



Received on : 11.12.2019  
Registered on : 12.12.2019  
Decided on : 22.04.2024  
Duration :04Ys.04M.11Ds.

**IN THE COURT OF DISTRICT JUDGE - 2**  
**PUNE AT PUNE**

[Presided by : Sunil G. Vedpathak]

**CIVIL M.A. No.1337/2019**  
**CNR NO.MHPU010185452019**  
**EXH NO.-35.**

National Agricultural Co-operative  
Marketing Federation of India  
Limited (Nafed), a co-operative society,  
having its registered office at  
Nafed House, Sidhartha Enclave,  
Ashram Chowk, New Delhi-110014  
And having its branch office at  
Raj Mahal, 3<sup>rd</sup> Floor, Veer Nariman  
Road, Churchgate, Mumbai-400020.

... .. Petitioner

**VERSUS**

1. Roj Enterprises (P) Limited,  
Having its office at A-8, Saket,  
45/1 + 2/A, Karwe Nagar,  
Off. Patwardhan Building, Pune.
2. Mr. Suresh G. Motwani,  
Having its office at 39, Mysore Colony,  
Anik Village, Behind RCF, Chembur,  
Mumbai.

3. Mr. Rajendra Narhar Kulkarni,  
Having its office at Row House No.8,  
Swapnashilpa, 19/2C, Ganesh Nagar,  
Kothrud, Pune - 411029

... .. Respondents

-----  
**Application u/s. 34 of Arbitration and Conciliation Act,  
1996.**  
-----

**Appearances :-**

Learned advocate Shri. B. R. Phatak for applicant.  
Learned advocate Shri. Premlal Krishnan along with Adv.  
Shital Chaudhari l/b Panindia legal services LLP for  
respondents.  
-----

**J U D G M E N T**  
**(Delivered on 22.04.2024)**

This is an application under section 34 of the Arbitration and Conciliation Act 1996 (hereinafter ‘The Act’) whereby the applicant (original claimant before sole arbitrator) has challenged the award dated 12<sup>th</sup> February, 2019 passed by Hon’ble Shri. Ashok. C. Agarwal, Retired Chief Justice whereby he has dismissed the claim made by the applicant and allowed the counter claim put forth by the respondent no.1.

**FACTS IN BRIEF :-**

2] The applicant is an apex co-operative society registered under the provisions of the Multistate Co-operative Societies Act, 1984 and is engaged in the

business of marketing of agricultural produce in India and abroad.

The respondent no.1 is a private limited company and respondent nos.2 and 3 are its Directors and incharge of the day to day affairs of the respondent no.1.

3] In the beginning of the year 2004, respondents approached the applicant and represented that they are an export house dealing in exporting fruit pulp and concentrate and other items, that the respondents had huge orders from abroad for supply but required funds for effecting the supply and requested the applicant for financial help. After negotiations, the applicant agreed to extend financial help to the respondents. Accordingly, an agreement dated 24.03.2004 was executed by and between the applicant and respondents whereby the applicant agreed to extend financial help to the respondents for the purpose of purchase and stock of mango pulp for about 10,000 Metric Tonn of Alphanso and Totapuri for fair average quality.

4] In pursuance of respondent's request for financial help for the product of ceramic tiles, which request was accepted by the applicant and fresh agreement dated 30.04.2004 was came to be executed between both. The terms and conditions in the said agreement dated

30.04.2004 were similar to those in earlier agreement dated 24.03.2004 except that the quantity of the mango pulp / concentrate was for 5,000 Metric Tonn or more of ceramic tiles was for 635,000 sq.cms. and that the financial exposure of the applicant in respect thereof would be to the extent of Rs.25 Crores and Rs.5 Crores respectively. As per request by the respondents which was accepted by the applicant, the additional items of guar gum and tropical fruit purees were added and covered under the applicant's financial exposure of Rs.25 Crores for mango pulp / concentrate in the said agreement.

5] Thereafter, despite various representations and assurances, the respondents failed to clear the dues and arrange to take away the stocks within the prescribed time limit. The respondents had undertaken to deposit an amount of Rs.8 Crores against the outstanding amount without asking for release of any stocks till such time that the respondents clear the dues of atleast Rs.12 Crores. The respondents had also issued various cheques for total amount of Rs.7.30 Crores to the applicant, however the same were dishonoured.

6] The respondents vide their letters dated 18.11.2005, 30.11.2005 and 09.12.2005 acknowledged their liabilities and represented and assured the applicant

to make payments as stated therein. In addition to it, the respondents also executed affidavit-cum-undertakings dated 31.12.2005, 15.02.2006 and 22.05.2006 and assured to make payments to the applicant as stated therein.

