

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 335 of 2010(O&M)
Date of decision : August 18th , 2015

Mangal Jyoti Cooperative Group Housing Society Ltd.

..... Appellant

Versus

M/s Vir Bhan Mittal and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Akshay Bhan, Senior Advocate with '
Mr. Santosh Kumar, Advocate
for the appellant.

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate
for respondent No.1.

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?

Amit Rawal, J .

The Mangal Jyoti Cooperative Group Housing Society Limited has knocked the door of this Court by invoking Section 37 of the Arbitration and Conciliation Act, 1956 whereby the objections filed against the arbitration award dated 30.5.2006 have been dismissed vide impugned judgment dated 7.8.2009.

Learned Senior counsel Mr. Akshay Bhan for the appellant submits that the Arbitrator has exceeded its jurisdiction in allowing the claimant-Contractor-respondent by permitting amendment of claim of from ₹5 lacs to ₹50 lacs against column of

damages, whereas, no such claim was, ever, raised in the legal notice and contents of reply to the claim statement would prove that Contractor had not claimed a sum of ₹50 lacs as damages. He further submits that there was a settlement dated 6.10.2000 which, for some reason, allegedly could not be accepted, accordingly the matter was, referred to the arbitration. The award of the Arbitrator suffered from illegality and perversity for the reason that no amended claim petition was ever asked for, despite that the contractor filed the same and therefore, there was no occasion for the appellant to file amended reply, the second reply, was not to the amended reply but was, in continuation to the previous reply, in essence, it was detailed one. Thus, the Arbitrator on its own has enhanced the claim on account of damages which was never claimed by the claimant-contractor.

He submits that specific objections bearing Objection No. 11,12,19 in this regard were taken before the District Judge but the same have not been, for, no reason taken note of and thus the objections have erroneously been rejected. He further submits that the finding rendered by the trial court is totally capricious as it had failed to notice that the compromise, dated 6.10.2000 was not even an understanding between the parties to the *lis* as it was never agreed to between the parties.

The claim was also time barred and the Court below failed to appreciate the limitation, as the period to claim the amount of security as well amount of the final bill could be up to 2003, any claim beyond this compromise actually expired on 5.10.2003.

The objected court failed to appreciate that arbitrator acted in a most bias manner, as the counter claim filed by the Society has been rejected, being time barred whereas the claim of the contractor was accepted to be well within the period of limitation.

The interest awarded by the Arbitrator as well s Additional District Judge is against the settled law and Arbitrator misconducted in allowing frivolous claim and dis-allowing the genuine claims of the Society. The Court below totally failed to note the fact that initially no specification was given regarding damages in the originally filed statement of claim except the amount in tabular form, which subsequently, had been changed by tampering the record from ₹5 lacs to ₹50 lacs, but both, the Arbitrator and court below did not address the said issue, thus prays that the award and the order rejecting the objection be set aside.

Mr. Chetan Mittal, learned Senior counsel has drawn attention of this Court, to the record of the Arbitrator, to submit that there was no tampering in the claim viz-a-viz damages in as much as that the damages were to the extent of ₹50 lacs and were actually claimed, which fact, is evident not only from the tabular form but, from perusal of page 12 of the claim statement, wherein, in claim No.11 a sum of ₹50 lacs expenses (in words), has been claimed towards damages. For the sake of brevity the relevant portion of claim No. 11 and 9 is reproduced hereunder:-

“Claim No.11 and 9- ₹50 lacs expenses incurred

towards dismantling GI pipes, spouts and laying GI

pipes”

He further submits that the Arbitrator called upon the Society to file the claim but the Society failed to file detailed reply to the claim statement. Even the supplementary claim already submitted, clearly envisaged the damages were in consonance with one sought earlier, thus, there is no illegality and perversity in the award, much less, in the order, whereby objections have been declined.

Mr. Akshay Bhan, learned Senior counsel in rebuttal submitted that the Arbitrator has not only misconducted but committed mala fide.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

The plea, that the claim of the contractor was time barred is not tenable, for the reason, that there was no acknowledgment on behalf of the Society with regard to the settlement dated 1.4.2001 and the arbitration clause was invoked on 16.3.2004 which is well within the period of three years. Even otherwise, the Society has not raised any objection viz-a-viz limitation at the time of the receipt of request of the Contractor nor before the Arbitrator, thus, for intents and purposes the Society waived its right as per provisions of Section 4 of the Act.

As regards the alleged interpretation and entertaining supplementary claim (Appendix B) it is clearly deciphered that there is no such clause in the claim by adding one zero i.e. by enhancing the claim from ₹5 lacs to ₹50 lacs against the

claim of damages. Moreover as per claim Nos. 9 and 11 (supra) at page No.12 of the claim statement the contractor had claimed a sum of ₹50 lacs (in words) towards damages.

The award in my view, is not against the public policy or against any substantive law. The plea of interpolation, in view of what has been observed above, is devoid of merit.

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, stands already 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 is not speaking is in consonance with provisions of Section 28(1) & 31(1) 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. (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 such 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. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but viz-a-viz proceedings. In my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

The award read as a whole is just, fair and reasonable and claims granted are duly been supported, with reasons. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise in the impugned judgment and award. The impugned judgment and award is perfect and justified and all the objections filed against the same were/are wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 18th , 2015
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