



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO. 11 OF 2017

Godawari Marathwada Irrigation
Development Corporation, Aurangabad .. Appellant

versus

M/s Chowgule Real Estate and Construction
Company Pvt. Ltd. .. Respondent

Mr. B. R. Surwase, Advocate for the Appellant.
Mr. G. K. (Naik) Thigale, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.
DATE : 7th FEBRUARY, 2025.

PER COURT :

1. This appeal is preferred under Section 37 of the Arbitration and Conciliation Act (for short 'the Act') against the judgment and order dated 11.03.2015 passed in Misc. Civil Application No. 567/2013 by Principal District Judge, Beed, rejecting application filed under Section 34 of the Act and confirming the award passed by the Arbitral Tribunal dated 20.05.2013.

2. Appellant is Godawari Marathwada Irrigation Development Corporation, Aurangabad. Work of construction of Earthwork, Lining and structures on Distributary D35 is minors of

Pohaner branch Canal on Majalgaon Right Bank Canal was allotted to M/s Chowgule Real Estate and Construction Company Pvt. Ltd. (Respondent) for estimated cost of Rs. 33.52 lacs. The tender was accepted and the stipulated period for completion of work was 24 months i.e. upto 05.12.1989. It is the case of the appellant that due to breach of contract and delay caused by Respondent, the said work could not be executed within stipulated period and looking to the interest of the work, extensions were granted to complete the work. Since Respondent accepted various bills paid by the Appellant and as there was slow progress, Respondent could not complete the work within stipulated period and therefore, Appellant withdrew the part of the contract as per Clause 46 of the general conditions of contract. Termination of contract came to be effected by invocation of Clause No. 47 of tender after issuing due notice. It is further case of the Appellant that final bill is prepared with due notice to the contractor to attend the office for signing final bill on 10.02.1994. In spite of the said notice, Respondent/contractor did not attend the office. As such, in its absence, final bill was completed. It is the case of the appellant that for the first time, on 14.02.2006, notice was issued under Clause No. 52 of the tender agreement raising various claims and for appointment of Arbitrator to resolve the dispute between the

parties. The claim raised by said notice came to be rejected by the authorities since it was made after lapse of 17 years and being time barred. It is claimed that the Respondent preferred representation before Superintending Engineer and Chief Engineer and Chief Administrator CADA for the reason that the claim of the contractor was rejected on 13.07.2006. It is thereafter as per clause No. 53, sole Arbitrator came to be appointed on 13.09.2006.

3. Respondent/contractor submitted statement of claim. Appellant filed written statement. Amongst other issues, issues of jurisdiction of Arbitrator and constitution of Arbitral Tribunal and limitation were also raised before the Arbitral Tribunal. The proceeding commenced on 28.12.2006 and concluded on 08.09.2012. Award came to be passed on 20.05.2013 allowing the claim of Respondent/contractor. Against said award, application under Section 34 came to be filed before the District Court, Beed and since the said application came to be rejected by the impugned order, this appeal.

4. Learned counsel for Appellant submits that time barred claim of the contractor was entertained by the Arbitral Tribunal and

there was no invocation of provisions of tender agreement, more particularly clause Nos. 36, 52 and 53 and as such, as per Section 4 of the Act, Respondent has waived right to object regarding invocation of clause No. 52. It is his further contention that the arbitration proceedings are vitiated by violation of public policy and the learned District Judge infact ought to have caused interference in the entire award but interference was caused only to the extent of interest payable on the amount awarded. It is also contended that the Arbitrator as well as the District Court has failed to take into consideration the documentary evidence adduced before the Tribunal. On these amongst other grounds specifically mentioned in the memo of appeal, interference is sought in the impugned order.

5. Learned counsel for Respondent supported the impugned judgment as well as the award. It is his submission that it was not open for the Courts to invoke provisions of Sections 34 and 37 and that interference is permissible in any award strictly in accordance with the law laid down by the Hon'ble Supreme Court in various judgments. To support his submissions, he placed reliance on latest judgment of Hon'ble Supreme Court in case of Somdatt Builders vs. National Highways Authority of India and others, 2025 SCC OnLine

SC 170. He has also drawn attention of the Court to the judgment passed by coordinate bench of this Court in Arbitration Appeal No. 12/2011 and other appeals.