7] The respondents failed to pay rent and other charges to the warehouses where the stocks were deposited and lying. It appears that the warehouses were not able to recover their outstanding dues against the respondents despite selling off the stocks and filed a summary suit against the the respondents and applicant for recovery of amount. It is stated that the applicant has not been liable to pay any amount to the said warehouses. So, the applicant attempt to dispose off the stocks had been unsuccessful due to the perishable nature of the goods.

8] Due to failure of respondents to make payments to the applicant and take away the stocks that were deposited and lying in the warehouses. The applicant has become entitled to claim an amount of Rs.54,93,37,825.50 as on 11.03.2015 with further interest thereon at the rate of 10% p.a. from the date of filing of the claim till payment or realization thereof.

9] Since dispute was arose and, therefore, as per arbitration clause sole arbitrator i.e. Retired Chief Justice Hon'ble Shri. Ashok. C. Agarwal has been appointed.

10] Both parties appeared before arbitral tribunal on behalf of claimant. Statement of claim was submitted by claiming total amount of Rs.54,93,37,825.50 along with interest at the rate of 10% p.a. from the date of filing of claim till its realization.

11] Respondents also submitted their statement of defence and denied all adverse allegations made by the applicant in statement of claim. Respondents have filed a counter claim of Rs.33,97,77,369/- as on 31.08.2015 with future interest @ 12% p.a. with monthly rest from the date of filing of the counter claim till actual realization. After conducting the arbitral proceedings, ultimately learned sole arbitrator passed the award, operative order of the same is reproduced below.

1. As there is no arbitration agreement between the Claimant & Respondent No.2 and 3, this arbitration is not maintainable against Respondent No.2 and 3. Even otherwise, the claim against Respondent No.2 and 3 is barred by limitation.

2. Claimant obtained undertakings & post dated cheques issued by the Respondent were therefore not given towards legally enforceable debt.

3. The claim of the Claimant is dismissed with costs payable to Respondent no.1.

4. The counter claim of the Respondent No.1 is allowed as follows :

The Claimant is hereby ordered to pay to the Respondent No.1 a sum of Rs.33,97,77,369/- (Rupees Thirty Three Crores Ninety Seven Lacs Seventy Seven Thousand Three Hundred Sixty Nine Only) as of 31<sup>st</sup> August 2015 & future interest @ 12% p.a. with monthly rest from 31<sup>st</sup> August 2015 till realization.

12] The applicant has challenged the award by filing application under section 34 of the Arbitration and Conciliation Act by raising following grounds.

a] The findings rendered by learned arbitrator are beyond the scope of submission of dispute.

b] Infact, affidavits-cum-undertakings were binding on respondents, however learned arbitrator had committed serious error while appreciating those undertakings and wrongly concluded that same undertakings were outcome of coercion and fraud. Therefore, the award is in gross violation of provisions i.e. principles of fundamental policy of Indian Law particularly under clause 2<sup>nd</sup> of clause (b) of sub-section (2) and sub-section (2-A) of the Arbitration and Conciliation Act.

c] The allegations made by respondents are inter se contradictory and further giving weightage by arbitrator as a evidence to news articles is itself in the conflict with

public policy of India and vitiates by patent illegality.

**d]** The findings rendered by learned arbitrator are without appreciation of evidence in proper perspective and further they are based on no evidence so award suffers from patent illegality on its face.

**e]** Learned arbitrator had committed serious error of law and fact while giving findings with respect to nature of said agreements.

**f]** Learned arbitrator without appreciating the facts and evidence by its proper perspective wrongly concluded that the respondent no.1 is entitled for the counter claim. Therefore, it is submitted that the award under challenge suffers from patent illegality and it is in conflict with public policy of India. So, it is submitted to set aside the impugned award.

13] Respondents by filing their say below Exh.17 have contested the application by denying all adverse allegations made therein. According to them, application is not maintainable as it is filed without complying the provision under section 34 (5) of the Arbitration and Conciliation Act.

14] According to respondents, whatever the dispute referred towards arbitral tribunal was rightly



considered by learned arbitrator by considering the pleadings, evidence and certain legal provisions by its proper perspective. So, the findings rendered by learned arbitrator cannot be blamed. Further, the scope of this court while dealing with application under section 34 of the Act is very limited and, therefore, this court cannot enter into the merits of the award by making reappraisal of evidence nor it can replace its view to the view taken by learned arbitrator. So, whatever the contentions raised on behalf of applicant are nothing but expectation that this court shall act as an appellate court and enter into the merits of the case by making reappraisal of evidence which is not at all permitted.

