2025:PHHC:018795

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112+233

FAO-5992-2023 (O&M)
Date of decision : 06.02.2025

Sanjay Gupta

.....Appellant

VERSUS

Ashwani Kumar and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE LAPITA BANERJI

Present: Mr. Saksham Mahajan, Advocate,
for the appellant.

Mr. Vivek Gupta, Advocate (through VC)
for the respondents.

*****

LAPITA BANERJI, J. (ORAL)

1. The present appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act'). Under challenge is the impugned judgment and order dated July 20, 2023, passed by the Additional District Judge, Chandigarh, in an application filed under Section 34 of the 1996 Act.

2. Learned counsel appearing on behalf of the appellant submits that the arbitration agreement is forged and fabricated and no reliance can be placed thereupon. He submits that there was a previous award passed on May 18, 2001, by an Arbitral Tribunal consisting of five members. Challenging the award, an application under Section 34 of the 1996 Act was filed by the appellant herein. The learned Court, after hearing the application under

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

Section 34 of the 1996 Act, dismissed the same. Challenging the order dated March 4, 2003, a civil revision was filed. The said civil revision was dismissed. Thereafter, a review petition was filed, which was finally converted into FAO-8431-2015.

3. By an order dated February 11, 2016, a Coordinate Bench of this Court set aside the award passed in year 2001, since the same was not signed by all the Arbitrators. Since the parties were *ad idem* that the matter be referred to an independent Arbitrator, the Coordinate Bench appointed an independent Arbitrator, who adjudicated the disputes between the parties.

4. The parties submitted to the jurisdiction of the Sole Arbitrator and the arbitration proceedings culminated into the award dated September 26, 2017. The said award was challenged before the Additional District Judge, Chandigarh, in Arbitration Case No.1042 dated 11.12.2017. Vide judgment and order dated July 20, 2023, the learned Additional District Judge, Chandigarh, dismissed the application under Section 34 of the 1996 Act, being devoid of any merit. Challenging the impugned judgment dated July 20, 2023, the appellant has filed the present appeal.

5. Learned counsel for the appellant further contends that there was no appreciation of evidence by the learned Arbitrator and he failed to take into consideration Section 80 of the Indian Evidence Act, 1872/Section 79 of Bhartiya Sakshya Abhiyan, 2023 (for short 'BSA'). It is urged that there was no contract between the parties and therefore, the findings of the learned Arbitrator were perverse. Attention of this Court is drawn to the decision in ***Associate Builders versus Delhi Development Authority,*** **(2015) 3 SCC 49.** It is submitted that when the Arbitral Tribunal takes into consideration something irrelevant to the decision arrived at, then such decision suffers from

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

perversity and the award should be set aside.

6. Learned counsel appearing on behalf of the respondents submits that no objection regarding the jurisdiction of the Arbitral Tribunal was taken by the appellant herein (respondent in the arbitration proceedings). Furthermore, no reappreciation of evidence can be done by a Court adjudicating an application under Section 34 of the 1996 Act. The learned Arbitrator after appreciating the evidence came to the finding that some bags of potatoes were stored in the cold storage of the appellant and the same was reflected from the books of entries maintained by the appellant. Furthermore, the amount i.e. due and payable by the claimant to the appellant could be evidenced from the said books of entries. He further submits that the argument regarding the applicability of Section 18 is misplaced as the Court of the Chief Judicial Magistrate held that the report of the Handwriting Expert, dated January 20, 2013, regarding the signatures on the arbitration agreement being forged and fabricated, is *prima facie* not believable. The signatures were taken from photostat copy of an agreement and were compared after a gap of about 13 years. Therefore, no argument can be raised by the appellant on that spot.

7. This Court has heard the submissions made by learned counsel for the parties and perused the material on record.

8. From a perusal of the award dated September 26, 2017, it appears that the appellant herein being the owner of the cold storage used to store different kinds of agricultural products on agreed rates for admitted periods.

9. 1654 bags of potatoes were stored by the claimant with the respondent in the year 2000 and value of the said bags of potatoes was Rs.3,15,000/-. The potatoes were to be stored from November, 2000, but since

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

the same were not returned to the claimant, disputes and differences arose between the parties. It has been alleged that due to high market rates, the respondent sold the same with *mala fide* intention.

10. In order to resolve the disputes and differences between the parties, an arbitration agreement was entered into on April 27, 2001. The claimant's case was that the appellant had a practice of recording details of the goods received in the cold storage in their books of entries. The appellant had produced the original book containing 159 pages. During the arbitral proceedings held in the year 2001, the same was accepted by the learned Arbitrators. The appellant did not challenge the entries relating to the storage of potatoes made by the appellant at Page No.5 of the book. The photocopy of the original books of entries from the records of the previous arbitration proceedings was annexed to the statement of the claimant.

