



LAW

# An Arbitral Award can be set aside only when it is vitiated by patent illegality: SUPREME COURT

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The Supreme Court, in a recent judgement<sup>1</sup>, delivered on 30th March 2022, noted that apart from the grounds mentioned in Section 34(2)(b) of the Arbitration and Conciliation Act, 2013 (the “Act”), an arbitral award can be set aside only when it is vitiated by patent illegality, and not on the ground of erroneous application of law or by misappreciation of evidence.

Section 34 of the Act, states the application for setting aside an arbitral award may be set aside by the Court only if the Court finds that

- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is in conflict with the public policy of India.

### **Facts of the case**

An agreement was signed on 6 July 1988, between Haryana Urban Development Authority, Karnal being the appellant and M/s. Mehta Construction Company And Anr, being the respondents. According to the agreement, the respondent was supposed to carry out some construction work in the city of Karnal. The Appellant claimed that there was a delay on the respondent’s part and the respondent claimed the same on the part of the appellant.

The respondent filed an application before the Punjab and Haryana High Court requesting appointment of an arbitrator. As per the agreement, the High Court ordered the parties to approach the Arbitrator-cum-Superintending Engineer, HUDA Circle, Karnal. The sole arbitration passed an award dated 28 March 2014 in favor of the respondent,.

The award was objected before the District Court, under Section 34 of the Act and the same was dismissed by the District Court on 8 January 2018 on the ground of Delay. On appeal under Section 37 of the Act, the High Court refused to interfere with the order of the District Court.

### **Observations of the Supreme Court**

The Supreme Court bench, comprising Justices Ajay Rastogi and Sanjiv Khanna quashed the order of the Punjab and Haryana High Court and allowed the appeal. The Court observed that lower courts were not justified in refusing to condone the delay, which was only 8 days.

As per Section 34(3) Act, an arbitral award can be challenged within 3 months from after the arbitral award is received. If sufficient reasons are provided, a delay of up to 30 days can be granted by the Court. In the present case, only 8 days’ delay was observed due to the fact that sanctions from higher authorities took time.

The court stated that *“We have briefly noted the provisions of the Act only to highlight that the objections under Section 34 of the Act did require consideration and in-depth examination and should not have been dismissed without proper and full application of mind with reference to the provisions of the Limitation Act and the Act. 17.*

*In these circumstances, and for the reasons stated, we have no option but to allow the present appeal and set aside the impugned order dated 11th December 2019 passed by the High Court as well as the order dated 8th January 2018 passed by the Additional District Judge, Karnal.”*

Accordingly, the Court remitted the matter to the District Court with the direction to decide the objections afresh on merit.

<sup>1</sup> Haryana Urban Development Authority, Karnal v. M/s. Mehta Construction Company And Anr. (2022 LiveLaw(SC) 348)