

A HARYANA TOURISM LIMITED

v.

M/S KANDHARI BEVERAGES LIMITED

(Civil Appeal No. 266 of 2022)

B JANUARY 11, 2022

**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

*Arbitration and Conciliation Act, 1996 – ss.34 and 37 – Exercise of powers u/s.37 – Scope of – High Court in appeal u/s.37*

- C *set aside the award passed by the arbitrator as well as the order passed by the first appellate Court-Additional District Judge-On appeal, held: An award can be set aside only if it is against the public policy of India –The award can be set aside u/ss.34/37, if it is found to be contrary to fundamental policy of Indian Law; or the interest of India; or justice or morality; or if it is patently illegal –*
- D *None of the aforesaid exceptions are applicable to the facts of the present case –In appeal u/s.37, the High Court entered into the merits of the claim which is not permissible– It decided the appeal u/s.37 as if it was deciding the appeal against the judgment and decree passed by the trial Court – High Court exercised the jurisdiction not vested in it u/s.37– Impugned judgment of High Court set aside – Award passed by the arbitrator and the order passed by the Additional District Judge u/s.34 overruling the objections are restored.*
- E *jurisdiction not vested in it u/s.37– Impugned judgment of High Court set aside – Award passed by the arbitrator and the order passed by the Additional District Judge u/s.34 overruling the objections are restored.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 266 of

F 2022.

From the Judgment and Order dated 17.07.2018 of the High Court of Punjab and Haryana at Chandigarh in FAO No.1399 of 2015 (O&M).

B. K. Satija, Himanshu Satija, Ms. Neha Mehta , Advs. for the Appellant.

G Kanwal Chaudhary, Bimlesh Kumar Singh, Rajeev Kumar Gupta, Joginder Mann, Hardik Ahluwalia, Ms. Urvi Kashiwal, Advs. for the Respondent.

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The Judgment of the Court was delivered by

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**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17.07.2018 passed by the High Court of Punjab and Haryana at Chandigarh in F.A.O. No. 1399 of 2015 (O&M), by which the High Court has allowed the said appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, ‘the Arbitration Act’) and has set aside the award dated 17.11.2005 passed by the arbitrator as well as the order dated 25.09.2014 passed by the first appellate Court – Additional District Judge, Chandigarh, the original claimant – respondent before the High Court has preferred the present appeal.

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2. The facts leading to the present appeal in a nutshell are as under:

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That the appellant herein – Haryana Tourism Limited (for short, ‘Corporation’) invited tenders/quotations for the supply of Aerated Cold Drinks at its Tourist Complexes for the period 15.05.2001 to 14.05.2002. The tender submitted by the respondent herein was accepted by the Corporation. As per the agreement, the respondent-company was supposed to pay a sum of Rs. 20 lakhs on account of Brand Promotion which was required to be spent as per mutual agreement between the parties.

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2.1 That the Corporation organised a Mango Mela on 07/08<sup>th</sup> July, 2001. The Corporation spent a sum of Rs. 1 lakh. Both the parties agreed to hold musical nights. According to the respondent herein, it spent a sum of Rs.13.92 lakhs. However, the appellant-Corporation asked the respondent vide letter dated 20.09.2001 to deposit a sum of Rs. 19 lakhs as sponsorship money. The appellant vide letter dated 17.01.2002 terminated the contract. Dispute arose between the parties. The matter was referred to the sole arbitrator.

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2.2 Vide award dated 17.11.2005, the arbitrator directed the respondent to pay a sum of Rs. 9.5 lakhs. The counter claim lodged by the respondent claiming Rs. 13.92 lakhs was dismissed by the arbitrator. The respondent thereafter filed objection petition before Additional District Judge, Chandigarh under Section 34 of the Arbitration Act against the award passed by the arbitrator. Vide order dated 25.09.2014, the Additional District Judge dismissed the appeal/objection petition.

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- A        2.3 Feeling aggrieved and dissatisfied with the order passed by Additional District Judge, Chandigarh dismissing the appeal/objection petition under Section 34 of the Arbitration Act, the respondent herein preferred a further appeal before the High Court under Section 37 of the Arbitration Act. By the impugned judgment and order, the High Court has allowed the said appeal by entering into the merits of the claim and has quashed and set aside the award passed by the arbitrator as well as the order passed by Additional District Judge, Chandigarh.
- B        2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original claimant – Corporation has preferred the present appeal.
- C        3. Shri B.K. Satija, learned Advocate has appeared on behalf of the appellant herein and Shri Kanwal Chaudhary, learned Advocate has appeared on behalf of the respondent herein.
- D        3.1 Shri B.K. Satija, learned Advocate appearing on behalf of the appellant – Corporation has vehemently submitted that the High Court has materially erred in quashing and setting aside the award in exercise of its powers under Section 37 of the Arbitration Act. It is submitted that while quashing and setting aside the award passed by the arbitrator, the High Court has exceeded its jurisdiction under Section 37 of the Arbitration Act.
- E        3.2 It is submitted that the High Court had a very limited scope and/or jurisdiction while deciding the appeal under Section 37 of the Arbitration Act.
- F        3.3 It is submitted that in an appeal under Section 37 of the Arbitration Act, the High Court has no jurisdiction to enter into the merits of the claim awarded by the arbitrator, confirmed by the first appellate Court under Section 34 of the Arbitration Act.
- G        3.4 It is submitted that in the present case, the High Court has decided the appeal as if the High Court was deciding the first appeal against the judgment and decree passed by the learned trial Court which as such is not permissible while exercising the power under Section 37 of the Arbitration Act.
- H        3.5 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court.

4. The present appeal is vehemently opposed by Shri Kanwal A Chaudhary, learned Advocate appearing on behalf of the respondent.

4.1 It is submitted that as such the learned arbitrator had no jurisdiction at all to pass the award as no amount was due and payable as nothing was spent on marketing activities by the appellant – Corporation. B

4.2 It is submitted that the composition of Arbitral Tribunal as well as the appointment of the sole arbitrator was not in accordance with clause 13 of the Contract. It is submitted that the appointment of the sole arbitrator and his competence was challenged by the respondent, which was summarily rejected. C

4.3 It is submitted that the question of jurisdiction can be raised under Section 16 of the Arbitration Act which can also be raised after the award is passed.

4.4 It is submitted that even otherwise as no amount was spent by the appellant – Corporation, there was no question of any payment to the appellant-Corporation. It is submitted that on the contrary, the respondent filed a counter claim claiming Rs. 13.92 lakhs which unfortunately came to be rejected by the arbitrator. D

4.5 Making the above submissions, it is prayed to dismiss the present appeal. E

5. We have heard the learned counsel for the respective parties at length. We have also gone through the impugned judgment and order passed by the High Court.

6. So far as the question of jurisdiction of the arbitrator raised by the respondent is concerned, the same has been dealt with by the High Court also and the said objection has been overruled by the High Court against which no appeal is preferred by the respondent. In that view of the matter, now it is not open for the respondent to challenge the jurisdiction of the arbitrator, that too in an appeal preferred by the original claimant – Corporation – appellant herein. F

7. So far as the impugned judgment and order passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the G H

- A claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.
8. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial Court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.
- In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The award passed by the arbitrator and the order passed by the Additional District Judge under Section 34 of the Arbitration Act overruling the objections are hereby restored.
10. The present appeal is accordingly allowed to the aforesaid extent. No costs.

Divya Pandey  
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.