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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1430-2018(O&M)
Date of Decision:16.09.2025

Krishan Malik

....Appellant(s)

Versus

Executive Engineer (C-1) CCS HAU Hisar and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gursher Singh Bhandal, Advocate, for the appellant.

Mr. Surinder Singh, Advocate, for respondent No.1.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present appeal has been filed against the order dated 08.12.2017 passed by the learned Additional District Judge, Hisar, whereby the objections filed by the appellant-contractor under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') have been dismissed.

2. Learned counsel appearing on behalf of the appellant, while giving the brief facts of the case, submitted that an agreement was executed between the appellant-contractor and the respondent-University and in pursuance thereof, the work was allotted to the appellant vide Annexure P-2 dated 07.06.2011 for widening of approach roads of 10, 11 and 12 type houses and special repair of approach road from junction near HARSAC to 10-A/10 type house in New Campus at CCSHAU, Hisar. He submitted that in the

aforesaid allotment of work dated 07.06.2011, there was a conditional clause inserted at serial No.5 wherein the bitumen for the purpose of construction was to be supplied by the respondent-University and the rate was mentioned in clause 5(iii). Relevant portion is reproduced as under:-

> *"5. Material such as cement steel, bitumen will be issued from the Centre Store at HAU, Hisar on the following Stock issue rates+3% storage charges.*
> *(i) xxx xxx xxx*
> *(ii) xxx xxx xxx*
> *(iii) Bitumen @ Rs. 6807/- per drum of 156 KG*
> *(Rs. Six Thousand Eight Hundred Seven only)".*

3. While referring to the aforesaid clause, he submitted that not only the rate of bitumen was fixed but there was a condition in the contract that it was to be supplied by the respondent-University but the respondent-University never supplied the same to the appellant-contractor and consequently, the road could not be constructed and therefore, the contract could not be completed in time. Time was the essence of contract since it was to be completed within a period of four months and in this way, a dispute arose between the parties and the matter went to the learned Arbitrator. Learned Arbitrator has granted the claim in favour of the respondent-University on the ground that the aforesaid road could not be constructed and repaired, according to the terms of the contract.

4. Learned counsel submitted that in fact after the aforesaid work order was allotted vide Annexure P-2 dated 07.06.2011, the respondent-University issued a unilateral letter on the next date i.e. on 08.06.2011, wherein the aforesaid clause 5(iii) was deleted but the same was never in the knowledge of the appellant and the appellant had been pressing hard for the supply of the bitumen so that the contract could be completed in time but despite various requests being made to the respondent-University for supply of

bitumen, the same was not provided by them and therefore, there was a violation of the terms of the contract i.e. clause 5(iii) but so far as the deletion aspect is concerned, the appellant was not aware of the same and in this way, when the dispute arose, the matter went to the Arbitrator but the learned Arbitrator has not considered the contention of the appellant in true perspective. When the appellant filed objections under Section 34 of the Act, the same were also not considered by the learned Additional District Judge while hearing the objections under Sections 34 of the Act especially with regard to the aforesaid aspect of non-supply of bitumen. While referring to the order passed by the learned Additional District Judge, he submitted that it was observed in the latter part of the order that the aforesaid clause was struck off and he referred to the copy of the original order whereby the aforesaid line which was pertaining to clause 5(iii), as reproduced above, was in fact struck off by one stroke of a pen and beneath the same on 17.11.2011 the Executive Engineer had signed and in this way, it becomes clear that during the aforesaid period of four months, which was the time period for construction and repair of the road, there was no deletion of the aforesaid clause 5(iii) but it was struck off only on 17.11.2011 and therefore, it was a case of fraud being played by the respondent-University upon the appellant-contractor. He submitted that in view of the above, the impugned order passed by the learned Additional District Judge and the award are liable to be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondent-University while referring to the record which was produced before the Court not only of the learned Additional District Judge but also of the learned Arbitrator submitted that the arguments which have been raised by the learned counsel for the appellant are not according to the record and they are

