HIGH COURT OF PUNJAB AND HARYANA
Division Bench: Hon'ble Mr. Justice Arun Palli and Hon'ble Mr. Justice Vikram Aggarwal
Date of Decision: 05th April 2024

FAO-CARB-58-2023 (O&M)

M/s GAURAV RICE INDUSTRIES AND ANOTHER ...APPELLANT(S)

VERSUS

THE HARYANA STATE COOP. SUPPLY AND MARKETING FED. LIMITED (HAFED) ...RESPONDENT

Legislation and Rules:

Section 151 of the Code of Civil Procedure (CPC)
Section 34 of the Arbitration and Conciliation Act, 1996
Section 138 of the Negotiable Instruments Act, 1881

Subject: Appeal against the judgment dismissing the appellants' Section 34 petition challenging an arbitral award favoring the respondent for breach of contract in a lease agreement for rice mill operations.

Headnotes:

Arbitration Proceedings - Non-filing of Written Statement of Defence - Dismissal of Application under Section 151 CPC for Placing Documents on Record - High Court dismisses application under Section 151 CPC for placing documents on record, as the appellant failed to file a written statement of defence before the Arbitrator during arbitration proceedings. No cogent reason provided for the belated submission of documents. Application dismissed. [Paras 1-2]

Arbitration and Conciliation Act, 1996 - Section 34 Petition - Challenge to Arbitral Award - Failure to Contest Claim - Dismissal of Petition - Appellants fail to submit a written statement of defence during arbitration proceedings, only making verbal submissions. Arbitral award passed in favor of respondent. High Court dismisses petition under Section 34 of the 1996 Act, stating no fault could be found with the award due to appellants' failure to participate effectively. [Paras 2(ii)-11]

Grounds for Interference with Arbitral Award - Limited Scope - Court's Role - Court does not sit in appeal over arbitral award but may interfere on limited grounds, including violation of public policy or patent illegality. No independent assessment of merits of the award permitted. [Paras 7-13]

Decision: Dismissal of Application under Section 151 CPC - High Court dismisses the application for placing documents on record, citing failure to file a written statement of defence during arbitration proceedings. [Para 2]

Dismissal of Petition under Section 34 of the Arbitration and Conciliation Act, 1996 - High Court upholds the dismissal of the petition challenging the arbitral award, noting appellants' failure to effectively contest the claim during arbitration proceedings. No violation of principles of natural justice found. Appeal deemed devoid of merit and dismissed. [Paras 10-11]

Referred Cases:

- Associate Builders vs. DDA, (2015) 3 SCC 49
- ONGC Ltd. vs. Saw Pipes Ltd., (2003) 5 SCC 705
- Hindustan Zinc Ltd. vs. Friends Coal Carbonisation, (2006) 4 SCC 445
- McDermott International vs. Burn Standard Co. Ltd., (2006) 11 SCC 181
- MMTC vs. M/s Vedanta Ltd., 2019 AIR SC 1168

Representing Advocates:

For the appellants: Mr. Lekh Raj Sharma, Mr. Abhishek Sharma, Mr. Raj Kumar Sharma, Mr. Abhikant Vats, Mr. Vivek Kumar

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VIKRAM AGGARWAL, J.

CM-7-FCARB-2024

Prayer in the instant application preferred under Section 151 CPC is for placing on record certain documents as Annexures A-2 to A-6. Learned counsel for the applicant-appellants submits that the documents in question could not be produced before the Arbitrator during the course of the arbitration proceedings and that the applicant-appellants be now permitted to place the said documents on record. We do not find any reason to accede to the prayer made in the application, as the applicant-appellant cannot be permitted to now place on record the said documents once he did not even bother to file a written statement of defence before the Arbitrator. No cogent

reason has been given for the acceptance of the prayer made in the application.

Accordingly, finding no merit, the application is dismissed.

FAO-CARB-58-2023

1. The present appeal assails the order and judgment dated 17.11.2023 passed by the Court of learned Additional District Judge, Kaithal, vide which the petition preferred by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"), was dismissed. Along with the petition under Section 34 of the 1996 Act, objections had also been filed by the appellants in the execution petition preferred by the decree-holder (DH), which were also dismissed.

2. The respondent-HAFED invited tenders for leasing out its rice mills located at Ladwa, Pehowa, Dhand, Kalayat, Jakhal, Ratia, Ding, Kalanwali and Rania. The appellants, along with others, submitted their bids along with earnest money of Rs.5 lakh as per the terms and conditions of the tender notice. The offer of the appellants was accepted qua HAFED Rice Mill, Dhand for leasing of 9000 MT paddy for the year 2016-17, for a total lease money of Rs.26.01 lakh. Thereafter, agreement dated 01.10.2016 was also executed, wherein the terms and conditions for running the rice mill were enumerated. The possession of the rice mill was taken over by the appellants on 01.10.2016. As per the terms and conditions of the agreement, the appellants were to deposit security of Rs.5 lakh in addition to the earnest money. The same was paid by way of a cheque but was dishonoured. Other installments were also not paid, nor any response was given to various notices issued by the respondent. A criminal complaint under Section 138 of the Negotiable of Instruments Act, 1881 was also instituted. Finally the arbitration proceedings were initiated for recovery of amount of Rs.26.01 lakhs on account of loss suffered by the respondent-HAFED due to

noncompliance of the terms and conditions of the agreement and tender notice by the appellants.

