

(1964) 01 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 243 of 1961 and Civil Miscellaneous No. 479 of 1962

Sujant Singh

APPELLANT

Vs

Seth Mohinder Paul

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 29
Arbitration Rules, 1940 — Rule 3
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1964) 01 P&H CK 0025

Hon'ble Judges : H.R. Khanna, J

Bench : Single Bench

Advocate : H.R. Aggarwal and R.C. Dogra, for the Appellant; H.L. Sarin and K.K. Cuccria, for the Respondent

Judgement

H.R. Khanna, J.—This appeal filed by Sujant Singh is directed against the order of learned Sub-ordinate Judge, Pathankot, whereby he accepted the objections of the Appellant to an award only in part and awarded a decree in terms of the modified award against the Appellant.

2. The brief facts of this case are that on 4.4.1960 Sujant Singh Appellant and Mohinder Paul Respondent appointed Dharam Chand Nanda as Arbitrator in respect of their dispute about certain monetary dealings. After a few hearings before the Arbitrator, wherein certain admissions were made about the amount due, the Arbitrator gave notice (Exhibit R/6) dated 14.6.1960 to the Appellant calling upon him to appear before the Arbitrator on 26.6.1960 which was the next date of hearing fixed for the arbitration proceedings. On 15.6.1960 the Appellant gave notice (Exhibit Rule 3) to the Arbitrator stating that the Appellant did not want arbitration by Dharam Chand Nanda and as such the Appellant was revoking the agreement to refer the dispute to arbitration. The Arbitrator, however, replied that he was proceeding with the award and directed the Appellant to appear before him on 10-7-1960 failing which he would proceed ex-parte. On that date Mohinder Paul Respondent appeared before the Arbitrator but

the Appellant absented himself. The Arbitrator then recorded the statement of the Respondent and gave an award holding that the Appellant was liable to pay Rs. 5,046/- as the principal amount and Rs. 1,547/50 nP. as interest, in all Rs. 6,593/50 nP. to the Respondent.

The Appellant was directed to pay that amount along with future interest at the rate of Rs. 1/- per cent per mensem till the date of realization to the Respondent. An application under Sections 14 and 17 of the Arbitration Act was then filed by the Respondent in the Court of Subordinate Judge, Pathankot, praying that the Arbitrator be ordered to file the award in Court so that the same might be made the rule of the Court. Award was thereafter filed by the Arbitrator and objections to the award were filed by the Appellant. In the course of his objections the Appellant alleged that Dharam Chand Nanda was not properly appointed as Arbitrator because he was an intimate friend of the Respondent and this fact was not disclosed to the Appellant. The arbitrator was further stated to have misconducted himself and to have got the signatures of the Appellant on blankpapers and used the same against him. According to the Appellant the award was pre dated and compound interest had been awarded by the Arbitrator against the Appellant with vengeance and in collusion with the Respondent. Objection was also taken to the effect that a sum of Rs. 1,300/- which had been paid by the Appellant to the Respondent, had not been adjusted by the Arbitrator.

The objections were resisted by the Respondent and the Court below framed the following issues:

- (1) Whether the award has been procured collusively and improperly?
- (1A) Whether Dharam Chand Nanda was not properly appointed as an Arbitrator?
- (2) Whether the Arbitrator has committed any judicial misconduct as alleged?
- (3) Whether the objections have been filed within time?
- (4) Whether the award is incomplete?
- (5) Whether the award is invalid for its,being beyond the scope of the powers of the Arbitrator regarding interest?
- (6) Whether the award is pre-dated?
- (7) Whether the authority of the Arbitrator had been revoked before the award, if so to what effect?
- (8) Whether any amount of Rs. 1,300/- was paid to the Arbitrator by the Respondent on 4-4-1960, which has not been adjusted in the award?
- (9) Relief?