misleading. He submitted that there is no doubt that vide Annexure P-2, work order was issued on 07.06.2011 wherein the aforesaid clause which is reproduced above has been incorporated but on the very next date a letter was issued to the appellant-contractor i.e. on 08.06.2011 vide Memo No. EE(C.1)/11/HC/W-823/4339-45 which is clear from page No.121 of the arbitral record. He submitted that a bare perusal of the aforesaid would show that on the very next date the aforesaid clause 5(iii) was deleted and this letter was issued by the Executive Engineer of the respondent-University addressed to the appellant-contractor and was sent by way of registered post and in this way, now the appellant cannot be permitted to take up a plea that the aforesaid letter was not in the possession or knowledge of the appellant because it was sent through a proper method through registered post to the appellant-contractor himself. The aforesaid letter dated 08.06.2011 which is so part of the arbitral record at page No.121 of the record is reproduced as under:-

REGISTERED

From

The Executive Engineer (C l)
CCSHAU, Hisar.

To

Sh. Krishan Malik,
Govt. Contractor,
Gali No. 2, Surya Nagar
Hisar.

M. No. 9812618798 / 9416239564

Memo No. EE(C l/11/HC/ W- 823/4339-45
Dated: 08.06.2011

Sub: - *Widening of approach roads of 10, 11 & 12 type houses and special repair of approach road from junction near HARSAC to 10-A/10 type house in New Campus at CCSHAU, Hisar.*

Estimated Cost: 26.00 lacs

In continuation to this office Memo No. 4318-24 dated 7.6.2011 on the subject cited above.

The Condition No. 5 (iii) stands deleted.
Other terms & conditions will remain same.

Sd/-
Executive Engineer (C.l)

6. While referring to the aforesaid letter, learned counsel submitted that once the aforesaid clause 5(iii) stood deleted on the very next day, the mere fact that some signatures have been appended by the Executive Engineer by cutting the aforesaid clause on the copy of the original contract would not mean that the aforesaid letter dated 08.06.2011 has become insignificant or irrelevant. To further substantiate his arguments, he referred to page No.145 of the arbitral record which contains a letter issued by the appellant himself to the Executive Engineer of the respondent-University seeking extension of time. This letter is dated 01.10.2011 wherein he has stated that the work was allotted to him vide letter No. EE(C.1)/11/HC/W-823/4339-45 dated 08.06.2011 and the aforesaid letter number which has been reproduced above is the same as that which was referred to by the appellant in his own letter on his own letterhead and not only this, it was also stated that the work cannot be completed in the given time because of the rainy season and non-availability of material in 'Khanak quarry'. He submitted that once the appellant himself has written a letter to the respondent-University in October 2011, then now he cannot be permitted to take up a plea that it was not in his knowledge and rather, he has stated that the material was not available in Khanak quarry,

which means that he had to procure the bitumen from the aforesaid quarry and not from the respondent-University and therefore, such a plea taken by the appellant is totally misconceived and against the record itself. The aforesaid letter dated 01.10.2011 at page No.145 of the arbitral record is also reproduced as under:-

Dated 01/10/11

To

The Executive Engineer (C.l),
CCSHAU,Hisar.

Sub: Time Extension for the work of "Widening of approach roads of 10, 11 & 12 type houses and special repair of approach road from junction near HARSAC to 10-A 10 type house in New Campus at CCSHAU, Hisar " upto 27.2.2012.

R/Sir,

The above cited work was allotted to me vide allotment letterNo. EE(C.I)/11/HC/W-823/4339-45 dated 08.06.2011. The work was to be completed upto 27-2-2012.

But, it cannot be completed within the given time limit due to rainy season and non-availability of material in Khanak quarry.

So, it is requested to your goodself that date of completion of work may please be extended upto 27-2-2012.

Thanking you,

Sd/-
Contractor
Krishan Malik

7. He submitted that the present is an appeal which has been filed under Section 37 of the Act regarding which the scope is very limited and the

learned Additional District Judge while considering the objections under Section 34 of the Act has properly dealt with the aforesaid issue and there was no ground available with the appellant in the aforesaid objections which are provided under the provisions of Section 34 of the Act and therefore prayed for the dismissal of the present appeal.