15] As such, respondents have justified the findings and conclusions of learned arbitrator while passing the award. Lastly, they sought rejection of application being meritless.

16] On behalf of respondents reliance is placed on following cases.

- i] Zenobia Poonawala Vs. Rustom Ginwala and others, reported in MANU/MH/0208/2023,
- ii] Jagannath Parmeshwar Mills Pvt. Ltd. Vs. Agility Logistics Pvt. Ltd. reported in MANU/MH/2280/2022,
- iii] UHL Power Company Ltd. Vs. State of Himachal

- Pradesh** reported in **MANU/SC/0019/2022**,
- iv] **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd.** reported in **MANU/SC/0623/2021**,
- v] **Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (NHAI)** reported in **MANU/SC/0705/2019**,
- vi] **National Highway Authority of India Vs. Gammon India Ltd.**, reported in **MANU/WB/0551/2014**,
- vii] **Oil & Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.**, reported in **MANU/SC/0314/2003**,
- viii] **Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir**, reported in **MANU/SC/0427/1992**,
- ix] **Sudarsan Trading Co. Vs. Government of Kerala and Ors.**, reported in **MANU/SC/0361/1989**.

17] Upon rival pleadings, following points arise for determination and I record findings thereon as under for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1.	Whether impugned award is in conflict with public policy of India and it vitiates by patent illegality on the face of it ?	.. No.
2.	Whether interference in the award under reference is necessary ?	.. No.
3.	What order ?	As per final order.

**REASONS****AS TO POINT NOS. 1 AND 2 :-**

18] Heard arguments of both parties. So also, I have gone through the written notes of arguments submitted on behalf of applicant below Exh.31. Further, I have gone through the cases cited on behalf of applicant and I will make its reference at the relevant time during the course of discussion.

19] Before considering rival submissions of both parties and disputed aspects, in my opinion, it is necessary to advert the scope of this court while dealing with the application under section 34 of the Act. In view of pronouncement by Hon'ble High Courts as well as Apex Courts it is clarified that, while deciding application under section 34 of the Act Court has only supervisory role. It cannot sit as a appellate court in order to review the findings and conclusion drawn by learned arbitrator. The scope of section 34 of the Act does not permit the court to make reappraisal of evidence and replace the view taken by arbitrator with its own view by entering into the merits of the award. In short, the very limited scope is there to the court while deciding the challenge to arbitral award.

20] I have gone the grounds put forth in application to challenge the arbitral award and also I have gone through the written notes of arguments coupled with cases relied upon. Similarly, I have gone through the impugned award and record and proceedings before arbitral tribunal.

21] Learned advocate for applicant has submitted that the findings given by learned arbitrator with respect to affidavits-cum-undertakings are in absence of prayer or relief claimed by respondents and, therefore, the said dispute does not fall within the scope of submission to the arbitration. However, having gone through the findings given by learned arbitrator, in this regard they are self sufficient to accept that the counter claim made by the respondent no.1 and denial of its liability to the claim put forth by the applicant before arbitral tribunal is the part and parcel of the affidavits-cum-undertakings. Therefore, it cannot be said that the findings of arbitrator with that respect are beyond the scope of submission. So, the cases relied upon by the applicant such as **Messrs. Trojan and Co. Vs. V. RM. N. N. Nagappa Chettiar** reported in **AIR 1953 SC 235**, **State of Orissa and another Vs. Mamata Mohanty** reported in **(2011) 3 SCC 436**, in which it is observed that, the Court is not entitled to grant the relief not asked for or as a rule relief not founded on the

pleadings should not be granted are not of assistance.

22] In further arguments on behalf of applicant, it is submitted that whatever affidavits-cum-undertakings given by the respondent no.1 were binding on respondents still without base of evidence learned arbitrator had rendered the findings that those affidavits-cum-undertakings were obtained by claimant resorting to intimidation, coercion and fraud. So, said findings against issue no.3 vitiates by patent illegality and also it is in conflict with the principles of fundamental policy of Indian Law.

23] In this connection, after having gone through the pleadings recorded by learned arbitrator with respect to issue no.3 in which the arbitrator has observed that the respondent no.3 in his deposition has stated in detail about the physical and mental torture which the respondent no.3 had to suffer at the hands of the officers of the claimant. There was no denial of such treatment meted out to the respondent no.3. Moreover, the claimant's witness in cross-examination directed on behalf of respondents did not in clear words deny this particular aspect and, therefore, considering non specific denial which amounts to admission of the fact coupled with the some news items and applying Doctrine of Economic

Duress under commercial pressure. The issue no.3 was came to be decided in favour of respondents. So, the findings given by arbitrator on this issue cannot be blamed nor the view taken by arbitrator in that regard can be replaced by making reappreciation of the evidence which was appreciated by the arbitral tribunal. So, it cannot be said that the findings against issue no.3 is either without evidence or it is against the public policy of India.

