



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO. 5 OF 2018 WITH
CIVIL APPLICATION NO. 8281 OF 2018
IN ARBA/5/2018

The Zonal Manager, Maharashtra State Co-operative
Cotton Growers Marketing Federation Ltd., Parbhani

VERSUS

Mahesh Ginning And Pressing Industry Through It S
Proprietor, Radheshyam Ratanlalji Bhandari

• Mr. S. T. Shelke, Advocate for the Appellant

CORAM : R. M. JOSHI, J
DATE : JANUARY 17, 2025

PER COURT :

1. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') taking exception to the order passed by the Principal District Judge, Parbhani under Section 34 of the Act in MA(RJE) No. 89/2011 whereby the said application filed by the Appellant herein came to be dismissed.

2. The facts, as they led to the filing of this Appeal, can be narrated in brief as under:

Undisputedly, Appellant is State Co-operative Cotton Growers Marketing Federation (for short 'the

Federation'). The federation procures the cotton and supplies the same to the ginning and pressing factories. The Respondent is one of such factory to whom the it is supplied. In the intervening night of 03.02.2009 and 04.02.2009, the cotton stored in the premises of the Respondent for ginning and pressing caught fire. A District Fire Committee was constituted under G.R. dated 03.08.2002 on 04.02.2009. The said committee conducted the inquiry and determined the damage caused in the said fire. The committee held that the loss is more than Rs. 90 lacs and suggested imposition of penalty of Rs. 5 lacs on the Respondent/factory. Admittedly, the said amount of Rs. 5 lacs came to be deducted from the bills payable to the Respondent/Factory. Since the Respondent was aggrieved by the said deduction, by invoking clause no. 17(h) of the agreement between the parties, an application was moved before the Joint Director (Marketing) for appointment of the arbitrator. The said authority appointed arbitrator. Arbitration proceedings were conducted before the Arbitral Tribunal. The Arbitral Tribunal passed award dated 13.06.2011 directing the Federation to pay/refund Rs. 5 lacs to

Respondent with 15% interest p.a. and an amount of Rs. 25,000/- was directed to be paid towards cost of arbitration proceedings. This order was challenged under Section 34 of the Act before District Judge, Parbhani. Since the said application is dismissed, this Appeal.

3. At the outset, learned Counsel for the Appellant has raised objection with regard to the jurisdiction of the Arbitral Tribunal to conduct the proceedings under the Act. It is his submission that as per the contract between the parties, arbitrator was to be appointed by Registrar, Co-operative Societies. He drew attention of the Court to the order passed by the Joint Director (Marketing) dated 26.11.2010 making appointment of the Arbitral Tribunal. It is his submission by relying upon the judgment of the Hon'ble Supreme Court in case of Hakam Singh vs. M/s. Gammon (India) Ltd, AIR 1971 SC 740 that parties cannot by agreement confer jurisdiction on Court not possess it under the Code. It is his submission that non raising of objection before the Joint Director (Marketing) does not amount of conceding to the jurisdiction of the

arbitrator.

4. There is no dispute about the fact that there is an arbitration agreement exists between the parties. However, as per clause 17(h) of the said agreement, Arbitral Tribunal was to be appointed by Registrar, Co-operative Societies, Pune. It is thus clear that there was agreement between the parties with regard to the appointment of the arbitrator. In this backdrop, perusal of the order passed by the Joint Director (Marketing) dated 26.11.2010 indicates that no objection of whatsoever nature was raised before the said authority on the ground of lack of jurisdiction to appoint arbitrator. This Court, therefore, finds no substance in the contention of the learned Counsel for the Appellant that the arbitrator appointed by the said authority had no jurisdiction to conduct the arbitration proceedings. The agreement and clause no. 17(h) has been superseded by further agreement between the parties when no objection was raised before the Joint Director (Marketing) for appointment of arbitrator. Pertinently, Appellant was heard and only objection was raised with regard to the there being no

authority to appoint Arbitral Tribunal. The judgment of the Hon'ble Supreme Court in case of Hakam Singh (supra) deals with the issue that the Court which does not possess the jurisdiction under the Code of Civil Procedure cannot be conferred jurisdiction by the parties. This judgment has no application to the present case as the appointment of the Arbitral Tribunal is with the agreement between the parties and which is permissible in law. Most importantly, no objection was raised before Arbitral Tribunal about appointment or validity thereof. Section 16 of the Act entrust powers to the Tribunal to decide its jurisdiction. Non raising of any objection to the appointment of Arbitrator by Authority Competent before the Tribunal, amounts to acquiescence on part of Appellant. Moreover, no prejudice much less any irreparable loss is shown to have been caused by appointment of Arbitrator by Joint Director (Marketing) instead of Registrar, Co-operative Societies. This Court finds no substance in the said objection.

5. On merit, learned Counsel for the Appellant submits that as per the clause no. 17(c) of the

agreement between the parties it was open for the Appellant to deduct any amount payable to the Appellant by Respondent. Thus, it is his contention that even amount of Rs. 5 lacs, which was determined as penalty, was deductible from any amount payable to the Respondent.

6. In this regard, there is no dispute about the fact that though the inquiry committee had recommended the imposition of penalty of Rs. 5 lacs in fact no penalty in fact was imposed by the Federation on Respondent. In such circumstances, invocation of clause no. 17(c) is not justified.

7. Alternatively, it is sought to be argued on behalf of learned Counsel for Appellant that in any case when admittedly there was a damage caused to the extent Rs. 90 lacs and the entire damage was not made good by the Insurance Company, it was open for the Appellant/Federation to recover the said amount from the bills payable to the Respondent. In this regard, specific query was raised to the learned Counsel for Appellant as to whether at any point of time any notice was issued to the Respondent seeking recovery of any

damage. Admittedly, no such notice was issued by the Federation to the Respondent. In such circumstances, it was not open for the Federation to recover any amount unilaterally from bills payable to Respondent.

8. Having regard to the limited jurisdiction with the Court in order to cause any interference in the arbitral award, no case is made out for the same. Hence, appeal stands dismissed. Pending civil application(s), if any, stand disposed of.

9. After pronouncement of this order, learned Counsel for Appellant seeks continuation of the statement made on 04.07.2018 by Respondent whereby Respondent agreed not to withdraw the amount deposited before District Court.

10. None for Respondent.

11. As the said statement is in force since 2018, this Court finds no reason not to continue the same for a period of six weeks from today. Hence, said statement stands continued for a period of six weeks from today.

(R. M. JOSHI, J.)