

212

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-3249-2016 (O&M)
Date of decision: 27.10.2025**

M/S GANPATI POLYMERS

...Appellant(s)

VERSUS

**THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED AND ANOTHER**

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

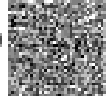
Present:- Mr. D. K. Singal, Advocate for the appellant.

Mr. Vikas Singh, Senior Advocate with
Ms. Anamika Sheoran, Advocate for respondent No.1.

JASGURPREET SINGH PURI, J. (Oral)

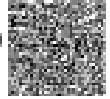
1. The present appeal has been filed challenging the judgment dated 08.01.2016 passed by the learned Additional District Judge, Chandigarh, whereby the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') was dismissed.

2. While narrating the facts of the present case, Mr. D. K. Singal, learned counsel for the appellant submitted that respondent No.1-claimant had invited tenders through a newspaper advertisement dated 29.06.2012 for the purchase of polypack bags and the appellant-firm having quoted the lowest rates was awarded the contract pursuant to an agreement executed between the parties. The total order was for the supply of 5 lakh PP bags, which was placed with the appellant-firm. He further submitted that these PP bags are used for



packaging cattle feed and out of the total quantity ordered, the appellant-firm supplied 10300 PP bags of different sizes to respondent No.1-Federation. He further submitted that the remaining PP bags were yet to be supplied but in the meantime, respondent No.1-Federation revoked the contract, although no order in this regard was placed on record before the learned Arbitrator and rather respondent No.1 purchased the remaining PP bags from some other firm and on the pretext of risk and purchase costs, Clause 7 of the agreement was invoked and thereafter, a claim petition was filed by respondent No.1 before the learned Arbitrator seeking recovery of an amount of approximately Rs.5,50,000/-.

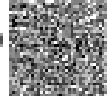
3. Learned counsel for the appellant further submitted that when respondent No.1 filed the claim petition before the learned Arbitrator, the same was contested by the appellant. He further submitted that the appellant also filed a counterclaim, which is attached with the present appeal as Annexure A-3 and the said counterclaim comprised four components i.e. pending payment for the supply of material amounting to Rs.1,21,717/-, earnest money amounting to Rs.50,000/- not released, interest from the date of accrual up to date of payment @ 18% per annum and costs amounting to Rs.2,00,000/- and in this way, the total counterclaim amounted to approximately Rs.4,00,000/- along with interest. He further submitted that the fact that the appellant also filed a counterclaim before the learned Arbitrator is not in dispute and the same rather reflects in the award passed by the learned Arbitrator and also in the judgment passed by the learned Additional District Judge, Chandigarh, while deciding the objections under Section 34 of the Act. He further submitted that even after noticing that the counterclaim had been filed, the learned Arbitrator made no observation at



all and did not adjudicate upon the same and rather remained totally silent on the fate of the counterclaim admittedly filed by the appellant, whereas on the other hand, the claim of respondent No.1-claimant to the tune of approximately Rs.5,50,000/- was allowed without even considering the fate of the counterclaim.

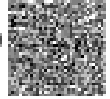
4. Mr. Singal further submitted that when the appellant filed objections under Section 34 of the Act before the learned Additional District Judge, Chandigarh, the learned Court noted down the aforesaid aspect pertaining to non-adjudication of the counterclaim but failed to consider and decide as to what would be the fate of non-adjudication of the counterclaim, whereas on the other hand, it was so observed by the learned Additional District Judge, Chandigarh that the counterclaim made by the appellant was taken into consideration by the learned Arbitrator. He further submitted that the aforesaid observation made by the learned Additional District Judge, Chandigarh, was contrary to the record itself. He referred to the award which was passed by the learned Sole Arbitrator to show that the counterclaim filed by the appellant was neither noticed, adjudicated upon nor taken into consideration by the learned Sole Arbitrator. He also submitted that there is not even a whisper in the award as to how the counterclaim of the appellant was dealt with by the learned Arbitrator and in this way, the impugned judgment which was passed by the learned Additional District Judge, Chandigarh, under Section 34 of the Act was totally against the record.

5. Learned counsel further submitted that under the provisions of Section 2(9) of the Act, a counterclaim is to be treated at par with that of a



claim made by the claimant and also referred to the provisions of Section 31(3) of the Act, wherein it is so specifically provided that the learned Arbitrator is to record reasons while passing the award. He further submitted that there had been a direct violation of the aforesaid statutory provisions and on that ground itself, the learned Additional District Judge, Chandigarh, ought to have considered the provisions of Section 34 of the Act, which provides that if the Court finds that the arbitral award is in conflict with the public policy of India or that if it is in contravention with the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice, then it becomes a ground for setting aside of the award. He submitted that however on the other hand, the learned Additional District Judge, Chandigarh, observed that no ground under Section 34 of the Act was available, whereas the learned Court failed to consider the aforesaid grounds which were made available under Section 34 of the Act since there was violation of the statutory provisions of the Act itself and therefore, the impugned judgment passed by learned Additional District Judge, Chandigarh, is liable to be set aside.

