

2023:PHHC:150187

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

FAO-6327-2023 (O&M)
Date of Decision:-24.11.2023

National Highway Authority of India ... Appellant

Versus

Kuljit Singh Sodhi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nitin Goyal, Advocate for
Mr. Raghujeet Singh Madan, Advocate for the appellant.

GURVINDER SINGH GILL, J. (Oral)

1. The appellant assails order dated 23.8.2023 passed by learned Additional District Judge, SAS Nagar, Mohali, whereby while partly accepting the petition under Section 34 of Arbitration and Conciliation Act filed by the claimant/respondents, the impugned award dated 23.12.2016 (Annexure A-1) passed by the Arbitrator has been set aside and the matter has been remanded back for a fresh decision. The operative part of judgment dated 23.8.2023 reads as under:

“Here, the learned Arbitrator has not taken into consideration the relevant sale deeds. Hence, the present application is partly allowed and the award dated 23.12.2016 is set aside. The learned arbitrator should call the parties to file the claims and then should call replies to

the said claims and the evidence should be taken in accordance with law and decide the award afresh within 2 months from the date of receipt of the copy of this order. The applicants are also directed to deposit the amount which has been taken by him. Record of the Arbitrator be returned along with the copy of the order, and file be consigned to the record room.”

2. Learned counsel representing the appellant has vehemently argued that Section 34 of Arbitration and Conciliation Act does not vest any power with the Trial Court for remanding the matter and that, as such, the impugned judgment dated 23.8.2023 deserves to be set aside. Learned counsel, in order to hammer forth his aforesaid submissions, places reliance upon a judgment rendered by Hon’ble the Apex Court in Kinnari Mullick and another Versus Ghanshyam Das Damani, 2018(11) SCC 328.
3. This Court has considered the aforesaid submissions.
4. The question as regards a fresh arbitration upon award being set aside by Court stands well settled now. Hon’ble Supreme Court in 2021(9) SCC 1 – Project Director, National Highways No. 45-E and 220 National Highways Authority of India versus M.Hakeen & Another held as under:-

“39. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in Kinnari Mullick (supra). Also, in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd.*, 2021 SCC OnLine SC 157, a recent judgment of this Court also followed McDermott (supra) stating that there is no power to modify an arbitral award under Section 34 as follows: -

- (f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.

Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the ‘limited remedy’ under Section 34 is co- terminus with the ‘limited right’, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

5. Even the ratio of judgment of Hon’ble the Supreme Court in Dr. A. Parthasarathy Versus E. Springs Avenues Pvt. Ltd., 2022 (1) Apex Court Judgments (SC) 130, is to a similar effect wherein it has been held as follows:

“3. By the impugned judgment and order passed by the High Court in exercise of power under Section 37 of the Arbitration and Conciliation Act, 1996, the High Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the Arbitrator for fresh decision. As per the law laid down by this Court in the case of **Kinnari Mullick v. Ghanshyam Das Damani (2018) 11 SCC 328** and **I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd. (2022) SCC OnLine SC 4**, the same is wholly impermissible. Only two options are available to the Court considering the appeal under Section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on

merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator.”

- 6. In view of the consistent ratio of judgments referred to above, this Court does not find any infirmity in the impugned judgment dated 23.8.2023 passed by learned Additional District Judge, SAS Nagar, Mohali and the same is hereby affirmed.
- 7. It has been informed by learned State counsel that Shri Ajeet Singh Pannu, IAS, who was the Divisional Commissioner and the statutorily appointed arbitrator under Section 3G(5) of National Highways Act, 1956 has already retired. As such, it follows that the matter upon any fresh arbitration being invoked is not going to be decided by the same Arbitrator.
- 8. Having regard to the facts and circumstances, it is clarified that pursuant to passing of impugned order, it shall be open to the respondents to invoke fresh arbitration by moving appropriate application before the present incumbent i.e. to the Commissioner, Patiala (concerned officer as per the Statute). Upon such application being filed, the same shall be disposed of in accordance with law and in accordance with directions issued vide impugned order dated 23.8.2023
- 9. Needless to mention, the appellant would be given reasonable opportunity to put up its case in accordance with law.
- 10. The instant petition stands disposed off accordingly.

24.11.2023

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No