

A PUNJAB STATE CIVIL SUPPLIES
CORPORATION LTD. & ANR.

v.

M/S. RAMESH KUMAR AND COMPANY & ORS.

B (Civil Appeal No 6832 of 2021)

NOVEMBER, 13, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

- C *Arbitration and Conciliation Act 1996: ss. 34 and 37 – Arbitral award – Jurisdiction of High Court u/s. 37 arising from the disposal of a petition challenging an arbitral award u/s. 34 – On facts, High Court not only set aside the judgment of the District Judge rejecting the petition u/s. 34 but also awarded the claim of the respondents, together with interest – Sustainability of – Held: Not sustainable –*
- D *High Court seems to have proceeded as if it was exercising jurisdiction in a regular first appeal from a decree in a civil suit – High Court was required to determine as to whether the District Judge had acted contrary to the provisions of s. 34 in rejecting the challenge to the arbitral award – High Court went one step further while reversing the judgment of the District Judge in decreeing the claim in its entirety, which was clearly impermissible – While considering a petition u/s. 34 the court does not act as an appellate forum – Thus, the order passed by the High Court set aside.*
- E *Allowing the appeal, the Court*

- F **HELD:** 1.1 While considering a petition under Section 34 of the Arbitration and Conciliation Act 1996, it is well-settled that the court does not act as an appellate forum. The grounds on which interference with an arbitral award is contemplated are structured by the provisions of Section 34. The District Judge had correctly come to the conclusion that there was no warrant for interference with the arbitral award under Section 34. The High Court seems to have proceeded as if it was exercising jurisdiction in a regular first appeal from a decree in a civil suit. The jurisdiction in a first appeal arising out of a decree in a civil suit is distinct from the jurisdiction of the High Court under Section 37 of the 1996 Act arising from the disposal of a petition
- G *1132*

challenging an arbitral award under Section 34 of the 1996 Act. A
[Para 11][1136-E-G]

1.2 In the instant case, the High Court was required to determine as to whether the District Judge had acted contrary to the provisions of Section 34 of the 1996 Act in rejecting the challenge to the arbitral award. Apart from its failure to do so, the High Court went one step further while reversing the judgment of the District Judge in decreeing the claim in its entirety. This exercise was clearly impermissible. The arbitrator was entitled to draw relevant findings of fact on the basis of the evidence which was adduced by the parties. This was exactly what was done in the arbitral award. The award of the arbitrator was challenged unsuccessfully by the respondents under Section 34 of the 1996 Act. There was no basis in law for the High Court to interfere with the judgment of the District Judge and, as to even go a step further by decreeing the claim. The judgment of the High Court is unsustainable and is set aside. In consequence, the appeal filed by the respondents to challenge the rejection of the petition under Section 34 of the 1996 Act is dismissed. [Para 12, 13][1136-H; 1137-A-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6832 of 2021.

From the Judgment and Order dated 18.05.2016 of the High Court of Punjab & Haryana at Chandigarh in FAO No.2637 of 2013 (O&M).

Himanshu Upadhyay, P. N. Puri, Advs. for the Appellants.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. The appeal arises from a judgment of a Single Judge of the High Court of Punjab and Haryana dated 18 May 2016 in FAO 2637 of 2013.

3. By an arbitral award dated 20 December 2005, the sole arbitrator rejected the claims of the first and second respondents¹, amounting to Rs 4,88,437 and upheld the action of the appellants of

¹ hereinafter referred to as the respondents

- A forfeiting the security deposit. The award of the arbitrator was challenged under Section 34 of the Arbitration and Conciliation Act 1996² in Arbitration Case No 17 of 2006 before the District Judge at Chandigarh. By a judgment dated 9 November 2012, the District Judge, finding no substance in the petition under Section 34 of the 1996 Act, rejected it.
- B The judgment of the District Judge was challenged before the High Court in FAO 2637 of 2013 under Section 37 of the 1996 Act. The High Court allowed the appeal, *inter alia*, on the ground that the award lacked reasons and the reasons which were assigned were arbitrary and erroneous. Having held that the award was liable to be set aside, the High Court decreed the claim of the respondents for the supply of 22,389
- C wooden batons, together with the security deposit of Rs 1,00,000 and awarded interest at the rate of 12% from the date from which the amount became due.

4. While issuing notice on 24 March 2017, this Court stayed the operation of the impugned judgment and order of the High Court.

- D 5. The dispute between the parties arose from a contract which was entered into between the appellants and the respondents on 4 April 2002 for the supply of 24,900 batons. Of the contracted supply, 22,389 batons were accepted by the appellants while the rest were rejected. Pursuant to the contract, the respondents had deposited a sum of Rs
- E 1,00,000 towards security. The dispute between the parties was referred to arbitration in terms of clause 17 of the agreement by an order of the Civil Judge (Junior Division), Faridkot on 28 June 2005. The respondents raised a claim in the amount of Rs 4,88,437 besides raising a grievance in regard to the forfeiture of the security deposit. In the written statement filed by the appellants, the defence was that the supply effected by the
- F respondents was sub-standard and not in accordance with the specifications of the tender. After recording evidence, the sole arbitrator rejected the claim. After considering the evidence of the witness for the claimant and for the appellants, the sole arbitrator arrived at the conclusion that the material which had been supplied was defective and that the
- G forfeiture of the security deposit was valid.

