

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

F.A.O.No.4021 of 2009

Date of Decision: August 27, 2015

Savita Malhotra

...Appellant

Versus

The Union of India, New Delhi & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

**Present: Mr.Amit Parashar, Advocate,
for the appellant.**

**Mr.C.M.Sharma, Advocate,
for the Union of India-respondent No.1.**

AMIT RAWAL, J.

The challenge in the present appeal is to the impugned order dated 1.5.2009 passed by the District Judge, Gurdaspur, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”) have been allowed in part. In essence, the findings on issue No.1 rendered by the arbitrator have been set-aside, whereas rest of the award has been upheld.

Mr.Amit Parashar, learned counsel appearing on behalf of the appellant submits that in pursuance to the contract entered into between the

parties, the work in question was allotted to the appellant by the Executive Engineer on 24.5.1988 in anticipation of the approval of rate by the Chief Engineering concerned. He further submits that the work was completed on 15.7.1988, which fact was established from the letter dated 30.10.1988. The final bill was submitted, but the appellant had been paid only an amount in part and a sum of ₹3,02,940/- was due along with interest and, therefore, the reference was sought.

The arbitrator, on the basis of the evidence and as per the terms and conditions of the agreement, rightly allowed the claim in different heads by holding that the reduction of the items was sanctioned by the Superintending Engineer unilaterally as no consent of the claimants was sought. He further submits that the objections filed were not within the parameters of the provisions of Section 34 of 1996 Act and, therefore, the District Judge has committed an illegality and perversity in setting-aside the award with respect to the findings recorded against item 3.2.3 of the award and consequential adjustments made by the arbitrator, however, the rest of the award had been maintained. He further submits that the said Clause 3.2.3 with regard to the reduction on the part of the department against item at Sr.No.1 was highly exaggerated and had been made on adhoc basis. In fact, no test was conducted and, therefore, the arbitrator found that the department was only entitled to recover a sum of ₹50,000/- from the claimants on account of reduction/deductions pointed out in the completion certificate. He also submits that as per Clause 10 of the contract agreement, it is within the domain of the Superintending Engineer to consider the quantum of reduction and as well as justification thereof in respect of the

rates of sub standard work, which may be decided to be accepted and his decision would be final and the said matters cannot be referred to the arbitrator. He further submits that the findings given by the District Judge, Gurdaspur are erroneous.

Mr.Chander Mohan Sharma, learned counsel appearing on behalf of the Union of India submits that there is no illegality and perversity in the order passed by the District Judge, Gurdaspur, whereby the objections were allowed in part. The District Judge has rightly set-aside the award of the arbitrator in respect of account of ₹2,55,324/- by taking into consideration the terms and conditions of Clause 10 of the contract agreement.

I have heard the learned counsel for the parties and appraised the paper book.

No doubt, the scope of interfering in the objections is limited to the extent as provided under Section 34 of the 1996 Act, but the fact remains that in case the award of the arbitrator is against the terms and conditions of the agreement, the District Judge is yet within his jurisdiction to accept the objections in this regard. The instant case is a case of similar nature. The claim awarded by the arbitrator, vis-à-vis the quantum of reduction in respect of rates of sub standard work, was not within his domain, but it was within the jurisdiction of the Superintending Engineer. The District Judge has not interfered with the findings rendered by the arbitrator in respect of other claims, vis-à-vis the claim granted, i.e., the account of ₹2,55,324/- by taking into consideration the terms and conditions of Clause 10 of the agreement. There is no illegality and perversity in the impugned order and, thus, interference is not warranted as the findings have

been rendered strictly within the parameters of Section 34 of 1996 Act.

There is no merit in the appeal. The same is accordingly
dismissed.

August 27, 2015
ramesh

(AMIT RAWAL)
JUDGE