

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2539 of 2001 (O&M)

Date of decision: 12.03.2015

Kimti Lal Vohra, Contractor, resident of House No.678, New Prem
Nagar, Karnal.

... Petitioner

versus

Haryana State through the Executive Engineer, Provincial Division,
PWD, B&R, Kaithal, and another.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Puran Singh Rana, Advocate,
for the petitioner.

Mr. Sharad Kumar Yadav, DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The civil revision is against the order passed by the civil court exercising the appellate jurisdiction against the order passed by the court of first instance in arbitration proceedings. The claims and counter claims were made by the petitioner, who was a contractor, and the State which had entrusted the contract before the Arbitrator for three heads of claims: (i) interest of security amount paid by the contractor; (ii) loss suffered for escalation of costs beyond the contract period; (iii) interest for delayed payments.

2. The claim of the petitioner was that the work, which was allotted on 07.11.1986 and which was required to be completed within a period of 6 months, could not, however, be completed within the stipulated time on account of the fact that for a portion of a work which was already completed and for which an amount of ₹25,000/- and odd was required to be paid had not been paid on the alleged failure to make adequate budgetary allocations and the period for completion of the work had been periodically extended by the respondents on the petitioner's request and the work was ultimately completed on 13.02.1991. The delay in completion of the work was, therefore, on account of the respondent's failure to honour its financial commitments and the resultant increase in costs of inputs and labour that had to be borne by the State. The third head of claim was the interest for delayed payments that had ultimately resulted by the delay in completion of the work in the payment that were ultimately made.

3. The Arbitrator had allowed for all the three claims and when an objection was filed under Sections 14 and 17 for making the award the decree of the court, the State had filed a petition to set aside the award under Section 30 but the court was rejecting the objections made by the State and granted a decree in terms of the award. The order declining to set aside or modify the award was a subject of appeal before the lower appellate court which disallowed

all the three heads of claims on the ground that there was no reasoning at all adopted by the Arbitrator and the award admitting the petitioner's claims was, therefore, required to be set aside. Accordingly, the appeal filed by the State against the court of first instance was allowed and the order of the first court set aside. It is the judgment of the appellate court which is assailed in civil revision before this court.

4. The counsel would preface a submission with a plea that it is a settled law that the award of the Arbitrator need not to be reasoned, unless the terms of the reference themselves required a reasoned judgment to be given. The ground taken by the appellate Court that there were not adequate reasons for admission of the claims was, therefore, unjustified. The position of law is now too well established to be restated again and I affirm the incontrovertible position that the award cannot be assailed because it is not reasoned. I will not, therefore, find any fallability about the award for its failure to state its reasons.

5. I have, therefore, asked the counsel to argue only on the tenability of the award for the claims admitted by the Arbitrator if reasons were not necessary. The State has a contention to make that as per the terms of the contract, security amount was to be returned within a period of 4 months from the time when the work was completed and in this case, the security amount had been refunded

on 28.02.1992 that was within the time when the last payment was issued. It only explains that there was no delay in the return of the security amount but it does not answer the fundamental issue of whether there is any liability to pay interest. The counsel for the petitioner refers me to the provisions of the Interest Act that provides for allowance for interest in certain cases. Section 3 of the said Act states that, in any proceedings for the recovery of any debt or damages, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages at a rate not exceeding the current rate of interest. Section 4 of the said Act is a non-obstante clause that notwithstanding anything contained in certain particular conditions imposed in Section 3, the court shall allow interest from the date specified to the date of institution of proceedings and includes in Section 4(2)(a) the following:-

“Where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit.”

6. The award passed by the Arbitrator is enforcement of the statutory provisions of what we have extracted above. The Act itself explains the court to include an Arbitrator. To me, the issue ought to be settled through the statutory provisions and the interpretation made by the District Court in that regard was not justified.

7. The second head of claim relates to the loss suffered by escalation on account of delayed completion of the contract work which was stated to be on account of the petitioner's own conduct. The petitioner was required to complete the work within 6 months from the date of entrustment, namely, 07.11.1986, but the work had been completed only on 13.02.1991. Notices for extension had been given on more than 4 occasions and the petitioner, who was guilty of such delay, could not claim any escalation charges. The counsel for the State would read to me clause 4 of the additional conditions of contract that spells out that no escalation cost or labour could be claimed for any reason. The counsel for the petitioner would explain that the escalation of cost and labour that cannot be claimed must be restricted to any escalation which the contractor suffered within the contract period. If there had been extensions and the work was completed beyond the stipulated period and by which time, the material costs or the labour costs had increased, such clause will not operate. The counsel would refer to the judgment of the Supreme Court in **K.N. Sathyapalan (dead) by LRs. Versus State of Kerala and another-2007(1) RCR (Civil) 270** that held where the contractor was claiming extra cost which he had to incur on account of payments made to idle labour and machinery would be entitled to be paid the additional costs in terms of the Arbitrator's award and an Arbitrator acted within his jurisdiction in allowing some of the

claims on account of escalation of costs. I must find the judgment to be not strictly applicable, for, the Supreme Court was considering a situation of the State failing to maintain law and order problem which was created at the work site and when the contractor was compelled not to extract work and keep them idle but still pay them the wages. In this case, the whole issue must rest on whether there was a justification for a delay in completion of work and whether such delay could be attributed to the conduct of the respondents. The petitioner sets up a plea that the work was completed when bills had been raised and the amounts had not been paid and that contributed to the delay. We have an admitted situation here that a delay for over 24,000 was pending right from the year 1987 till the year 1991 when on account of the financial stringency. The State admitted that it could not make the payment. The counsel for the petitioner would explain that the government was prepared to extend the time periodically not out of any grace but on account of owning up its responsibility for contributing to the delay for not being in a position to release the amount of what was due to the petitioner. I have no answer before me coming from the State as to why the amount could not be paid, nor was there any denial of the fact that there was a financial stringency at that time. If the Arbitrator, therefore, thought that there has been a loss by additional costs incurred by the contractor and, therefore, the contractor would deserve to have the

benefit of escalation of costs, I find that to be not without substance or outside the jurisdictional ambit of the Arbitrator. The interference made in that regard as well cannot therefore be supported.

8. The third head of claim is purely consequential to the decision under the second head. The third claim is interest on delayed payment. If the first payment was delayed and the contract was delayed by the inability of the State to release the first payment, the ultimate delay that was caused by releasing the payment on the work done would also require to be compensated by interest against the claim which was assessed by the Arbitrator and affirmed by the decree. I restore the decision of the first court granting decree in terms of the award.

9. I set aside the order passed by the District Court that restored the order of the first court. The civil revision is allowed with costs of ₹5,000/- against the State.

(K.KANNAN)
JUDGE

12.03.2015
sanjeev