

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1803 OF 2020

JASPAL & ANR.

...Appellant(s)

Vs.

PUNJAB STATE WAREHOUSING CORPORATION LTD.

...Respondent(s)

O R D E R

Heard the learned senior counsel appearing for the appellants and the learned counsel appearing for the respondent.

2. The dispute between the appellants and the respondent was referred to the sole arbitrator. Before the Arbitral Tribunal, the respondent was the claimant and the appellants herein were the respondents. The learned Arbitrator made an Award dated 4<sup>th</sup> May, 2007 holding that the respondent had failed to prove that there was any valid agreement between the parties and in the absence of any such valid agreement, no valid reference could be made. Therefore, he proceeded to dismiss the claim petition.

3. The respondent took recourse to Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"). A petition under Section 34 of the 1996 Act was filed before the District Court. By judgment and order dated 17<sup>th</sup> August, 2012, the learned Additional District Judge, Patiala proceeded to set aside the Award and proceeded to pass an order of remand to the Arbitrator. Paragraph 20 of the said order reads thus:

"20. In view of my findings above, the present petition succeeds and is hereby allowed and award dated 4.5.2007 passed by the learned Arbitrator is hereby set aside and matter is sent back to the Managing Director of the petitioner corporation to send the same to the Arbitrator to decide it afresh or merits and in case said Arbitrator is not available due to any reason or has become incapable during the intervening period, refer the matter to a New Arbitrator duly appointed as per terms of the agreement. File of the Arbitrator be sent to the Managing Director of petitioner corporation with copy of the Judgment on the same. Memo of costs be prepared and file of objection petition be consigned to the record room complete in all respects."

4. Being aggrieved by the said order, the appellants preferred an appeal by invoking Section 37 of the 1996 Act. By the impugned judgment, the learned Single Judge came to the conclusion that the impugned order of the Additional District Judge, Patiala will have to be treated as the one

passed under Section 37 of the 1996 Act, as the adjudication was made under Section 16 of the 1996 Act by the Arbitrator. Therefore, in view of sub-section (3) of Section 37 of the 1996 Act, the learned Single Judge of the High Court held that the appeal was not maintainable.

5. After having heard the learned counsel appearing for the parties, we find that the learned Additional District Judge, Patiala was dealing with a petition under Section 34 of the 1996 Act filed by the respondent and in exercise of the power under Section 34 of the 1996 Act, he purported to not only set aside the Award but pass an order of remand to the Arbitrator. Under clause (c) of sub-section (1) of Section 37 of the 1996 Act, an appeal is available against an order under Section 34 of the 1996 Act of setting aside or refusing to set aside an arbitral Award. In this case, clause (c) of sub-section (1) of Section 37 was applicable as the judgment and order dated 17<sup>th</sup> August, 2012 passed by the Additional District Judge, Patiala is an order setting aside an Award in exercise of powers under Section 34 of the 1996 Act. Therefore, the view taken by the learned Single Judge of the High Court that the appeal preferred by the appellants was not maintainable under Section 37 of the 1996 Act is completely erroneous and deserves to be set aside.

6. In normal course, we would have passed an order of remand directing the learned Single Judge to hear the appeal under Section 37 of the 1996 on merits. However, we find that the learned Additional District Judge, Patiala

committed gross error by passing an order of remand to the Arbitral Tribunal. The power to remand was not vested in him in exercise of jurisdiction under Section 34 of the 1996 Act.

7. Therefore, to save the time, the only legal order which could be passed today is of setting aside the judgment and order dated 17<sup>th</sup> August, 2012 and of directing the learned Additional District Judge, Patiala to hear and decide the petition under Section 34 of the 1996 Act in accordance with law.

8. Hence, the judgment and order dated 17<sup>th</sup> August, 2012 passed by the Additional District Judge, Patiala and the judgment and order dated 1<sup>st</sup> November, 2017 passed by the learned Single Judge of the High Court are hereby quashed and set aside. Arbitration Case No.71 of 2007 is restored to the file of the Additional District Judge, Patiala.

9. The Registry of this Court shall forward a copy of this order to the Court of the learned Additional District Judge, Patiala.

10. The restored Arbitration Case No.71 of 2007 shall be listed before the learned Additional District Judge, Patiala on 2<sup>nd</sup> September, 2024 in the morning for fixing a date for hearing. The parties to the appeal shall appear before the learned Additional and District Judge, Patiala on that day and no further notice shall be served upon them.

11. Since the case is of the year 2007, the learned Additional District Judge, Patiala shall give necessary priority to the disposal of the case.

12. All contentions of the parties in the restored Section 34 petition are kept open.

13. The appeal is accordingly partly allowed on the above terms.

14. There shall be no order as to costs.

.....J.  
(ABHAY S.OKA)

.....J.  
(AHSANUDDIN AMANULLAH)

.....J.  
(AUGUSTINE GEORGE MASIH)

NEW DELHI;  
August 08, 2024.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1803/2020

JASPAL &amp; ANR.

Appellant(s)

VERSUS

PUNJAB STATE WAREHOUSING CORPORATION

Respondent(s)

(IA No. 204692/2022 - FIXING DATE OF HEARING)

Date : 08-08-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s)

Mr. R.Anand Padmanabhan, Sr.adv.  
Mr. Arimardhan Sharma, Adv.  
Ms. Ruchi, Adv.  
Mr. Shashi Bhushan Kumar, AOR

For Respondent(s)

Mr. A P Dhamija, Adv.  
Ms. Laxmi Kumari, Adv.  
Mr. S C Sharma, Adv.  
Ms. Tanya Sharma, Adv.  
Mr. Sarad Kumar Singhania, AORUPON hearing the counsel the Court made the following  
O R D E RThe appeal is partly allowed in terms of the signed  
order.

Pending application also stands disposed of.

(ANITA MALHOTRA)  
AR-CUM-PS(AVGV RAMU)  
COURT MASTER

(Signed order is placed on the file.)