

(1972) 04 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 169 of 1967

Mehar Singh and Sons,
Contractors

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: April 25, 1972

Acts Referred:

- Arbitration Act, 1940 - Section 14, 15, 16, 17, 29

Citation: AIR 1973 P&H 114

Hon'ble Judges: Muni Lal Verma, J

Bench: Single Bench

Judgement

1. The circumstances, giving rise to this appeal may be briefly stated as under:--

The appellants were authorised contractors and they executed certain works of electric installation at Faridkot for the respondent. Some dispute arose between them and the respondent respecting the payments for the said works executed by them. Therefore, according to submission clause contained in the agreement the said dispute was referred to the arbitration of Shri O.P. Malhotra, Superintending Engineer, P.W. D. B. & R. Patiala (hereinafter called the Arbitrator). He made the award on 28-2-1966. The appellants moved application u/s 14 of the Indian Arbitration Act (hereinafter called the Act) in the Court of the learned Senior sub-Judge, Bhatinda for asking the Arbitrator to file the award. So, the award was filed on 27-4-1966. Thereupon, the appellants made application under Sections 15 and 16 of the Act requesting that either the award be remitted to the Arbitrator for decision of the matters which had not been determined by him or the award be modified and corrected. It was alleged that whereas the dispute, which was referred to the Arbitrator for decision related to nine items of payment, the Arbitrator had made award respecting one of the same and thereby he had left the other eight claims undetermined. So, the award suffered from error which was apparent on the face of it. Interest on the amount of the award was also claimed u/s 29 of the Act.

The aforesaid application was resisted by the respondent. The material allegations of the appellants were traversed. So, the case was tried on the following issues:--

"(1) Whether the award is liable to be modified for want of reasons in not allowing the claims of the applicant for items Nos. 2 to 9?

(2) Whether the applicant is entitled to any interest?

(3) Relief."

The learned Senior Sub Judge decided issues Nos. 1 and 2 in the negative and disallowed the application moved by the appellants and made the award rule of the court. Aggrieved by the said order, the appellants have appealed. I have heard the arguments and examined the record.

2. The learned counsel for the appellants challenged the impugned order with the contentions that the award was bad because it did not refer to any evidence produced by the parties and the Arbitrator did not record reasons for allowing Rs.3,100/- or for disallowing the other amounts claimed by them and he (Arbitrator) had exceeded his powers in rejecting the items mentioned at Nos.7, 8 and 9 in the award and that the lower court was not justified in not awarding interest u/s 29 of the Act on the amount of decree. Now, the relevant portion of the award reads as under:--

".the parties have referred to me... for determination of the matter of difference between them concerning the following:-

Amount of Claim

Rs.

Claim No.1 Bill for providing and fixing electric 6,575.00 plus
installations at Darbar Ganj, Faridkot. interest up to date.

Claim No. 2 Bill for electric fitting (extra item) at Darbar Ganj 1,548/- plus
at Faridkot. up to date interest

Claim No.3 Bill for erection of fans at Darbar Ganj, Faridkot. 240/- plus
up to date interest

Claim No.4 Bill for providing and fixing gattis for chicks at 40/- plus up
Darbar Ganj Kothi at Faridkot. interest

Claim No.5 Bill for providing and fixing of Electric Installation 3,470/- plus
of Agriculture Laboratory, Brijinder College, .interest
Faridkot.

Claim No.6 Bill for providing and fixing extra plugs and 462/- plus up to c
fan hooks in Agriculture Laboratory, interest interest.
Brijinder College, Faridkot.

Claim No.7 Bill for fitting of electric installation on labour 456/- plus u
rates for college Hostel at Faridkot. interest.

Claim No. 8 Bill for fitting of electric installation on labour 862/- plus
rates per point basis in Zenana Hospital, Faridkot. interest

Claim No.9. Bill for fitting of electric installation on labour 433-50 plus
rates in Brijinder College Hostel, Faridkot. interest.

Total amount of Claims Rs. 11,088.50 plus
upto date interest.

Now I, the said Om Parkash Malhotra, having considered the whole matter sub
Amount of Award
Rs.

Claim No.1 I award Rs.3,100/- in favour of the Contractor against this claim

Claim No.2

Claim No.3

Claim No.4

Claim No.5 I award Nil against these claims Nil.

Claim No.6

Claim No.7

Claim No.8 _____

Total amount of award to be paid by Punjab State to M/s. Mehar Rs.3,100.00

Singh and Sons Contractors.

