

PBBT010070972018



Presented on : 01-09-2018
 Registered on : 04-09-2018
 Decided on : 24-04-2019
 Duration : 0 years, 7 months, 23 days

**IN THE COURT OF SHRI KAMALJIT LAMBA,
 DISTRICT JUDGE, BATHINDA.
 (UID No.PB0055)**

CNR No.PBBT01-007097-2018.

CIS No. Arb.78/2018.

File No.34 dated 04.09.2018.

RT No.88 dated 16.03.2019

Date of decision: April 24, 2019

Vijay Kumar, aged about 54 years, son of Shri Hans Raj son of Shri Gurditta Mal, resident of House No.MCB-Z5-06863, Guru Gobind Singh Nagar, Gali No.9, Bathinda.

.....Petitioner.

Versus

1. The Bathinda Central Cooperative Bank, Grain Market Branch Bathinda through its Branch Manager.

....Respondent.

2. Jhabbar Mal son of Sh.Sham Lal, Sham Sweet House, Grain Market, Bathinda.
3. Ramesh Kumar Gupta, Ex.Branch Manager, The Bathinda Central Cooperative Bank Ltd. Bathinda Branch Grain Market, Bathinda.
4. Suresh Kumar, Cashier, The Bathinda Central Cooperative Bank Ltd. Bathinda Branch Grain Market, Bathinda.
5. Smt.Devinder Kaur Accountant, The Bathinda Central Cooperative Bank Ltd., Bathinda Branch Grain Market, Bathinda.

....Performa-Respondents.

6. Sh.Harpal Singh AR (now retired) through Assistant Registrar, Cooperative Societies, Mini Secretariat 3rd Floor, Room No.445-445, Bathinda.

.... Arbitrator

**PETITION UNDER SECTION 34 OF THE
ARBITRATION AND CONCILIATION ACT, 1996.**

.....

Present: For the Petitioner: Sh.Rajiv Gupta & Sh.Rohit Jain, Advocates.
For respondent No.1: Sh.A.P.S.Sekhon, Advocate.
Service of remaining respondents has already been dispensed
with.

JUDGMENT

1. The petitioner-objector had filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'Act') against the award dated 14.6.2010 passed by the learned Sole Arbitrator, who vide order dated 31.01.2012 dismissed the objections. The petitioner-objector challenged the said order in the Hon'ble High Court vide FAO No.2161 of 2012. Hon'ble Punjab and Haryana High Court vide order dated 08.05.2013 was pleased to set-aside the order of my learned Predecessor and remanded back the matter to the learned Arbitrator for disposal in accordance with law. The learned Arbitrator vide award dated 26.04.2018 has held against the petitioner-objector and aggrieved therefrom, the petitioner-objector has filed the instant objections.

2. The facts required to be noticed for the purpose of the disposal of the instant petition are that petitioner, who was working as Peon-cum-Chowkidar in Bathinda Central Cooperative Bank, Grain Market Bathinda, is alleged to have misappropriated certain amounts of the Bank. A committee constituted by the Bank to enquire into the matter, found that petitioner has misappropriated the certain amounts belonging to the Bank. Accordingly, the dispute arose between the petitioner and respondent No.1 and the same was referred to an Arbitrator under Section

56 of the Punjab Cooperative Societies Act, 1961 and Shri Harbans Singh Jatana, Assistant Registrar, Cooperative Societies, Bathinda was appointed as Arbitrator, who passed the Award on 14.6.2010, vide which the Arbitrator directed the petitioner to pay the amount embezzled by him to the Bank. The said Award was challenged by the petitioner before District Court, Bathinda by way of filing a petition, which was initially dismissed by the District Court, Bathinda, but the challenge thereto carried by the petitioner in appeal bearing FAO No.2161 of 2012, was allowed by the Hon'ble High Court on 8.5.2013 and the Award was set-aside and the matter was remitted to the Arbitrator to decide the same afresh in accordance with law. Accordingly, Registrar, Cooperative Societies vide letter No.3392 dated 19.6.2013 appointed Assistant Registrar, Cooperative Societies, Bathinda as an Arbitrator to adjudicate the matter, who conducted the proceedings and passed the fresh Award on 26.4.2018. It is alleged that the impugned Award has been passed by the Arbitrator as Sole Arbitrator on 26.4.2018 without the knowledge of the petitioner and that too in his absence. No intimation of hearing or passing of the Award was ever given to the petitioner nor any certified or signed copy of the Award was ever supplied to the petitioner. According to the petitioner, the arbitral Award dated 26.4.2018 passed by respondent-Arbitrator is illegal, invalid, arbitrary, unjust, against public policy and is liable to be set-aside on various grounds mentioned in para No.3 of the petition.

