

**IN THE COURT OF SH. KEWAL KRISHAN, ADDITIONAL
DISTRICT JUDGE, PATIALA.**

Case type	Arbitration
CNR No	PBPT010182212019
CIS No.	ARB-853-2019
Instituted on	12.12.2019
Date of Registration	13.12.2019
Decided on	25.02.2021

IN THE MATTER OF :

1. Rajesh Kumar son of Sh.Tarsem Chand, resident of Ward No.8, Lakh Wali Basti, Patran, Tehsil Patran & District Patiala.
2. Vinod Kumar son of Sh. Tarsem Chand, resident of Ward No.8, Lakh Wali Basti, Patran Tehsil Patran District Patiala and owners of Shop M/s Rakesh Kumar Vinod Kumar, Sangrur Road Patran, Patran, District Patiala.

.....Applicant/Petitioner

Versus

1. Union of India, through Secretary Ministry of Shipping, Road Transport and Highways New Delhi.
2. National Highways Authority of India through its General Manager, (Tech and Project Director) H.No.17-L, Model Town Ambala City.
3. Competent Authority-Cum-Land Acquisition Collector-cum-Sub Divisional Magistrate Patran, District Patiala.
4. Sub Divisional Engineer, Central Works Sub Division, Sangrur at Patiala.
5. Executive Engineer, Central Works PWD (B&R), Patiala.

...Respondents

Objections petition under Section 34 of the Arbitration and Conciliation Act (as amended upto date) to the Award dated 12.9.2019 on behalf of the objector.

Present:

Sh. Sameer Gupta Advocate Learned Counsel for the objectors.

Sh. Vishavdeep Gupta Advocate Learned Counsel for the respondents No.1, 3, 4 and 5.

Sh. Charanvir Singh Advocate counsel for respondent No.2.

Order :

1. The objectors have filed this objection petition under Section 34 of the Arbitration and Conciliation Act challenging the order dated 12.9.2019 of the Arbitral Tribunal. They have considered the impugned order as Award. The question of maintainability of the present objection petition under Section 34 of the said Act is involved. The impugned order is reproduced as under:

*“Present: Clerk/Sh. Parminder Singh Adv., for the petitioner.
Sh. Vishavdeep Gupta Adv. For the respondents.*

This is an application filed under Sub Section 5 of the Section 3(G) of the National Highways Act 1956 for determining the market value of the land situated in village Patran, Tehsil Patran, District Patiala, acquired by National Highways Authority of India for widening the National Highways-71 (Sangrur to Punjab/Haryana Border Section) in District Patiala. The award for acquisition was passed by the Sub Divisional Magistrate -Cum-Land Acquisition collector, Patran on 7.11.2014.

2. The application was filed by the counsel for the applicant on 1.7.2015 and case was fixed for arguments on 31.8.2018. From 31.8.2018 till today seven adjournments were given on the request of clerk of counsel for the petitioner. The counsel

never appeared. Today, neither the petitioner nor his counsel have come present. It clearly shows that he is not interested to pursue the present case. As such the application filed in this case is hereby dismissed.

ANNOUNCED

Arbitrator-Cum Commissioner,

12.9.2019

Patiala Division Patiala.”

2. Brief facts as putforth in the petition are that objectors being the owners in possession of landed property situated alongside the National Highway-71 were constrained to part with part possession of the same under notification issued by the Union of India whereby wide in/four laning of NH071 was proposed. The final award was passed by the Competent Authority. The objectors filed a petition before Learned Arbitrator for enhancement of compensation. Laerned Tribunal dismissed the petition vide impugned order, which has been challenged vide present objection petition.

3. The respondents No.1, 3, 4 and 5 have appeared and filed their joint admitting filing of the petition before the Learned Arbitrator and passing of impugned order. Other pleas of the objector were denied and a prayer for dismissal of objection petition was made. Reply on behalf of respondent no.2 is not filed, which is dispensed with for the purpose of deciding the question of maintainability of the petition U/s 34 of the said Act.

4. The question of maintainability of present petition under Section 34 of the said Act against the impugned order are heard. Learned counsel for the objectors has argued that the impugned order is an Award and this petition under Section 34 of the said Act is maintainable, whereas learned counsel for appearing respondents has argued that this petition is not maintainable.