True, the Arbitrator did not make reference to any evidence produced before him by the parties and he did not record reasons for reducing the claim of the appellants to Rs.3,100/- with regard to the amount of Rs.6,575/- claimed under item No.1 or for disallowing the amounts of other items i.e. Nos.2 to 9 or the interest. But, then, the law as it now stands and I understand is that an Arbitrator being domestic Tribunal is not required, while making award, to refer to the evidence produced by the parties or to record reasons therein for allowing or disallowing the amounts claimed by them all it is not necessary for him to give specific finding on each of the separate claims and he can record of the separate claims and he can record one finding for various items of claim referred to him. The authority regarding Union of India v. Bakshi Ram reported in (1957) 59 PLR 572, relied upon by the learned counsel for the appellants is of no help to him. True, it has been ruled in the said authority that an Arbitrator is expected to give intelligible decision but it has been observed at page 578 that it is not necessary for him to give reasons for his conclusions or to give reasons for his conclusions or to give separate findings on each and every issue involved in the dispute. It has also been observed in the said authority at page 577 that even if the Arbitrator has come to a wrong conclusion it would not be a ground for setting aside the award. In the case of the said authority, it appears that application for setting aside the award had been made u/s 30 of the Act. In the aforesaid case regarding (1957) 59 PLR 572 the dispute related to three items i.e. (a) Rs.30,000/- (b) Rs.14,000/- and (c) Rs.20,000/-. It was held that the umpire in that case had rejected the claim respecting (b) i.e. Rs.14,000/- and had awarded Rs.54,000/- for claims of (a) and (c). Since the total of the claims under (a) and (c) above was Rs.50,000/- it was held that the amount awarded by the umpire exceeded the amount claimed and as such it was observed that the award had been made in excess of the jurisdiction vested in him (umpire); so it was found that the award was not intelligible and it was set aside on that ground. The facts of the case in hand are different. Here, the award does not suffer from any ambiguity and is perfectly intelligible. The portion of the award stated above points out that the Arbitrator

declined the amounts of claim as well as interest thereon mentioned at items 2 to 9 and he allowed Rs.3,100/- out of Rs.6,575/- and interest claimed under item No.1. In view of the position of law stated above, the mere fact that the Arbitrator did not refer to any evidence produced by the parties or that he did not record reasons in allowing Rupees 3,100/- only out of the amount claimed under item No.1 or for disallowing the amounts claimed under items 2 to 9 does not render the award invalid. It is worthy of note that the arbitrator stated in the award that each item of amount mentioned at Nos. 1 to 9 had been claimed with interest. So, the award when read carefully, tells that the Arbitrator has disallowed interest for the amount of Rs.3,100/- out of the sum claimed under No.1 and had also disallowed interest alongwith the amounts claimed under Nos.2 to 9. It is important to note that Shri Joginder, who is son of Shri Mehar Singh and is the only witness who was examined by the appellants in the lower Court, admitted during cross-examination that no documentary evidence in support of their claim respecting amounts mentioned under items No.2 to 9 had been produced by them before the Arbitrator. Therefore in absence of any such evidence, the Arbitrator cannot be said to have acted wrongly in disallowing the claim of the appellants respecting the amounts mentioned at Nos.2 to 9.

3. At one stage of the arguments the learned counsel for the appellant contended that once the Arbitrator had remarked during the arbitration proceedings that the amounts mentioned at Nos.7, 8 and 9 above were beyond the scope of reference and as such he exceeded his powers in giving decision, though of course, of rejection, respecting the said three amounts. But there is absolutely nothing on the record to bear out the said contention. Further, it was not pleaded by the appellants in the application moved by them under Sections 15 and 16 of the Act on 26-5-1966 that the Arbitrator had exceeded his powers in rejecting their claims mentioned under items Nos.7, 8 and 9 because he had once said that those matters were beyond the reference. So, the contention of the learned counsel for the appellants that the Arbitrator had exceeded his powers of jurisdiction in rejecting their claims mentioned in the award at Nos.7, 8 and 9 is creation of after thought; is beyond the pleadings and is also not borne out by the record. Therefore, I have no hesitation in rejecting the same.

4. It is clear from Sections 15 and 16 of the Act that the powers of the Court to modify the award or to remit the same for reconsideration are discretionary. It has already been shown above that the claim of the appellants for different items of money were considered by the Arbitrator and the claim respecting the amounts mentioned at items Nos.2 to 9 in the award had been rejected. Therefore, it cannot be maintained that the claim of the appellants respecting amounts mentioned at items Nos.2 to 9 in the award were left undetermined. It, thus follows that there is nothing to say that the award is imperfect or that it suffers from any error apparent on the face of it. As such, the lower court was right in declining to modify or to remit the same to the Arbitrator for reconsideration. The powers given to the lower Court

u/s 29 of the Act to award interest from the date of the decree are again discretionary. Nothing has been shown to me that the said discretion, vested in the lower court, was wrongly exercised by it in declining interest on the amount awarded from the date of decree.

5. It follows from the discussion above that it cannot be maintained that the impugned order was wrongly recorded by the lower court, and there is no force in the attack of the learned counsel for the appellants against it. So, the appeal is without merit and must fail.

6. It may be added that I have doubt that the appeal was competent. Right of appeal is granted by the statute. Section 39 of the Act mentions the orders which are appealable and provides that the appeal lies against the order which modifies or corrects an award. But no appeal can be preferred against the order which declines to modify or correct the award. Section 39 of the Act also does not provide an appeal against the order passed by the Court disallowing the interest from the date of decree u/s 29 of the Act. According to Section 17 of the Act, no appeal lies against an award which was made a rule of the Court and the judgment and decree passed are not in excess of the award. Since the impugned order declined to modify or correct the award or to remit the same for reconsideration, to the Arbitrator, and disallowed interest from the date of decree u/s 29 of the Act to the appellants and the application made by them was under Sections 15, 16 and 29 of the Act, I do not think that the appeal was competent. Even otherwise, as discussed above, the appeal fails on merits.

7. Consequently, I, maintaining the impugned order, dismiss the appeal. Having regard to the peculiar circumstances of the case, I leave the parties to bear their own costs.

8. Appeal dismissed.