

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

F.A.O.No.6292 of 2010 (O&M)
Date of Decision: August 31, 2015

M/s Raj Kishan & Company, 3280, Sector 19-C, Chandigarh

...Appellant

Versus

State of Haryana

...Respondent

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.D.K.Singal, Advocate,
for the appellant.**

**Mr.Ravi Partap Singh, AAG, Haryana,
for the State.**

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the impugned order dated 25.4.2009, whereby the objections filed by the department against the award dated 3.10.2006, whereby direction has been issued to the department to refund the security deposit, have been accepted.

Mr.D.K.Singal, learned counsel appearing on behalf of the appellant-contractor submits that there are two types of security deposit, which have to be deposited by the contractor, one in lieu of the contract and another in case the department raises the dispute and seeks reference before the arbitrator.

Admittedly, reference was sought by the department and not by the contractor. The reference claiming the element of liquidated charges was sought. The arbitrator declined the liquidated charges, but however, ordered the department to refund the security deposit, which was deposited in lieu of the contract. The department misconstrued the award/finding on the premise that the security deposit was with regard to the arbitration dispute as the counter-claim of the department was rejected on account of non-payment of the arbitration fee. Even the objecting court has also misconstrued clauses of the agreement by relying upon the findings of the arbitrator that since the fee of the arbitrator has not been paid towards the counter-claim, therefore, the arbitrator could not have ordered the refund of the security deposit and, thus, the impugned order suffers from illegality and perversity.

Mr.Ravi Partap Singh, learned Assistant Advocate General, Haryana appearing on behalf of the State submits that there is no illegality and perversity in the order which has been assailed by the appellant as the objecting court has rightly accepted the objections by taking into consideration the findings rendered by the arbitrator that since the contractor had failed to deposit the arbitration fee, the arbitrator could not have ordered for refund of the security deposit.

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

The counter-claim did not envisage the refund of the security deposit, which was deposited in lieu of the contract, thus, there was no occasion for the department to raise the objections against the findings rendered by the arbitrator, vis-a-vis the refund of the security deposit. It

would be apt to refer the operative part of the impugned order, whereby the department has been directed to refund the security deposit, which reads thus:-

“”No doubt, the Arbitrator dismissed both the claims put forth by the petitioner but he also dismissed all the counter claims put forth by the respondent/contractor including a claim of refund of security deposit on the simple ground that the contractor had not deposited the arbitration fee for the counter claims put forth by him. When he had rejected all the counter claims including refund of security deposit, where was the question of refund of the earnest money and that too by taking lenient view for which there is no provisions in the Act of 1996. So the argument of the counsel for the respondent/contractor that after dismissal of the claims of the petitioner, the Arbitrator was bound to refund the security amount of the contractor is not sustainable.”

The District Judge has failed to address the issue in correct perspective, inasmuch as that, it found that since the contractor did not deposit the fee towards the counter-claim, which also include the element of security deposit and, therefore, the arbitrator could not have ordered for refund of the security deposit. Such findings, in my view, as already noticed, are not in consonance with the terms and conditions of the agreement as the security was deposited in lieu of the contract and not in view of the reference sought on behalf of the department.

In my view, the impugned order allowing the objections is not

sustainable in the eyes of law and the same is hereby set-aside and the award of the arbitrator is restored.

The appeal is allowed.

August 31, 2015
ramesh

(AMIT RAWAL)
JUDGE