3. Upon receiving the notice of the instant objection petition, respondent No.1 appeared through its counsel and resisted the same by

way of filing written reply.

4. Service of remaining respondents was dispensed with on the basis of the statement made by the learned counsel for the petitioner as no relief was sought against them.

5. Record of the learned Arbitrator was also requisitioned and perused.

6. This Court has considered the rival submissions of the learned counsel appearing on behalf of the respective parties and with their able assistance have gone through the record of the Arbitrator, carefully and cautiously.

7. At the very out-set, the primary objection raised by the learned counsel appearing on behalf of the respondent-society is that the objection filed by the petitioner under Section 34 of the Arbitration and Conciliation Act 1996 is not maintainable.

8. On the other hand, learned counsel appearing on behalf of the petitioner submitted that the objection as such filed by the petitioner under Section 34 of the Arbitration and Conciliation Act is fully maintainable. Elaborating his submission, he submitted that it is a matter of record that earlier the objection filed by the petitioner against the Award under Punjab Cooperative Society Act was dismissed and aggrieved therefrom, the petitioner has filed the appeal before the Hon'ble Punjab and Haryana High Court in FAO No.2161 of 2012 and vide Judgment dated May 8, 2013 the Hon'ble High Court has remitted the case to the Arbitrator and while remitting the matter, the Hon'ble High Court has considered the plea of the respondent society in regard to the maintainability of the

objection under section 34 of the Arbitration and Conciliation Act and the Hon'ble High Court held that against the Award passed under Punjab Cooperative Society Act, the aggrieved party has a right to challenge the same or prefer an objection under Section 34 of the Arbitration and Conciliation Act.

9. This Court has considered the primary objection raised by the respondent society regarding the maintainability of the instant objection. It is not in dispute that aggrieved from the Award passed under Punjab Cooperative Act, earlier the petitioner has filed the objections under Section 34 of the Arbitration and Conciliation Act and the Hon'ble High Court while remitting the matter back to the learned Arbitrator has considered the plea of the respondent society in regard to the maintainability of the objection under Section 34 of the Arbitration and Conciliation Act and the Hon'ble High Court has ordered as follows:-

"Normally the scope of interference with respect to an award passed by an Arbitrator is very limited. The award can be set-aside only if it attracts any of the grounds enumerated in Section 34 of the Conciliation Act, 1996. But that pre-supposes an Award passed in accordance with law. If the Award is passed in a wholly illegal and unjust manner, it will be an act done against the public policy, equity and rules of natural justice.

The instant case would eminently attract the adage "justice hurries is justice buried". Arbitrator held the first and only hearing on May 17th, 2010. On that date itself appellant

filed his reply. No points for settlement or issues were framed. The Bank filed affidavits of four employees. Appellant was not given opportunity to cross-examine them. He was denied the opportunity to produce evidence and straightaway the Arbitrator reserved the order and then pronounced the same on July 14th, 2010. A complete go by was given to the provisions of law, procedure and rules of justice. It is a typical case where the Arbitrator misconducted the proceedings and also misconducted himself.

It would thus be seen that appellant was unable to present his case and the procedure adopted by the Arbitrator was not in accordance with provisions of Conciliation Act, 1996. The wrong must not be left unredeemed and right not left unenforced. So, the Award dated June 14th, 2010 passed by the Arbitrator is set-aside. The impugned Judgment of the Additional District Judge is also set-aside.

Since the Award is set-aside on account of procedural violation, it is remitted back to the Arbitrator to decide the same afresh in accordance with law. Registrar, Cooperative Societies, Punjab, is hereby asked to decide the dispute himself or transfer it for disposal to another Arbitrator invested by the Government with powers in that behalf."

10. In view of the admitted fact that the matter in hand has been remanded by the Hon'ble Punjab & Haryana High Court with a direction to decide the dispute afresh and as such, now there is no need to go into

the controversy as to whether against the award passed under the Punjab Cooperative Societies Act, aggrieved party has only a right to challenge the same under the provisions of said Act or the aggrieved party is well within in his right to file the objections under Section 34 of the Act. As such, the preliminary objection raised by the respondent society with regard to the maintainability of the objections under Section 34 of the Act become redundant and accordingly rejected.

11. Now coming to the merits of the case, the award is challenged by the petitioner-objector on the following grounds:-

1. Award is against law and facts.
2. The learned Arbitrator while passing the impugned award has not considered the facts and documents filed by the petitioner-objector.
3. The learned Arbitrator has not provided the reasonable, equitable and fair hearing. It is submitted on behalf of the petitioner-objector that in fact after filing of the reply and the documents by the petitioner-objector, he was never called upon to lead evidence or to make submissions.
4. Partially, prejudice and bias of the Arbitrator against the petitioner-objector.
5. Travelling beyond the scope of agreement between the parties and many claims beyond the scope of Arbitration had been granted.