11. It was argued on behalf of the appellant that that no goods were ever stored with him. Therefore, nothing had to be returned to the claimant. The dispute was referred to a panel of Arbitrators. An award was passed on May 18, 2001 in favour of the claimant. A compensation of Rs.3,15,000/- along with interest @ 18% per annum was awarded. An execution application was filed by the claimant on December 8, 2001. The same was contested by the appellant and an application under Section 34 of the 1996 Act was filed on October 23, 2001. After the dismissal of the objection application, a revision was preferred which was dismissed by a Coordinate Bench of this Hon'ble High Court on October 31, 2012. A review petition was filed by the appellant for recalling of the order dated October 31, 2012. Vide order dated February 11, 2016, the same was allowed and converted into FAO-8431-2020 and the matter was referred to the learned Sole Arbitrator.

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

12. It is appellant's case that no notice of the *ex parte* award was received. However, upon coming to know about the execution application filed for executing the award dated May 18, 2001, the appellant caused enquires came to know that the arbitration agreement was forged by the claimant. Immediately, a complaint was lodged vide DDR No.17 dated March 23, 2002, regarding the stolen documents by the partners from the cold storage. The appellant also filed a complaint with the Senior Superintendent of Police, Jalandhar. Due to the submission of forged documents by the claimant the appellant prayed for comparison of the signatures appearing on the fake agreements. Since the police did not take any action, a complaint under Section 156 (3) Cr.P.C. was filed against the claimant by the appellant.

13. On merits, the appellant admitted that he holds a cold storage and the factum of a fabricated arbitration agreement stood proved from the report of the Handwriting Expert, who has stated that the signatures of the appellant did not match with the signatures that appeared on the agreement.

14. The appellant also submitted before the learned Arbitrator that the entries that were referred to by the claimant were also fake and forged and the claimant's case cannot be considered on the basis of such fabricated documents. The previous Arbitral Tribunal consisted of interested persons and no reliance could be placed on the first award. The appellant was not liable to pay for any claim made by the claimant.

15. The learned Arbitrator, after analyzing the affidavit of evidence, the arbitration agreement dated April 27, 2001, copy of the book of entries/stock diary record maintained by the appellant and other records relating to the previous arbitral proceedings, came to the finding that 1654 bags of potatoes were stored in the godown of the appellant. It is recorded in

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

the award that during process of cross-examination, the photocopy of the agreement dated April 27, 2001 was admitted by the appellant. Furthermore, it was admitted that the photocopy of the relevant page of the books of entries annexed to the present statement of claim was filed before the previous arbitrators.

16. The claimant withstood his cross-examination and deposed that no receipt regarding the storage of potatoes in the cold storage of the appellant was taken as the appellant was his cousin. The claimant denied the suggestion that the said potatoes were not stored by one Kashmir Singh and one Nasib Singh and pointed out that the names of Kashmir Singh and Nasib Singh appeared to have been written by a different hand and a different ink.

17. The appellant admitted before the learned Arbitrator that no DDR regarding the loss of books of accounts or documents was filed by him. He only made a complaint regarding forging of the books of accounts and the arbitration agreement. Admittedly, the report was given by a private Handwriting Expert and not by an empanelled Government Expert.

18. The learned Arbitrator held that the execution of the arbitration agreement to proves that the parties were *ad idem* to refer the matter in dispute to an independent Arbitrator. The appellant had stored the potatoes in his cold storage as per the hiring charges reflected in the books of entries submitted by the respondent with the previous Arbitrators. There was no material on record to suggest the missing or stealing or forging of the arbitration agreement. Complaint under Section 156(3) Cr.P.C, dated January 27, 2014, was filed at a very belated stage. No evidence was brought on record by the appellant to show that any suit for declaration for declaring the arbitration agreement to be null and void was filed. Therefore, his statement before the Arbitral Tribunal

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

was held to be false. During the cross-examination, the appellant had admitted that 1654 bags of potatoes were stored by Kashmir Singh and Nasib Singh, whereby, they have admitted the factum of storage of the potatoes. The appellant could not contradict the material part of the evidence regarding entries made in the note book/stock diary. Therefore, the learned Arbitrator came to the finding that the arbitration agreement was duly executed between the parties and awarded a sum of Rs.3,15,000/- along with interest @ 9% per annum w.e.f. April 27, 2001 till the date of the award on September 26, 2017. The cost of the arbitral proceedings amounting to Rs.50,000/- was also to be borne by the appellant. In the event, the appellant failed to pay the awarded amount within the period of four months, then future interest of 2% higher than the interest calculated under Section 31(7) (b) of the 1996, Act, was directed to be paid from the date of the award till the actual realization.