6. At the outset, in order to appreciate the scope of Sections 34 and 37 of the Act, it would be relevant to take note of the judgment of Hon'ble Supreme Court in case of Somdatt Builders (supra). The relevant portion of the said judgment is reproduced as under :-

36. In MMTC Ltd. v. Vedanta Ltd., this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions

laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.

37. *What is public policy of India has been explained in Ssangyong Engineer and Construction Company Ltd. (supra). It means the fundamental policy of Indian law. Violation of Indian statutes linked to public policy or public interest and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. It would also mean that the arbitral award is against basic notions of justice or morality. An arbitral award can be set aside on the ground of patent illegality i.e. where the illegality goes to the root of the matter but re-appreciation of evidence cannot be permitted under the ground of patent illegality.*

38. *In PSA Sical terminals Private Ltd. (supra), this Court reiterating the well settled principles held as under :*

40. *It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference*

would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on

no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

39. *In Reliance Infrastructure Ltd. (supra), this Court referring to one of its earlier decisions in UHL Power Company Ltd. v. State of Himachal Pradesh, held that scope of interference under section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 At. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed.*

7. In the light of the law laid down by the Hon'ble Supreme Court with regard to the jurisdiction of the District Court under Section 34 of the Act, it would be relevant to see as to how the learned Principal District Judge, Beed has dealt with the issues involved in the application under Section 34 of the Act. It was necessary for the District Court to consider as to whether the Arbitrator has dealt with the issue raised by the appellant herein and

in case the Court finds that the view taken by the Arbitrator is not perverse, it was not open for the Court to take any different view and record any independent finding thereon. Perusal of the impugned order indicates that the learned Principal District Judge has taken into consideration the award passed by the Arbitrator so also the material placed before the Arbitrator with regard to the relevant issues.

8. It is observed by the learned Court in Paragraph No. 27 of the order that in the light of the findings recorded by the Arbitrator with regard to the invocation of arbitration proceeding that since the concerned authority i.e. Executive Engineer, did not receive positive response until his claim of respondent was finally rejected in the month of April, 2006, at no point of time prior to rejection of the claim, the respondent has been informed about preparation of final bill. It is also observed that he was not given notice of preparation thereof as contemplated by relevant clause of the tender agreement. It is therefore held that only after rejection of the claim by Executive Engineer, cause of action accrued for the Respondent to invoke clause No. 52 of the tender agreement. It was therefore held that the claim of the Respondent was not barred by limitation.

9. As far as merits of the award and claim granted by the Arbitral Tribunal is concerned, it was not open for the District Court to re-appreciate the said material placed on record to record any different finding. Suffice it to say that the order passed by the District Court is in consonance with the jurisdiction entrusted with it under Section 34 of the Act. Needless to emphasize that this Court under Section 37 of the Act would not be permitted to travel beyond the jurisdiction under Section 34 of the Act and the said power is more limited to cause interference in an Arbitral Award.

10. Pertinently, the District Court has not ignored the aspect with regard to the interest awarded by the Arbitral Tribunal at the rate of 12% per annum. It is held by the District Court that the Arbitral Tribunal has powers to grant interest pendente lite and post award. However, considering the length of the dispute between the parties and also in view of the fact that the arbitration clause was invoked in the year 2006, interest came to be reduced to the extent of 10% per annum. Since the Respondent has not raised any objection with regard to the said finding, this Court finds no reason to cause any interference.

11. In view of the above discussion and also in view of the law laid down by the Hon'ble Supreme court as recorded hereinabove, no interference is called in the impugned judgment and order. Hence, appeal stands dismissed.

12. At this stage, learned counsel for the Respondent seeks permission to withdraw the amount deposited in this Court by the Appellant along with accrued interest thereon.

13. Learned counsel for the Respondent opposes the said request and seeks stay to the order passed by this Court to challenge the same before the Hon'ble Supreme Court. This request is opposed by learned counsel for Respondent.

14. This appeal is of the year 2017. Having regard to the fact that the stay is operating for a quite longer period, this Court finds it necessary to given time to the Appellant to test this order before the Hon'ble Supreme Court. Hence, execution of this order stands stayed for a period of 4 weeks from today. It is however clarified that if there is no further order passed by the Hon'ble Supreme Court, after

expiry of period of four weeks, it would be open for the Respondent to withdraw the amount deposited along with interest.

(R. M. JOSHI)
Judge

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