

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6734 OF 2021

M/S. NARINDER SINGH AND SONS APPELLANT(S)

VERSUS

UNION OF INDIA THROUGH
DIVISIONAL SUPERINTENDENT
ENGINEER – II, NORTHERN RAILWAY,
FEROZEPUR DIVISION, FEROZEPUR RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

Despite rounds of litigation, the disputes that arose in 1996 will, unfortunately, continue even post this judgment.

2. M/s. Narinder Singh and Sons, the appellant before us, vide letter dated 27th January 1993 was awarded tender by the respondent namely, Divisional Superintendent Engineer-II, Northern Railway, Ferozepur Division, Ferozepur, Punjab, for additional washing line to accommodate 26 coaches at Jammu Tawi Railway Station. Disputes arose when the respondent terminated the contract vide letter dated 03rd April 1996 due to stated non-performance and

repeated lapses by the appellant. The appellant, on the other hand, alleged breaches on the part of the respondent who, it is stated, had modified the original work and changed scope of the work several times.

3. The appellant invoked the arbitration clause as per the contract agreement and in response, the General Manager, Northern Railways satisfied with the existence of the disputes, appointed an arbitrator. The appellant approached the District Court for termination of the mandate of the appointed arbitrator and substitution with an independent Arbitrator. The District Judge, Gurdaspur vide order dated 23rd December 2006 appointed Mr. Justice A.L. Bahri (Retd.) as the sole arbitrator. The respondent filed a Civil Revision Petition before the High Court against the order of the District Judge, Gurdaspur, which set aside the order of the appointment on the ground that the appointment of the arbitrator could only be done by the Chief Justice or any other Judge nominated by him. Finally, in the proceedings before the Chief Justice of the Punjab and Haryana High Court at Chandigarh, by an order passed on 15th February 2010, Mr. Justice A.L. Bahri (Retd.) was again appointed as the arbitrator.

4. The learned arbitrator, thereupon, pronounced an *ex parte* award against the respondent on 27th November 2010. Resultantly, the respondent had filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the 'Act') before the Additional District Judge, Gurdaspur, which were dismissed vide order dated 22nd March 2012. However, the respondent succeeded in its appeal filed under Section 37 of the Act before the Punjab and Haryana High Court at Chandigarh, which, vide impugned judgment dated 24th October 2017, accepted FAO No. 5227 of 2012 (O&M) and set aside the award primarily on the ground that the arbitrator had violated principles of natural justice and had proceeded with great haste and hurry. It was also held that pre-reference and *pendente lite* interest could not have been awarded in terms of clause 16(2) of the General Conditions of the Contract. On the question whether the Court could remand the disputes to the Arbitrator, the impugned judgment holds that the court remand was impermissible, but the parties were at liberty to approach the arbitrator for fresh adjudication or avail any other remedy permitted by law, while stating that the period spent in the arbitration proceedings and the resultant litigation should be excluded in terms of Section 43(4) of the Act.

5. Having heard counsel for the parties, we find that the respondent was “unable to present his case”, a valid ground and justification for setting aside an award under clause (iii) to sub-section (2)(a) to Section 34 of the Act. The award was also “in conflict with the public policy of India” under clause (ii) to Section 34(2)(b) read with the applicable *Explanation 1* to Section 34(2) of the Act.

6. The appellant had filed the Statement of Claim on 3rd May 2010. On 31st May 2010, the respondent sought adjournment for filing Statement of Defence, which was granted by the arbitrator. On 10th July 2010, written statement along with the copies of documents were filed. The appellant, thereupon, filed rejoinder and affidavit of Paramdeep Singh (PW-1) in evidence on 5th August 2010. On the same day itself, evidence of the appellant was closed while declining the request of the respondent to postpone cross-examination. Order dated 5th August 2010 also records that the respondent had not filed its affidavit and had requested for a date. Latter request, it is apparent, was accepted by the arbitrator as the respondent was directed to file the affidavit and produce the witness for cross-examination on the next date of hearing. On 28th September 2010, the respondent prayed for further time to file affidavits by way of evidence, which request for adjournment was opposed. This order records that the respondent