8. I have heard the learned counsel for the parties.

9. The issue involved in the present case was with regard to non-completion of the work by the appellant, which according to the contract was to be completed within four months. The work order was allotted in favour of the appellant vide Annexure P-2 on 07.06.2011 and the period of completion was four months. There was a condition appended in the aforesaid work order as reproduced above regarding the fact that material such as cement, steel and bitumen were to be supplied by the respondent-University and rate was also mentioned in clause 5(iii). On the very next day i.e. on 08.06.2011, a letter was issued by the respondent-University to the appellant by way of a registered post regarding the deletion of the aforesaid clause 5(iii). In this way, the bitumen was therefore, as per the learned counsel for the respondent-University was not to be supplied by the respondent-University. It was the case of the learned counsel for the appellant that the aforesaid letter was not in the knowledge of the appellant because it was a unilateral letter, whereas a perusal of the aforesaid letter dated 08.06.2011 would show that the same has been addressed to the appellant and it was sent by way of a registered post. The argument raised by the learned counsel for the appellant that it was not in the knowledge of the appellant, however, gets demolished from the fact that in a later communication by the appellant himself on his own letterhead, he had written to the respondent-University on 01.10.2011 by giving reference to the

aforesaid letter itself by giving the same memo number and the same date and therefore, it cannot be presumed that the appellant was not aware of the aforesaid letter.

10. The learned Additional District Judge while deciding the objections under Section 34 of the Act dealt with this issue in para No.7 of the impugned order, wherein it was observed that it was crystal clear that the aforesaid condition regarding bitumen was struck off.

11. This Court is of the considered view that firstly, the scope of Section 34 of the Act is very limited. The objections can be allowed and the award can be interfered only when the parameters which have been set forth in the aforesaid statutory provisions are satisfied. In the present case, the appellant has not been able to provide any ground as to under which clause or parameter of Section 34 of the Act the award could have been set aside. The only argument which was raised by the learned counsel for the appellant was that it was a result of fraud. However, a perusal of the documents which have been so referred to by the learned counsel for the respondent-University would show that the argument raised by the learned counsel for the appellant that the aforesaid letter was not in his knowledge gets demolished because the letter dated 08.06.2011 was issued by way of a registered post and it was addressed to the appellant and the same was also referred to by the appellant himself in the letter dated 01.10.2011 as reproduced above. Therefore, there was no ground available with the learned Additional District Judge to have exercised powers for setting aside the award.

12. Similarly, the scope of Section 37 of the Act is also limited. It is a settled law that the Courts in appellate jurisdiction would not interfere in the arbitral award and the orders passed under Section 34 of the Act normally

unless there are extreme and rare circumstances and the perversity is on the face of it. Reference in this regard may be made to the judgment of Hon'ble Supreme Court in "***M/s C and C Constructions Limited Vs. IRCON International Limited", 2025(4) SCC 234***, wherein it was held that the scope of interference in an appeal under Section 37 of the Act is well settled and reference was made to the earlier judgments passed by Hon'ble Supreme Court in "***Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others", (2023) 15 SCC 472*** and also in ***"Konkan Railway Corporation Limited Vs. Chenab Bridge Project Undertaking", (2023) 9 SCC 85*** and the relevant portion of the aforesaid judgment in ***M/s C and C Constructions Limited's case (Supra)*** is reproduced as under:-

> *"34. As far as scope of interference in an appeal under Section 37 of the Arbitration Act is concerned, the law is well settled. In* ***Larsen Air Conditioning & Refrigeration Co. v. Union of India,*** *this court held thus: (SCC P.478)*
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> > *"15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that illegality must go to the root of the matter and cannot be of a trivial nature; and that the 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 [ref : Associate Builders, SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."*

(emphasis in original and supplied)

> *35. In* ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*** *in para 18, this court held thus: (SCC P.93)*
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> > *"18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd,* 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."*

13. From the aforesaid facts and circumstances, it is therefore clear that there is no scope for intererence in the appellate jurisdiction of this Court since no ground is made out by the appellant for seeking interference. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

16.09.2025 **(JASGURPREET SINGH PURI)**

rakesh **JUDGE**

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