

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

FAO No.506 of 1990 (O&M)

Date of decision : 26.08.2015

Punjab State through Executive Engineer & ors.

...Appellants

Versus

M/s Harish Chandra (India) Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rajesh Mehta, Addl. A.G. Punjab.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the order dated 06.03.1990, whereby objections on Item No.1 filed by the State against the award dated 14.07.1989, have been dismissed.

Mr. Rajesh Mehta, learned Additional Advocate General Punjab appearing on behalf of appellants, submits that Arbitrator has wrongly taken into consideration the item nos.1 and 2 alleged to be part of the agreement, whereas, such items are of same from other agreement and, therefore, erroneously granted the benefit to the Contractor for extra ₹8.0 per cum for earth work in embankment. The Court below did not notice the aforementioned contention and capriciously and perversely rejected

objections. He further submits that earth work including compaction and random filled on the right bank of the canal, whereas decision regarding adoption of typical cross sections for filling more than 6 meters or less than 6 meters related to only left bank of canal. He further submits that Contractor had not used the earth already stored near the site and had only carried the same for which he was entitled to ₹11.81 per cum and not the excavation rate of ₹19.95 per cum and thus, Arbitrator has mis-conducted in allowing the claim and awarding the interest.

The Arbitrator has awarded the interest at the rate of 12% p.a. from the date of award which is beyond the scope, as there was no stipulation of awarding interest to the agreement.

I have heard learned counsel for the appellants.

Notice of this appeal was issued to the respondent No.1, which has been received back with the report that there was lock on the door. No fresh address has been tendered. No effort has been made by the State to furnish correct address and matter is pending since 1990 accordingly, I proceeded to decide the appeal on merits.

The arguments raised above is not only fallacious, but preposterous. On going through the record of the arbitration proceedings, it is evident that arbitration agreement contained awarding of ₹8.0 per cum for earth work in embankment over and above ₹19.95 per Cum under Serial No.1. The Arbitrator found that Contractor had to bring the earth work outside the channel portion for purposes of compaction, therefore, he was held entitled, as per the approved rates of Item No.1 ₹19.95 per cum, in addition, to Compaction charges at the rate of ₹8 per cum. It has been

noticed by the Court below and as well as by the Arbitrator that work of filling earth in compaction and random zones was done subsequent to the excavation of canal upstream RD4800-4200. As good quality, the earth could not be simultaneously carried to filling reach as there was no proper decision in this regard. Moreover, such objections had not been taken before the Arbitrator which fact is discernible from the reply. In essence, it is admitted case of parties before the Arbitrator that Contractor had brought the earth for filling and compaction in the disputed reach RD4800-5000 from around RD-4400, where it had been stored.

The contention that Contractor could not have done this exercise simultaneously has been belied from the fact that decision in this regard was taken later on. Therefore, aforementioned contention is hereby rejected. The contention with regard to awarding of the interest at the rate of 12% as per the terms of contract, in my view, is also not sustainable, for the reasons, that agreement with regard to the awarding of interest is conspicuously absent. It is now settled law that Arbitrator can award damages and also interest in the absence of any clause in the agreement and awarding 12% interest, is not on higher side. The order passed is based on the appreciation of both oral and documentary evidence.

There is no merit in the aforementioned appeal.

The present appeal is devoid of merits.

Same is accordingly dismissed.

26.08.2015

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**(AMIT RAWAL)
JUDGE**