5. It is admitted fact that the objector filed a petition under Section 3 G (5) of National Highways Act 1956 before the Arbitrator-cum-Commissioner Patiala on 1.7.2015. The evidence was submitted by the petitioner on 2.5.2016 and then proceedings were adjourned for arguments, which remained pending for long period for arguments. On 12.9.2019, the petition was dismissed by Learned Arbitrator vide impugned order.

6. Section 23 of the Arbitration and Conciliation Act, 1996 (as amended vide Act No. 33 of 2019) reads as: ‘**Statement of claim and defence**— (1) *Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.*
(2) *The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.*
(3) *Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.*

(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.'

7. Section 25 of the Act reads as: "**25. Default of a party**-Unless otherwise agreed by the parties, where, without showing sufficient cause,-

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

8. Section 32 of the said Act reads as: "**32. Termination of proceedings**-

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under Sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."

9. This Court deems it appropriate to refer the case law **Srei Infrastructure Finance Limited v. Tuff, Drilling Private**

Limited 2017(12) Scale 105 (Law Finder Doc Id # 908008) of Hon'ble Supreme Court, which shows that one-man arbitral tribunal entered into reference. Both the parties appeared on 27.08.2011 on which date arbitral tribunal had directed to file the statement of claim. Subsequently, 19th November was fixed on which date the claimant was absent. The arbitral tribunal directed for filing statement of claim by 9th December. On 9th December, the claim could not be filed by respondent and by order dated 12.12.2011, tribunal terminated the claim under Section 25 (a) by making the observations that it appears that the claimant is not interested to proceed with the reference. In view of Section 25 (a) of the Arbitration & Conciliation Act, 1996 the Arbitrator, therefore, has no alternative but to terminate the proceedings, which were terminated. The Claimant filed an application praying for recall of the order with further prayer to condone the delay in filing the statement of claim by granting necessary extension of time. In the application, reasons for non-filing of the statement of the claim and for non-appearance of the claimant were stated in detail. The application filed by the claimant was objected by the appellant. The opposite party questioned the maintainability of the application on the ground that arbitral tribunal has become functus officio in view of termination of the proceedings under Section 25 (a), hence the arbitral tribunal cannot recall its order terminating the proceedings. The arbitral tribunal held that in view of order terminating the proceedings, he cannot pass an order recommencing the arbitration proceedings and

he rejected the application. Aggrieved by the order of the arbitral tribunal, the claimant approached the Hon'ble Calcutta High Court, who after considering the submissions of parties came to the conclusion that **arbitral tribunal enjoys the power to recall its own order**. The order of the Tribunal was set aside and the matter was remitted back to the arbitral tribunal to decide the application on merits. The aggrieved party filed an appeal before Hon'ble Supreme Court. Para Nos.20, 21, 32, 33, 35 of the above case law are being reproduced as under:

‘(20) When the arbitral tribunal without sufficient cause being shown by the claimant to file the claim statement can terminate the proceedings, subsequent to termination of proceedings, if the sufficient cause is shown, we see no impediment in the power of the arbitral tribunal to accept the show-cause and permit the claimant to file the claim. The Scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23 (1) has expired. Thus, even after passing the order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the arbitral tribunal by accepting the show-cause and there is no lack of the jurisdiction in the arbitral tribunal to recall the earlier order on sufficient cause being shown.

(21) Section 32 contains a heading "Termination of Proceedings". Sub-section (1) provides that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section(2). Sub-section(2) enumerates the circumstances when the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. The situation as contemplated under Section 32 (2)(a) and 32(2)(b) are not attracted in the facts of this case. Whether termination of proceedings in the present case can be treated to be covered by Section 32 (2)(c) is the question to be considered. Sub-clause(c) contemplates two grounds for termination, i.e.; (i) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or (ii) impossible. The eventuality as contemplated under Section 32 shall arise only when the claim is not terminated

