

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

FAO No.4536 of 2009 (O&M)

Date of decision : 11.09.2015

District Manager, Punjab State Warehousing Corporation, Faridkot

...Appellant

Versus

M/s Ram Lal Hari Chand Goyal and sons 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. Vikas Singh, Advocate for the appellant.

Ms. Ritam Aggarwal, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned order dated 18.03.2009, whereby objections filed, under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') against the award dated 25.09.2004, whereby claim of the appellant has been rejected and the counter claim filed by the Miller to the tune of ₹2,06,265/- along with interest at the rate of 18% p.a. from 05.07.2002 to the date of passing of the award, till realisation, has been accepted.

Mr. Vikas Singh, learned counsel appearing on behalf of appellant submits that award of the Arbitrator was vitiated in law, inasmuch as that, not in accordance with law & evidence brought on record and have erroneously

rejected the claim of the appellant and allowed the counter claim of the respondent.

He further submits that appellant-Corporation had not been given proper opportunity to lead evidence, this fact has not been noticed by Objecting Court, while dismissing the objections. The interest awarded by the Arbitrator is too high, which is not, in consonance with the ratio decidendi laid down by Hon'ble Supreme Court and by this Court and at the best, interest is liable to be reduced considerably.

Ms. Ritam Aggarwal, learned counsel appearing on behalf of Miller submits that there is very limited scope for interference to the objections under Section 34 of the Act. None of the objections filed, on behalf of appellant was conforming to the provision of Section 34, this Court, much less, Objecting Court should not act as a Court of Appeal or sit on a arm chair of an expert.

She further submits, that though agreement did not envisage the awarded amount of interest, but the Arbitrator can always, by considering the facts and circumstances, award interest by way of damages and rightly so 18% p.a. has been awarded.

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

As regards the contention that appellant was not given any opportunity to lead evidence on various points, I do not deem it appropriate to interfere that on perusal of the record, sufficient opportunity has been granted to the appellant.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme

Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality or for want of reasons as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act.

As regards the granting of interest at the rate of 18% p.a. by the Arbitrator, I deem it appropriate that awarded interest is on higher side and is liable to be modified/reduced to 12% p.a.

Accordingly, it is reduced to 12% p.a. from 05.07.2002 till date of entering into reference.

It is made clear that interest of 18% p.a. as ordered by the Arbitrator shall be read as 12% p.a.

With the aforementioned modification, appeal stands partly allowed.

11.09.2015

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**(AMIT RAWAL)
JUDGE**