19. Since the scope of interference in an application under Section 34 of the 1996 Act is limited, the learned ADJ, Jalandhar, refused to interfere with the same. It held that the learned Arbitrator has dealt with the contract in the light of the entire documents placed before him and after affording due opportunities to the parties. It was held that the learned Arbitrator passed a well reasoned award and there was no error of fact on the face of the record. Neither the learned Arbitrator misconducted the proceedings by ignoring any material document nor did the award suffer from any error. Therefore, vide impugned judgment and order dated July 20, 2023, the application under Section 34 of the 1996 Act, was dismissed.

20. This Court has appreciated the award dated September 26, 2017 and the impugned judgment dated July 20, 2023. Admittedly, no application under Section 16 of the 1996 Act, has been filed by the appellant. After the

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

arbitral proceedings having been conducted by the Arbitrator, the appellant cannot now raise the issue of learned Arbitrator not having the jurisdiction to adjudicate the disputes between the parties. As has been noticed earlier, before the Coordinate Bench in FAO-8431-2015, the parties were *ad idem* that the disputes should be referred for adjudication by an independent Arbitrator. No objection was raised before the Coordinate Bench regarding the existence of arbitral agreement.

21. A detailed analysis has been made hereinabove, as to how the learned Arbitrator has appreciated the evidence. Therefore, there is no substance in the arguments that no evidence at all has been tendered by the parties or considered by the learned Arbitrator. Furthermore, since the learned Arbitrator has found that the charges are recorded in the book of entries/stock diary maintained by the appellant himself, there is no question of contract being hit by Sections 10 and 25 of the Contract Act, 1872. From the order passed by the Additional District Judge, Jalandhar, it appears that opinion of the Handwriting Expert was not accepted by him and the revision petition from the order dated June 16, 2018, passed by the Judicial Magistrate 1st Class, was not interfered with. Therefore, this Court is of the opinion that no violation of the provision of Section 80 of the Evidence Act, 1872 has been committed by the learned Arbitrator. In any event, this Court finds that the learned Arbitrator is the master of facts and is the ultimate authority to appreciate the evidence available before him. It is neither for the Court adjudicating the disputes under Section 34 of 1996 Act nor for the Court hearing the appeal under Section 37 of the 1996 Act to appreciate the evidence.

22. Relevant extract of the decision of the Apex Court in **Associate**

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

Builders' case (supra) is being reproduced hereinafter:-

> *12. xxxxx xxxxxxx xxxxxx xxxxx xxxxx*
>
> *It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently er fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral. Thus an award base on little evidence or on evidence which does not measure up in quali on this score[1]. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.*
>
> *xxxx xxxxx xxxx xxxx xxxx xxxx*
>
> *An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do. It wa opined by this court that when it comes to setting aside of an award under the public policy ground, it would mean that the award should shock the conscience of the court and would not include what the court thinks is unjust seeking to substitute its view for that of the arbitrator to do what it considers to be "justice".*
>
> *xxxx xxxxx xxxx xxxx xxxx xxxx"*

23. A beneficial reference may be made to the decision of the Apex Court in ***Konkan Railway Corporation Limited vs. Chenab Bridge Project***

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

***Undertaking*, (2023) 9 SCC 85.** The relevant extract is reproduced hereinafter:-

> *"14. Analysis: At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in **MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163**, is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.*
>
> *15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction.9 It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.10 In Dyna (2019) 19 SCC 9."*

24. A beneficial reference may be made to the decision of the Apex Court in **Delhi Metro Rail Corporation Ltd. Vs. Delhi Airport Metro Express Private Limited, (2024) 6 SCC 357**. The relevant extract of the said judgment is reproduced hereunderbelow:-

> 40. *In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A `finding' based on no evidence at all or an award which ignores vital*

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document

evidence in arriving at its decision would be perverse and liable to be set aside under the head of `patent illegality'. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice

25. Furthermore, the scope of interfere under Section 37 is extremely limited can be deduced from various judgments of the Apex Court. Accordingly, the present appeal being FAO-5992-2023 is dismissed.

26. Connected application(s), if any, also stand accordingly **dismissed**.

(LAPITA BANERJI)
JUDGE

06.02.2025
Nisha-I

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

NISHA
2025.02.24 10.10
I attest to the accuracy and
integrity of this document