had not paid the arbitration fee and expenses in spite of the earlier orders. The learned arbitrator adjourned the matter to 21st October 2010, subject to the payment of costs by the respondent to the appellant of Rs. 10,550/-, i.e., cost of proceedings for one day. On 21st October 2010, the respondent filed affidavit of Mr. Abhay Kumar, Senior Divisional Engineer-II, Northern Railway, Ferozepur as well as an application for recall of costs. This application for waiver of costs was opposed and rejected. Since the cost was not paid, the affidavit by way of evidence, it was directed would not be taken on record. This order of 21st October 2010 also records that while the respondent had not paid the arbitration fee and expenses, the appellant had already paid Rs. 50,000/- towards arbitration fee and expenses. The arbitrator adjourned the matter to 9th November, 2010 for final arguments and an *ex parte* award dated 27th November 2010 was passed awarding an amount of Rs. 20,25,255/- along with interest @ 12% per annum from 03rd April 1996 till payment was made. For this purpose, the arbitrator had relied upon Section 31(7) of the Act.

7. Section 19 of the Act states that while the arbitral tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, in the absence of any agreement between the parties as to the procedure to be followed, the arbitral tribunal may

conduct the proceedings in the manner it considers appropriate. Section 18 mandates that both parties shall be treated with equality and each party shall be given a full opportunity to present his case. Reference can also be made to Sections 24 and 25 and newly enacted Section 29A of the Act, which though not applicable to this case, emphasise on quick and prompt adjudications. Idioms carping 'delay' and 'hurry' in adjudication highlight the importance of both speedy disposal and reasonable opportunity, as both are essential for an even-handed and correct decision. Neither should be sacrificed nor inflated, as to prolong or trample a just and fair adjudication. A pragmatic and common-sense approach would invariably check any discord between the desire for expeditious disposal and adequacy of opportunity to establish one's case. In the context of the present case, we agree with the High Court that there was unnecessary haste and hurry by the arbitrator, especially when the respondent had filed the affidavit by way of evidence on 21st October 2010. Earlier, the respondent had filed written statement shortly after the appellant had filed the claim statement. The respondent was also deprived of reasonable and fair opportunity to cross-examine Paramdeep Singh (PW-1). The respondent had also moved an application for waiver of costs, which was rejected on 21st October 2010, *albeit* the arbitrator

decided to continue the arbitration to proceed *ex parte* and adjourned the matter to 9th November 2010 for final arguments. As the evidence of the respondent by the way of affidavit was not taken on record, their contentions and evidence were not considered and thus debilitated the respondent from stating their case. Given the aforesaid factual position, there was violation of principles of natural justice and lack of full opportunity as envisaged by Section 18 of the Act, thereby, impeding a fair and just decision. Consequently, the award suffers and is liable to be set aside in terms of clause (iii) to Section 34(2)(a) as well as clause (ii) to Section 34(2)(b) of the Act.

8. During the course of hearing before us, Mr. Ashish Verma, learned counsel for the appellant, and Mr. Sanjay Jain, learned Additional Solicitor General appearing for the respondent, have agreed that this Court may appoint an arbitrator for adjudication of the disputes, which prayer we accept.
9. We hereby appoint Mr. Justice S.N. Aggarwal, a retired Judge of the Punjab and Haryana High Court, #1458, Sector 40-B, Chandigarh (Mobile: +91-9876716983) as the arbitrator to adjudicate and decide the said disputes. He would be paid arbitration fee and expenses in terms of the schedule to the Act.

The appellant and the respondent would equally bear the said fee and expenses. The respondent would pay 50% of the arbitration fee and expenses to the learned arbitrator within one month from the date of the first hearing. The appellant would pay its share of 50% fee on the date when the final arguments commence. We have made the aforesaid direction in view of the conduct of the respondent in not paying their share of fee and expenses to the earlier arbitrator. We hope and trust that the parties would cooperate with the learned arbitrator now appointed to ensure expeditious disposal. The arbitration proceedings shall continue from the stage, permitting the respondent to cross-examine Paramdeep Singh (PW-1). We also direct that the respondent would file their affidavits by way of evidence within four weeks from the date the learned arbitrator enters upon reference. Arbitration record shall be forwarded to Mr. Justice S.N. Aggarwal (Retd.) and if not available, the parties shall reconstruct the same by filing self-certified copies of pleadings and documents as filed by them in the arbitration proceedings.

10. We also clarify that the question of award of interest, pre-reference and *pendente lite*, is left open to be decided by the arbitrator, without being bound by the findings of the High Court in the impugned order.

11. The civil appeal is disposed of in the aforesaid terms with no order as to costs.

.....J.
(M.R. SHAH)

.....J.
(SANJIV KHANNA)

**NEW DELHI;
NOVEMBER 18, 2021.**