Learned counsel appearing on behalf of the petitioner-objector has also referred to the grounds of objections, as stated by him in the objection petitioner, in order to contend that the award is based on

surmises and conjectures and not on facts/record. With these submissions, he submitted that the impugned award is liable to be set aside.

12. On the other hand, learned counsel appearing on behalf of the respondent society submitted that it is the second round of litigation and it is a matter of record that while remanding back the matter, Hon'ble High Court had specifically directed the parties to appear before the learned Arbitrator and in pursuance of the remand order, the petitioner-objector through his counsel appeared, as it is also the matter of record that the petitioner-objector had been represented by Sh. Shaminder Singh Maur, Advocate. However, for the best reasons known to the petitioner-objector he has chosen not to appear before the learned Arbitrator. He submitted that the learned Arbitrator afforded an opportunity to address the arguments, but the same was not availed. He submitted that the learned Arbitrator can only afford an opportunity and it is for the parties whether to avail the same or not. He submitted that there is no apparent illegality in the impugned order and the impugned order is neither contrary to the substantive provisions of law nor is appeased the public policy. He submitted that the view taken by the Arbitrator is a plausible view and as such, there is no ground to reappraise the entire findings of the learned Arbitrator. With these submissions, he prayed for the dismissal of the objections.

13. This Court has considered the rival submissions of the learned counsel appearing on behalf of respective parties and with their

able assistance have gone through the record available on the file carefully and consciously.

14. Needless to say that as per the settled law, under Section 34 of the Act, the Court does not sit as an Appellate Court to reappraise the entire findings of the Arbitrator. Once the view which has taken by the Arbitrator is a plausible view, the Court will not interfere with the findings and conclusions merely because a different view is possible as is sought to be propounded by the petitioner-objector. Once the Arbitrator arrives at a plausible finding of a fact of reference to a document and interpreting the same, such cannot be, in any manner, contended to be either illegal or perverse, so as to entitle this Court to interfere with such finding under Section 34 of the Act.

15. Keeping in view the above referred position of law, this Court has considered the various objections raised by the learned counsel appearing on behalf of the petitioner-objector. The first objection as raised by the petitioner-objector that the award is against law and facts. Admittedly, petitioner-objector was Peon-cum-Chowkidar in the year 2002 to 2008 in respondent society. The allegation against him that he had embezzled amount of the bank during the aforesaid period. A preliminary inquiry was also got conducted and there was a finding to the effect that the petitioner-objector had mis-appropriated the amount belonging to the bank. The matter was referred to the Arbitrator and the Arbitrator directed the petitioner-objector to pay the amount embezzled by him to the bank.

Now the objection against the Arbitrator award that the award is against law and facts is omnibus in nature. It has not been stated in so many words as to derogation of which particular law, the award has been passed or what particular facts have not been taken into consideration. The learned Arbitrator was ceased of the matter which pertain to the accounts. The relationship between the parties has not been in dispute. The only dispute before the learned Arbitrator was as to whether the petitioner-objector mis-appropriated the amount belonging to respondent society. The learned Arbitrator has decided the same on the strength of the documents adduced by the parties and consideration of the same. It has not been pointed out in the objections as to what facts have been ignored or erroneously considered by the learned Arbitrator. Therefore, this Court is of the considered view that the objection in this regard that the award is against law and facts, is merit-less and holds no ground.

16. Another objection raised by the learned counsel appearing on behalf of the petitioner-objector is that no reasonable, equitable and fair hearing was provided to the petitioner-objector. He submitted that in fact after filing of the reply and documents by the petitioner-objector, he was never called upon to lead evidence or to make submissions. Having considered this objection, this Court finds that this objection has been taken by the petitioner-objector in its widest amplitude. However, the facts and circumstances of the case do not even an iota of support to this objection. As stated above, before the Arbitrator, it was a second round of litigation, as the matter was remanded back to the learned Arbitrator by