Issues Nos. 1, 1A, 2, 4, 6, 7 and 8 were decided against the Appellant while issue No.3 was decided in his favour. On Issue No. 5 the finding of the Court below was that the Arbitrator had no jurisdiction to award interest on the amount

of Rs. 5,046/-. The award, it was held, was liable to be modified by striking down the amount of interest. In the result the objections were accepted only to the extent that the interest allowed by the Arbitrator over the amount of Rs. 5,046/- was disallowed. The remaining objections were dismissed and a decree for Rs. 5,046/- was granted in favour of the Respondent against the Appellant in terms of the modified award. Sujant Singh has filed the present appeal praying that his objections should have been accepted in their entirety and the award should have been set aside as a whole, while cross-objections have been filed by Mohinder Paul Respondent against the order of the Court below in so far as it has disallowed the interest awarded by the Arbitrator, (After dealing with some of the contentions (Paras 3 to 5) of the Appellant the judgment proceeds):

(6) Lastly it has been argued by Mr. Aggarwal that the Respondent had filed a suit on 27-6-1961 against the Appellant with respect to the amounts which were the subject matter of arbitration. The proceedings in the aforesaid suit, it is stated, were stayed on objection having been raised by the Appellant. According to Mr. Aggarwal, the filing of the aforesaid suit by the Respondent would go to show that even he admitted that the award was liable to be set aside. In my opinion, this contention is devoid of force. It may be that the Respondent might have filed the suit in respect of the amounts which were the subject-matter of arbitration as a measure of abundant caution so that his claim for recovery of those amounts might not become time-barred in case the award was set aside. This would not, however, go to show that the award in question was invalid and as such was liable to be set aside.

7. The appeal, accordingly, fails and is dismissed.

8. Coming to the cross-objections, I find that the Court below modified the award of the Arbitrator on the ground that the Arbitrator had no jurisdiction to award interest on the amount of Rs. 5,046/- because this was not a matter which had been referred to him. In this respect I find that according to the agreement (Exhibit A-12) Dharam Chand was appointed Arbitrator to settle dispute between the parties relating to monetary dealings and it was stated that whatever decision he would give in the matter would be accepted by both the parties. The authority given to the Arbitrator to settle dispute about monetary dealings would, in my opinion, include the power to award interest on the principal amount. In *Uttam Chand Saligram v. Mahmood Jewa Mamooji* AIR 1920 Cal 143 and *Tulsiram v. Jhanaklal* AIR 1936 Nag 197, it was held that an Arbitrator had power to award interest. The Court below while disallowing interest relied upon *Union of India v. Premchand Satram Das* AIR 1951 pat 201, But in my opinion, the facts of this case are clearly distinguishable. In that case there was a dispute between the Respondent and the Central Public Works Department in connection with the supply of bricks and the matter was referred to the Arbitrator in accordance with an arbitration clause. The Arbitrator in his award awarded interest to the Respondent but the award in this respect was held to be without jurisdiction because the Respondent had not included any claim for interest in the bill

originally submitted by him to the Chief Engineer, Central Public Works Department. It would, thus, appear that the award in respect of interest was set aside on the particular facts of that case and that decision, in my opinion, cannot be used as an authority for the proposition that no interest can be allowed by an Arbitrator in a dispute arising solely out of monetary dealings.

9. The Arbitrator in addition to allowing past interest amounting to Rs. 1,547/50 nP. also directed the Appellant to pay future interest on the amount of Rs. 6,593/50 nP. till realization. This part of the award about future interest was beyond the powers of the Arbitrator because it is only a Court which can award such interest, vide Section 29 of Arbitration Act read with Section 34 of the Code of Civil Procedure. An arbitrator as held in Seth Thawardas Pherumal Vs. The Union of India (UOI), is not a "Court" and as such cannot award future interest. Mr. Sarin has also frankly conceded that the Arbitrator had no power to award future interest to the Respondent.

10. I, therefore, accept the cross-objections and set aside the order of the Court below to the extent it disallowed interest amounting to Rs. 1,547/50 nP. Decree in terms of the award holding the Appellant liable to pay Rs. 6,593/50 nP. to the Respondent is awarded in favour of the Respondent against the Appellant. The Respondent would, however, not be entitled to future interest) on that amount. In the circumstances of the case I leave the parties to bear their own costs of the appeal as well as the cross-objections.