



Sr. No.107
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2808-2023 (O&M)
Date of Decision : 20.01.2025

Union of India	Versus	...Appellant
M/s Shekhar Enterprises and another		...Respondents

CORAM : HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Arun Gosain, Advocate,
for the appellant.

Mr. Vishal Sodhi, Advocate,
for the respondents.

LAPITA BANERJI, J. (Oral)

Under Challenge in the present appeal is the impugned judgment and order dated January 02, 2023 passed by the learned District Judge, Pathankot.

2. Learned District Judge vide impugned order, refused to interfere with the award passed by the learned Arbitrator and dismissed the application under Section 34 of the 1996 Act. It was argued by the applicant-appellant before the learned Court adjudicating the application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") that the learned Arbitrator misdirected himself by not taking into consideration Clause 11 of the arbitration agreement relating to *time, delay and extension of the contract* and unjustly/unfairly relied upon clauses 7 and 9 of the said agreement. The learned Arbitrator was of the view that the Union of India-appellant had to make good the amount that was claimed by the claimant-contractor against claim Nos.3(a), 3(b), 5(b), 5(c), 8 and 9 with interest @10% per annum from March 9, 2012 i.e. 6 months after the submission of the final bill by the contractor up to the date of the award.



The appellant was given a period of 3 months to make the payment. In the event the entire awarded amount was not paid within the aforesaid period of 3 months, the entire amount as due was directed to carry future interest @ 12% per annum from the day after the date of publication of award to the date of actual payment.

3. By the impugned order, the learned District Judge came to the finding that there was no infirmity in the aforesaid award and the appellant could not bring the challenge within the purview of the grounds set out in Section 34 of the 1996 Act. Since Court hearing an application under Section 34 could not sit in appeal over the award passed by the learned Arbitrator while dealing with the application under Section 34 of the 1996 Act, in view of the law laid down by the Hon'ble Supreme Court of India in *"Rashtriya Ispat Nigam Ltd. Vs. M/s Dewan Chand Ram Saran"* 2012 (3) RCR (Civil) 720, the award was not interfered with.

4. Learned counsel for the appellant submits that apart from the grounds mentioned in the application under Section 34 of the 1996 Act, the learned Arbitrator committed a jurisdictional error since the second extension was not granted by the Court and was only mutually agreed upon by the parties.

5. Issue notice to the respondents.

6. Mr.Vishal Sodhi, Advocate appears and accepts notice on behalf of the respondents and submits that by passing the impugned order, the learned District Judge did not commit any error since after appreciation of evidence, even if an alternative view to the view taken by the learned Arbitrator was possible, the award could not be interfered with. Further more, he submits that the extension of mandate of learned Arbitrator was done by



mutual consent of the parties and at this appellate stage, no issue could be raised regarding the said fact. The appellant has challenged the award on the ground of expiry of the mandate of the learned Arbitrator for the first time before this Court hearing the appeal under Section 37 of the 1996 Act.

7. He relies on the decisions passed by a coordinate Bench of the Delhi High Court dated 17.09.2004 in '*Shyam Telecom Ltd. Vs. Arm Ltd.*' and the Bombay High Court dated 01.08.2008 in '*M/s Mascon Multiservices and Consultants Pvt. Ltd. Vs. Bharat Oman Refineries Ltd. and Another*'.

8. Heard the parties and perused the material on record.

9. It appears that the learned Arbitrator considered clauses 7, 9 and 11 of the contract between the parties and after detailed reasoning granted the aforesaid claims. It could not be said that the award was against the Public Policy of India or that the learned Arbitrator misdirected himself in any manner or that the learned Arbitrator committed a jurisdictional error. Therefore, there was no scope of interference by the Court adjudicating the dispute under Section 34 of the 1996 Act. A beneficial reference can be made to the scope of the 34 proceedings in the judgment of the Supreme Court passed in '*Associate Builders Vs. Delhi Development Authority*', (2015) 3 SCC. The relevant extract is set out herein below:-

"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 was further held that it has been 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 on the facts of the case seeking to substitute its view for that of the arbitrator to do what it considers to be “justice”.”

10. The scope of interference in Section 37 of the 1996 Act is extremely limited and the court cannot go beyond the stipulations of Section 34 of the 1996 Act. A beneficial reference can be made to the judgment of the Supreme Court in “**Konkan Railway Corporation Limited Vs. Chenab Bridge Project Undertaking**” (2023) 9 SCC 85. The relevant extract of the same is reproduced hereunder:-

*“14. Analysis: At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this in **MMTC Ltd Vs. 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. 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.”

11. This Court also relies upon the reasoning of **Shyam’s** (supra) and **M/s Mascon Multiservices** (supra) to come to the finding that once the parties themselves submit to the jurisdiction of the learned Arbitrator and expressly waived their rights to challenge the mandate of the Arbitrator, which had come to an end by efflux of time, they should not be permitted to take that ground to challenge the award at the stage of setting aside of the award under Section 34 or at the stage of an appeal filed under Section 37 of the 1996 Act. In the present case, the parties entered into reference on



July 14, 2016. The first extension was made by the consent of the parties till December 31, 2017.

12. Before the expiry of the mandate on December 31, 2017, the parties on November 11, 2017 agreed to an extension till January 31, 2018. The award was passed by the learned Arbitrator on January 25, 2018. Therefore, admittedly the award was passed before expiry of the second extension that was consensually made by the parties. Therefore, this Court finds no infirmity in the judgment and order passed by the learned District Judge on January 02, 2023. Accordingly, FAO No.2808 of 2023 is **dismissed.**

13. Pending application(s) if any, shall also stand disposed of.

(LAPITA BANERJI)
JUDGE

January 20, 2025

vandana

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