6. In appeal, the High Court has set aside the judgment of the District Judge on the basis of the following reasoning:

H ² “1996 Act”

"I have heard the learned counsel for the parties and appraised the paper book and of the view that the findings arrived at by the Arbitrator for justifying the withholding of the payment for accepted wooden battons and security is highly erroneous and not in consonance with the provisions of the 1996 Act and thus, the Award suffers from the vice of the provisions of sub-section 3 of Section 28 of the 1996 Act. Reasoning assigned for withholding of the security is allegedly fortified as per the Clause 8 of the Agreement, whereas, Clause 8 says that only the charges of transportation to be borne by the appellant-contractor, but not with regard to withholding of the security. The Arbitrator did not examine the acceptance letter dated 04.04.2002 acknowledging the receipt of 22389 wooden battons which were confirming to the specification of the Contract. The claim was only with regard to the payment of the aforementioned battons and refind of the security. The award lacks reasons, much less, not in consonance with the provisions of the 1996 Act and the same is not sustainable. The reasons assigned by the Arbitrator is not only fallacious and arbitrary, much less, erroneous. No reasons have been assigned to the acceptance letter dated 04.04.2002. This aspect was required to be noticed by the Objecting Court, which is, in my view, committed fallacy in not appreciating the aforementioned facts and law."

7. The High Court not only set aside the judgment of the District Judge rejecting the petition under Section 34 of the 1996 Act, but also awarded the claim of the respondents, together with interest.

8. Mr Himanshu Upadhyay, counsel appearing on behalf of the appellants, submits that the High Court, while exercising its jurisdiction under Section 37 of the 1996 Act, arising from the rejection of an arbitration petition under Section 34, has transgressed the limits of the jurisdiction. Counsel submitted that:

- (i) The arbitral award, contrary to the finding of the High Court, is not unreasoned, but contains elaborate reasons after an evaluation of the evidence which was adduced by the rival parties;
- (ii) The High Court could not have set aside the award merely on the basis of the acceptance letter dated 4 April 2002.

- A The award does contain a reference to the fact that as far as the supply of batons after the expiry of the period on 4 April 2002 was concerned, a ‘deduction’ and is required to be made in terms of the relevant clauses of the tender document; and
- B (iii) The High Court was not exercising its jurisdiction as a first appellate court in a civil suit and could not have awarded the claim.

9. The respondents have been served. No appearance has been entered on their behalf.

- C 10. The Single Judge of the High Court was exercising jurisdiction under Section 37 of the 1996 Act. The award of the sole arbitrator dated 20 December 2005 contains an analysis of the evidence. Both the respondents as well as the appellants adduced evidence before the arbitral tribunal. It was on the basis of the evidence that the sole arbitrator upheld the defence of the appellants on the ground that right from the inception the respondents had been mixing sub-standard material with goods in accordance with the tender specifications. As a consequence of this, the loss and damage which has been caused to the appellants was duly quantified and in this backdrop, the sole arbitrator held that the respondents were not entitled to the payment of the balance of the principal or to recover the security deposit.
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- F 11. While considering a petition under Section 34 of the 1996 Act, it is well-settled that the court does not act as an appellate forum. The grounds on which interference with an arbitral award is contemplated are structured by the provisions of Section 34. The District Judge had correctly come to the conclusion that there was no warrant for interference with the arbitral award under Section 34. The High Court seems to have proceeded as if it was exercising jurisdiction in a regular first appeal from a decree in a civil suit. The jurisdiction in a first appeal arising out of a decree in a civil suit is distinct from the jurisdiction of the High Court under Section 37 of the 1996 Act arising from the disposal of a petition challenging an arbitral award under Section 34 of the 1996 Act.
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12. In the present case, the High Court was required to determine as to whether the District Judge had acted contrary to the provisions of Section 34 of the 1996 Act in rejecting the challenge to the arbitral award.

Apart from its failure to do so, the High Court went one step further while reversing the judgment of the District Judge in decreeing the claim in its entirety. This exercise was clearly impermissible. The arbitrator was entitled to draw relevant findings of fact on the basis of the evidence which was adduced by the parties. This was exactly what was done in the arbitral award. The award of the arbitrator was challenged unsuccessfully by the respondents under Section 34 of the 1996 Act. In this backdrop, there was no basis in law for the High Court to interfere with the judgment of the District Judge and, as we have noted earlier, to even go a step further by decreeing the claim.

13. For the above reasons, we find the judgment of the High Court to be unsustainable. We accordingly allow the appeal and set aside the impugned judgment of the Single Judge of the High Court of Punjab and Haryana dated 18 May 2016 in FAO 2637 of 2013. In consequence, the appeal filed by the respondents to challenge the rejection of the petition under Section 34 of the 1996 Act shall stand dismissed.

14. Pending application, if any, stands disposed of.

Nidhi Jain

Appeal allowed.