Reliance on behalf of applicant is placed on following cases.

- i] Dr. B. Singh Vs. Union of India and others reported in (2004) 3 SCC 363,
- ii] Laxmi Raj Shetty and another Vs. State of Tamil Nadu reported in (1988) 3 SCC 319,
- iii] Samant N. Balkrishna and another Vs. George Fernandez and another reported in 1969 (3) SCC 238, observations of their Lordship are on the point that newspaper per se do not constitute the legally acceptable evidence is not helpful for the applicant.

24] It is also argued on behalf of applicant that learned arbitrator had considered the appreciated the evidence which is not admissible. However, to take into account this objection and to go into scrutiny of entire evidence recorded before arbitral tribunal and appreciated by learned arbitrator would be beyond the scope of powers

of this court. So, in my view the insistence of applicant to make reappraisal of evidence cannot be considered. So far as remaining grounds such as grant of counter claim is in absolute contravention and disregard of Indian Law. Application of Doctrine of Economic Duress by learned arbitrator is wrong and further findings with respect to nature of agreements given by arbitrator are not correct and appreciation of evidence by arbitrator based on certain admissions of claimant's witness are contrary to legal provisions are the point which amounts to entering into the merits of the findings rendered by learned arbitrator by making reappraisal of evidence. Furthermore, if it is done then it amounts entering into the merits of the case and replacing the view of this court to the view taken by arbitral tribunal. Therefore, I am of the opinion that having gone through the findings rendered by learned arbitrator while passing award under reference, it appears that the same are based on appreciation and application of certain legal provisions. So, I find that the applicant could not make out the case that the impugned award is in conflict with fundamental principles of policy of Indian Law and is in conflict with the public policy of India and same vitiates by patent illegality. Therefore, whatever the remaining cases relied by the applicant i.e.

i] Bharathi Knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd. reported in

(1996) 4 SCC 704,

ii] Bihar State Electricity Board, Patna and others Vs. M/s. Green Rubber Industries and others reported in (1990) 1 SCC 731,

iii] Usha Kumari Ranawat Vs. Senior Divisional Manager, Life Insurance Corporation of India and another reported in (2011) 13 SCC 196,

iv] Pradyuman Kumar Sharma and another Vs. Jaysagar Sancheti and others reported in 2013 (5) Mh. L. J. 86,

v] K. Madhuryyajit Singh and another Vs. Takhellambam Abung Singh and others reported in AIR 2001 Guahati 181,

vi] Ratnagiri Nagar Parishad Vs. Gangaram Narayan Ambekar and others reported in (2020) & SCC 275,

vii] Hindoostan SPG And WVG. Mills Ltd. Mumbai Vs. Hindustan Crown Mills Siddhivinayak Kamgar Karmachari Sangharsha Sanghatana and others reported in 2007 (5) Mh. L. J. 801,

viii] United India Insurance Co. Ltd. and another Vs. Samir Chandra Chaudhary reported in (2005) 5 SCC 784,

ix] Gulabrao Balwantrao Shinde and others Vs. Chhabubai Balwantrao Shinde and others reported in (2003) 1 SCC 212,

x] Motilal Srinivasa Sarada Vs. The Netha Co-operative Spinning Mills Ltd reported in AIR 1975 Andhra Pradesh 169,



xi] State of Bihar and others Vs. Bihar Rajya Bhumi Vikas Bank Samiti reported in (2018) 9 SCC 472, are not useful to justify the grounds put forth by the applicant so as to set aside the award under reference. Hence, I find that the application being meritless, it is liable to be dismissed. Resultantly, following order is passed.

**ORDER**

Application is dismissed with costs.

Pune.  
Date : 22.04.2024

(Sunil. G. Vedpathak)  
District Judge-2, Pune.

**CERTIFICATE**

I affirms that, the contents of this P. D. F. file Judgment are same word for word as per original Judgment.

Name of Steno	S. Y. Shaikh, Stenographer (Grade-I)
Court Name	Shri. Sunil G. Vedpathak District Judge-2, Pune.
Date	22.04.2024
Judgment signed by Presiding Officer on	24.04.2024
Judgment uploaded & PDF on	25.04.2024