2(ii) During the arbitration proceedings, no written statement of defence was submitted though the representative of the appellants appeared before the Arbitral Tribunal and made verbal submissions. Accordingly, the arbitration proceedings concluded in favour of the respondent-HAFED. The award was accordingly passed in favour of the respondent-HAFED and against the present appellants and the claim was accepted *in toto.* 2(iii) Aggrieved by the award, a petition under Section 34 was preferred by the appellants, which was also dismissed by the Court of learned Additional District Judge, Kaithal, stating that since the appellants had not bothered to file any written statement of defence, no fault could be found with the award. Aggrieved by the said decision, the present appeal has been preferred.

3. We have heard learned counsel for the appellants.

4. Sh. Lekh Raj Sharma, learned counsel representing the appellants submitted that proper opportunity was not granted by the Arbitrator to the appellants and that the claim put forth by the respondentHAFED was granted without delving into the issue.

5. Learned counsel submitted that though the appellants did not participate in the arbitration proceedings, inasmuch, as no written statement of defence was submitted, submissions were duly made before the Arbitrator, but the Arbitrator did not consider the matter from the correct perspective.

6. We have considered the submissions made by learned counsel for the appellants and have also perused the paper-book. The record was not summoned, for no written statement of defence was submitted by the appellants and even the respondent had examined only one witness, as is - apparent from the award.

7. Before considering the issue on merits, it would be essential to state that the position of law is by now well settled that while dealing with a petition under

Section 34 of the 1996 Act, the Court concerned does not sit in appeal over the arbitral award and may interfere on merits on the limited grounds provided in Section 34 (2)(b)(ii) of the 1996 Act, i.e. if the award is against the public policy of the India. As per the legal position clarified by the Hon'ble Apex Court, prior to the amendment to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract. In any case, interference in an arbitral award would not entail a review of the merits of the dispute and would be limited to situations, where the findings of the Arbitrator are arbitrary 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, however, may not be interfered with, if the view taken by the arbitrator is a possible view based on facts. Reference in this regard can be made to the judgments of Hon'ble Apex Court in the case of ***Associate Builders vs. DDA*, (2015) 3 SCC 49**, ***ONGC Ltd. vs. Saw Pipes Ltd.*, (2003) 5 SCC 705**, ***Hindustan Zinc Ltd. vs. Friends Coal Carbonisation* (2006) 4 SCC 445** and ***McDermott International vs. Burn Standard Co. Ltd.*, (2006) 11 SCC 181**.

8. After the 2015 amendment, this position stands somewhat modified and it was held by the Supreme Court in the case of ***MMTC vs. M/s Vedanta Ltd.*, 2019 AIR SC 1168** as under:

"It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

12. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed 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. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

13. **Having noted the above grounds for interference with an arbitral award, it must now be noted that the instant question pertains to determining whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the Courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of reassessment of the material on record, but only in terms of the principles governing interference with an award as discussed above.**

14. It is equally important to observe at this juncture that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is within the arbitrator's jurisdiction to consider the same. (See *McDermott International Inc. v. Burn Standard Co. Ltd.* (supra); *Pure Helium India (P) Ltd. v. ONGC, 2003(4) RCR (Civil) 791: (2003) 8 SCC 593, D.D. Sharma v. Union of India, (2004) 5 SCC 325).*

9. Reverting to the case in hand, admittedly, the appellants did not submit any written response to the claim submitted by the respondentHAFED and only made oral submissions. The respondent-HAFED, on the other hand, examined its District Manager Sh. V.P. Malik as a witness and evidence by way of an affidavit was submitted. The learned Arbitrator awarded the claim of recovery of Rs.26.01 lakh and accepted the claim *in toto*. In the considered opinion of this Court, the Arbitrator did not commit any illegality in doing so, especially, once the claim was not opposed in any manner and further, the

respondent was able to prove its case through evidence of its District Manager.

10. The petition under Section 34 of the 1996 Act was also, therefore, rightly rejected by the Court of learned Addl. District Judge, Kaithal. It was contended before the said Court that no opportunity of hearing was given to the appellants, leading to the violation of the principles of natural justice. It was also submitted that the respondent-HAFEd had failed to deliver the paddy for milling as per the terms of the agreement dated 01.10.2016 and, therefore, there was no fault on the part of the appellants. The Court concerned duly took note of the fact that no written statement of defence had been filed before the Arbitrator, as a result of which the claim was accepted. It was held that ample and proper opportunity of hearing had been granted to the appellants and, therefore, here was no violation of the principles of natural justice. Accordingly, the petition under Section 34 of the 1996 Act, as also objections filed to the execution were rightly dismissed. 10(ii) This Court does not find any reason to interfere in the decision taken on the petition under Section 34, as also in the award in view of the judgments referred to in the preceding paragraph, as also in view of the fact that the appellants did not even bother to contest the claim of the respondent by filing written statement of defence or leading evidence. Once neither the written statement of defence was filed, nor any evidence was led, no illegality was committed in considering the claim of the respondent, the evidence led by it and accepting the same, of course upon finding the same to be meritorious.

11. In view of the aforesaid, we find the appeal to be totally devoid of merit and accordingly dismiss the same.