under Section 25 (a) and proceeds further. The word 'unnecessary' or 'impossible' as used in sub-clause (3) of Section 32 (2) cannot be said to be covering a situation where proceedings are terminated in default of the claimant. The word unnecessary or impossible has been used in different contexts than to one of default as contemplated under Section 25 (a). Sub-section (3) of Section 32 further provides that the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings subject to Section 33 and sub-section (4) of Section 34. Section 33 is the power of the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature or to give an interpretation of a specific point or part of the award. Section 34 (4) reserves the power of the Court to adjourn the proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. On the termination of proceedings under Sections 32 (2) and 33 (1), Section 33 (3) further contemplates termination of the mandate of the arbitral tribunal, whereas the aforesaid words are missing in Section 25. When the legislature has used the phrase "the mandate of the arbitral tribunal shall terminate" in Section 32 (3), non-use of such phrase in Section 25 (a) has to be treated with a purpose and object. The purpose and object can only be that if the claimant shows sufficient cause, the proceedings can be re-commenced.

(32) We endorse the views of Patna High Court, Delhi High Court and Madras High Court as noted above, in so far as they have held that the arbitral tribunal after termination of proceedings under Section 25 (a) on sufficient cause being shown can recall the order and re-commence the proceedings.

(33) In the present case, the arbitral tribunal has rejected the application of the claimant by order dated 26.04.2012 taking the view that after an order is passed by him terminating the proceedings, he cannot pass the order recommencing the arbitration proceedings. In view of the above discussions, we are of the view that the arbitral tribunal committed an error in holding that it has no jurisdiction to recall an order terminating the proceedings under Section 25(a). The arbitral tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the arbitral tribunal be asked to consider the application filed by the claimant dated 20.01.2012 praying for recall of the order dated 12.12.2011 and to grant extension for filing the statement of claim.

35. In result, the appeal is dismissed. The interim order dated 07.07.2015, granting stay on the operation of order dated 13.02.2015 passed by the High Court stands discharged and the arbitral tribunal shall now proceed to decide the application of claimant-respondent dated 20.01.2012 expeditiously. The parties shall bear their own costs.'

10. The Division Bench of Hon'ble Madras High Court has observed in **Bharat Heavy Electricals Limited v. Jyothi Turbopower Services Private Limited**, [2016\(5\) MLJ 1](#) : Law Finder Doc Id # 777336 that the appropriate remedy in case of termination of proceedings under Section 25 (a) would require the Arbitral Tribunal itself to be moved, which would then examine the aspects on merits as to why the order does or does not require to be recalled.

11. As observed by Hon'ble Supreme Court and Hon'ble Madras High Court respectively in the above case laws to get the order of termination of proceedings set-aside, the remedy lies with the objector is to file an application with the Arbitral Tribunal, who would examine the aspects on merits as to why the order does or does not require to be recalled.

12. Hon'ble Bombay High Court has observed in para No.24 and 25 of '**Neeta Lalitkumar Sanghavi v. Bakulaben Dharmadas Sanghavi** [2020\(1\) ArbiLR 344](#) (Law Finder Doc Id # 1368608)

'(24) To counter this argument, Mr. Dave submitted that the impugned order passed by the sole Arbitrator was in the nature of an Award and therefore could only be

challenged under Section 34 of the Act. I am unable to agree with this submission. To my mind, an Award is passed by the Arbitral Tribunal, interim or final, when it decides the lis between the parties. There has to be some adjudication on the merits of the claim or part thereof (which may include limitation) for the order passed by the Tribunal to be termed as an Award. It is not as if every order passed by the Tribunal and which terminates the Arbitral proceedings can be termed as an Award. This is quite clear on reading Section 32 itself which contemplates that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2) of Section 32. This would clearly indicate that merely because the arbitral proceedings are terminated by an order of the Arbitral Tribunal would not necessarily make it an award. It would partake the character of an award if the lis between the parties on any issue is finally decided by the Arbitral Tribunal. In the facts of the present case, admittedly, the lis between the parties has not been decided at all. In fact, as mentioned from the narration of facts set out earlier, this litigation has a very checkered history. The impugned order rejected the application of the claimant to be formally brought on record. Having passed such an order, naturally the sole Arbitrator could not proceed any further with the arbitral proceedings, especially considering that the original claimant had expired on 7th August, 2012 and his heirs were not brought on record. There was no one to prosecute the arbitral proceedings. This order can never be termed as an arbitral award as understood under Section 34 of the Act. I must mention that the Delhi High Court in the case of Joginder Singh Dhaiya (supra) appears to have taken a view that where the arbitrator holds that the proceedings have abated because of not bringing the legal heirs on