the Hon'ble High Court. In view of the order passed by the Hon'ble High Court in a petition filed by the petitioner himself, this Court is in no doubt that the petitioner was duty bound to appear before each and every date before the Arbitrator. Though, the petitioner-objector had engaged a counsel, namely, Sh. Shaminder Singh Maur, who filed his power of attorney, but for the reasons best known to him, he had not attended the dates fixed before the learned Arbitrator. Thus, instead of cooperating in the matter, neither the petitioner-objector nor his counsel appeared before the learned Arbitrator, perhaps with an intention to prolong the matter. The petitioner-objector seems to have acted contrary to the spirit to the remand order passed by the Hon'ble Punjab and Haryana High Court, as on his petition, the matter was remanded back to the learned Arbitrator with a direction to re-decide the controversy and pass a fresh award. It is pertinent to mention here that in fact it was the second round of litigation before the Arbitrator and the petitioner-objector ought to have more vigilant. No provision of law has been brought to the notice of this Court on behalf of the petitioner-objector to establish that petitioner-objector was entitled to notice on each and every date of hearing, as a matter of right. Not even a single specific instance has been mentioned by the petitioner-objector to show that the learned Arbitrator has not afforded equitable and fair hearing to him. There have been number of hearings and the impugned award shows that the documents brought on record by the parties have been considered by the learned Arbitrator and ostensibly there is no denial of any opportunity to any of the party. Needless to say that the arbitration proceedings are not strictly bound by the procedure as

laid down in the Code of Criminal Procedure or in the Indian Evidence Act. No objection to procedure has been taken during the pendency of the arbitration proceedings. Thus, this Court is of the considered view that even the second objection, so raised by the petitioner-objector, sans merit.

17. The petitioner-objector also raised the objection in regard to the partially, prejudice and bias attitude of the Arbitrator against the petitioner-objector. This Court has also considered the said objection and having gone through the proceedings of the Arbitrator, this Court is of the view that the said objection is also merit-less. Partially, prejudice and bias are serious allegations and must be shown by the circumstances as they may be subtle or discreet. It can be shown that an undue advantage has accrued to the adversary at the cost and expenses of the petitioner-objector on account of partial, prejudice or bias of the learned Arbitrator. In this context, the Act has laid down grounds and procedure to challenge the Arbitrator in regard to the alleged partial, prejudice and bias. It is directed under the Act that a party within 15 days of becoming aware of any ground of Section 12 of the Act may challenge the Arbitrator by sending a written statement contending the reasons for challenge. No such challenge had been made during course of proceedings. Even while filing the objections, no ground of any such challenge has been put forth by the petitioner-objector. On the other hand, by engaging counsel, the petitioner-objector has submitted to the jurisdiction of learned Arbitrator without a demur. Except oral submissions, there is no specific ground, reason or circumstance has been cited to show any justifiable doubt as to

independence or impartiality of the learned Arbitrator. Thus, this objection is also without any merit.

18. The another objection raised by the petitioner-objector that the Arbitrator travelled beyond the scope of agreement and as such, the award passed by him be set aside, is also seems to be entirely vague. Not even a single instance or claim has been mentioned where Arbitrator has travelled beyond the jurisdiction. No particular claim has been cited which has been granted by the Arbitrator in violation of the scope of his authority. The matter was referred to the Arbitrator in order to adjudicate as to whether the petitioner-objector embezzled the amount of the bank while he was Peon-cum-Chowkidar in the year 2002 to 2008 in the respondent society bank. There is no denial to the fact that the petitioner-objector was never employed with the respondent society bank. There is no denial to the fact that no preliminary inquiry was conducted into the matter and even there is no denial to the fact that a preliminary inquiry was conducted to look into the matter and to find that the petitioner-objector mis-appropriated the amount belonging to the bank and on the basis of the preliminary inquiry, the dispute between the employer and employee arose and the matter was referred to the Arbitrator. On the basis of the documents, the Arbitrator directed the petitioner-objector to pay the amount embezzled by him to the respondent bank. The respondent is a cooperative society and subjected to all accounting norms and tax laws and is liable to maintain its account. There is nothing on record to suggest that the petitioner-objector prayed for any opportunity to produce any

accounts and the same has been declined by the learned Arbitrator. Thus, this ground is also without any substance.

19. Considering the entire material on record, this Court is of the view that the various grounds pressed into service by the petitioner-objector in the grounds of petition to impugn the award of the learned Arbitrator are not only vague and omnibus in nature, they do not hold any substance. The award does not suffer from any infirmity or perversity and as such, the award does not require for any interference within the scope of Section 34 of the Act.

20. As a result of the foregoing discussion, the objection petition fails and is dismissed. However, keeping in view the peculiar circumstances of the case, the parties are left to bear their own costs. Memo of costs be prepared accordingly. After doing the needful, file be consigned to the Record Room.

Pronounced.
April 24, 2019.
'Sanjeev,EA'

(KAMALJIT LAMBA),
DISTRICT JUDGE,
BATHINDA.
(UID No.PB0055).