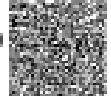
6. On the other hand, Mr. Vikas Singh, learned Senior Advocate assisted by Ms. Anamika Sheoran, learned counsel appearing on behalf of respondent No.1 submitted that while passing the award, the learned Sole Arbitrator considered the counterclaim made by the appellant, although no specific observation or adjudication was made in that regard. While referring to the award itself, he submitted that a detailed chart was incorporated therein showing that an amount of Rs.1,01,049/- had already been recovered from the appellant and was accordingly adjusted against the total award which was



passed to the tune of approximately Rs.5,50,000/- and therefore, it cannot be said that the counterclaim made by the appellant was not considered by the learned Arbitrator and on this ground, neither the award nor the judgment passed by the learned Additional District Judge, Chandigarh, can be set aside and therefore, the present appeal is liable to be dismissed. He further submitted that there was neither any ground available under Section 34 of the Act before the learned Additional District Judge, Chandigarh, nor any ground is available before this Court under Section 37 of the Act for setting aside the award as the aforesaid contention of the learned counsel for the appellant was based on disputing the merits of the case, which cannot become the scope of interference either under Section 34 of the Act or under Section 37 of the Act and therefore, the present appeal is liable to be dismissed.

7. I have heard the learned counsels for the parties and have also perused the record.

8. The main plank of the argument raised by the learned counsel for the appellant was that when a claim petition was filed by respondent No.1, then a counterclaim was also admittedly filed by the appellant, which has been attached along with the present appeal as Annexure A-3. This factual position is not disputed and rather it is so reflected both in the award and in the impugned judgment passed by the learned Additional District Judge, Chandigarh. The counterclaim filed by the appellant before the learned Arbitrator was under four different heads as aforesaid and according to the learned counsel for the appellant, the same amounted to approximately Rs.4,00,000/-.



9. Under the old Arbitration Act of 1940, misconduct itself was a ground for challenging an award but the same is not a ground under the new Arbitration and Conciliation Act of 1996. Under the new Arbitration and Conciliation Act of 1996, various other grounds are mentioned. The argument raised by the learned counsel for the appellant was that since a counterclaim was admittedly filed by the appellant, it ought to have been adjudicated by recording reasons, whereas in the present case, what to talk of reasons being recorded, the counterclaim was neither adjudicated nor there was any mention of its fate.

10. Section 2(9) and Section 31(3) of the Act are reproduced as under:-

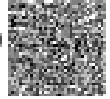
2(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

31(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

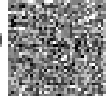
(b) the award is an arbitral award on agreed terms under section 30.

11. A perusal of the aforesaid would show that in arbitration proceedings, a counterclaim is at par with that of a claim. The title of Section 31 of the Act makes it very clear that it pertains to form and contents of arbitral award. Under Section 31(3) of the Act, it is mandatory for an arbitral award to state the reasons upon which it is based, except where the parties have agreed



that no reasons are to be given or where the award is on agreed terms under Section 30. This would definitely mean to include both the claims and the counterclaims. No segregation can be done pertaining to a claim and a counterclaim. It is a settled law that on a claim being preferred, the Arbitral Tribunal has to record reasons at the time of adjudicating the dispute and passing the award in terms of Section 31(3) of the Act. The rationale and the principle of law based upon the application of Section 2(9) of the Act would equally apply to the counterclaim as well.

12. A perusal of the judgment dated 08.01.2016 passed by the learned Additional District Judge, Chandigarh, while deciding the objections under Section 34 of the Act would show that it was so observed by the learned Court that the counterclaim filed by the appellant had been taken into consideration by the learned Arbitrator. The reason for making such an observation appears to be that an amount of Rs.1,01,049/- was so adjusted while passing the award and this argument was also raised by the learned Senior Advocate appearing on behalf of respondent No.1-claimant. However, this Court is of the considered view that when a counterclaim was raised by the appellant, then the same was required to be adjudicated in terms of Section 31(3) of the Act by recording reasons. A bare perusal of the award would show that there is no whisper as to what was the fate of the counterclaim. When the learned Additional District Judge, Chandigarh was considering the objections under Section 34 of the Act, the learned Court ought to have considered the aforesaid aspect in light of Section 34(2)(b) of the Act. The relevant portion of Section 34(2)(b) of the Act is reproduced as under:-



34(2)(b) *the Court finds that—*

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

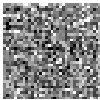
(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

xxx-xxx-xxx-xxx

13. The question that arises is whether the case of the appellant falls within any of the grounds under Section 34 of the Act, namely, being in conflict with the public policy of India, in contravention with the fundamental policy of Indian law or in conflict with the most basic notions of morality or justice in light of the provision of Section 31(3) of the Act, which is a statutory provision of the Arbitration and Conciliation Act, 1996, itself. This Court is of the considered view that the learned Additional District Judge, Chandigarh, fell in error in not considering whether non-adjudication of the counterclaim would



offend the provisions of Section 31(3) of the Act and in turn, whether it would violate the aforesaid provisions of Section 34(2)(b) of the Act.

14. In view of the aforesaid facts and circumstances, the present appeal is allowed. The impugned judgment dated 08.01.2016 passed by the learned Additional District Judge, Chandigarh, is hereby set aside. The matter is remanded back to the learned Additional District Judge, Chandigarh, to pass a fresh judgment after considering the effect of non-adjudication of the counterclaim of the appellant in light of the provisions of the Arbitration and Conciliation Act, 1996, particularly Section 2(9), Section 31(3) and Section 34(2)(b) of the Act. The learned Additional District Judge, Chandigarh, while deciding the objections under Section 34 of the Act shall consider the objections of the appellant afresh with due application of mind, on all the grounds to be taken up by the appellant and uninfluenced by the earlier judgment dated 08.01.2016 as well as the present order passed by this Court. The parties are directed to appear before the learned Additional District Judge, Chandigarh, on 19.11.2025. The entire exercise shall be completed within a period of four months from today.

27.10.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No