*record, the same would amount to an arbitral award which can be challenged under Section 34 of the Act. With great respect, I am unable to agree with the reasons of the learned Single Judge of the Delhi High Court. Though the decision of the Supreme Court in the case of **Lalitkumar v. Sanghavi** (supra) was brought to the attention of the Delhi High Court, it was sought to be distinguished by stating that in the facts of that case the Tribunal had terminated the arbitration proceedings as the claimant had taken no interest in the matter and it is in these circumstances that the Supreme Court held that such an order would be falling under Section 14 and 32 (2)(c) of the Act and hence the remedy would be under Section 14 (2). The Delhi High Court proceeded on the basis that the apparent distinction between an order and an award lies in the fact whether the decision of the Arbitral Tribunal affects the rights of the parties, concluding the dispute as to the specific issue and has finality attached to the same. The Delhi High Court held that since the order of the Tribunal had resulted in termination of the arbitration proceedings and would bar the petitioners from reagitating the same in any other proceedings, the said order would partake the character of an award since it has finality attached to it and determined the vital rights of the parties. I am unable to agree with the reasoning given by the Delhi High Court for the simple reason that Section 32 of the Act provides for the termination of arbitral proceedings. It provides that the arbitral proceedings shall stand terminated by pronouncement of the final arbitral award or by an order of the arbitrator under sub-section (2) of Section 32. In the facts of the present case, the Arbitral Tribunal has terminated the proceedings by virtue of not bringing the petitioners on record in the arbitral proceedings. There is no pronouncement of a final arbitral*

award in the facts of the present case as stipulated under Section 32(1). Every order of the Tribunal terminating the arbitral proceedings can never be terms as an award. This is clear from an ex-facie reading of section 32.

*(25) Furthermore, Section 34 of the Act provides for an application to be made to the Court for setting aside the arbitral award. The very heading of the above provision reflects that recourse to Section 34 is permissible only for setting aside the arbitral award on the grounds mentioned therein. It is not applicable where there is no award. As mentioned earlier, every order that terminates the arbitral proceedings would not amount to an award. There may be several situations and which are difficult to exhaustively set out, under which the Arbitral Tribunal may terminate the arbitration proceedings, as well as its mandate for reasons that this is impossible to continue with the arbitral proceedings. That would not mean that every such order would partake the character of an award. An award to my mind would be one which would decide the lis between the parties and which would have finality attached to it (subject, of course, to challenge under Section 34 of the Act). I am of the considered view, that the decision of the Supreme Court in the case of **Lalitkumar v. Sanghavi** (supra) would clearly cover the issue raised before me. I am therefore unable to agree with the reasoning of the Delhi High Court and therefore overrule the preliminary objection.'*

13. Learned Tribunal while passing the impugned order has not made adjudication on the merits of the claim or part thereof. Section 32(1) of the the Arbitration and Conciliation Act says that the arbitral proceedings shall be terminated by the final arbitral award or

by an order of the arbitral tribunal under Sub-section (2). Section 34 of the said Act is related to setting aside arbitral award. It is not related to an order of the arbitral tribunal. The impugned order is neither an Award not an interim Award.

14. Keeping in view above detailed discussion, this Court finds that present objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 against the impugned order is not maintainable and the same stands dismissed without going into the merits of claim of the petitioners. The parties shall bear their own costs.

15. This order of mine shall have no effect on the proceedings, if initiated by the petitioner before the Arbitral Tribunal. Record of the Arbitral Tribunal be returned. File of this Court be compiled and consigned to the Judicial Record Room.

**Pronounced in open Court,
On 25.2.2021
Typed by: Narinder Sharma-I**

**(Kewal Krishan)
Addl. District Judge, Patiala
UID-PB0182**