

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

FAO No.7188 of 2010 (O&M)

Date of decision : 22.09.2015

State of Haryana

...Appellant

Versus

M/s Birohar Co-operative L&C Society 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. Ravi Partap Singh, Assistant Advocate General, Haryana.

Ms. Avin Arora, Advocate for
Mr. Pritam Saini, Advocate for respondent No.1

AMIT RAWAL, J. (Oral)

CM No.30891-CII of 2010

Prayer in the application is for seeking condonation of delay of 1736 days in filing the appeal owing to the fact, that against the impugned order, appellant had filed civil revision which was not maintainable and, therefore, time spent has resulted into delay in filing the present appeal. Though, the aforementioned application has been contested by the non-applicant-respondent on account of the fact that no explanation, much less, reasonable explanation has been given in seeking condonation of delay, but, I am of the view that in case matter in dispute can be decided on merits, delay

should not be fatal/much less come in way.

For the reasons stated in the aforementioned application, which is duly supported by an affidavit, delay of 1736 days in filing the appeal is condoned.

Application is allowed.

Main Case

Challenge in the present appeal is to the order dated 21.10.2005, whereby objections filed against the award dated 12.02.2002, have been dismissed.

Mr. Ravi Partap Singh, Assistant Advocate General, Haryana submits, that Arbitrator, has erroneously allowed 4 claims out of 6 claims and has awarded 12% interest from the date of reference till the passing of the award and 15% p.a. from the date of award till realisation. He further submits that Contractor had not completed the work on time, therefore, he was not entitled to claims, much less, interest. The Arbitrator has exceeded its jurisdiction, in awarding the interest aforementioned, as the contract did not envisage any element of interest.

Ms. Avin, learned counsel appearing on behalf of Contractor submits that out of 6 claims only 4 claims have been awarded and the Arbitrator found that Contractor was not entitled to other claims. The Arbitrator has awarded a sum of ₹5,37,955/- on account of earth work below sub-oil water level at the rate specified, regarding sum of ₹46,604/- for forfeiting of the security, ₹4,000/- against the claim of ₹40,000/- on account of litigation charges and 12% on the delayed payment on claims No.1 and 2 and as regard the claim No.5, granted 15% interest on claim

Nos.1 to 4 from the date of award till actual payment in view of the provision of Section 31(7) of the Arbitration and Conciliation Act, 1996.

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

In my view, Arbitrator has not exceeded its jurisdiction in awarding aforementioned claims on the premise that adjudication was based upon documentary evidence brought on record. The Arbitrator was none else but an expert i.e. Superintendent Engineer, Construction Circle, Hissar. Since, dispute was with regard to the ascertainment of the technical work, therefore, it cannot be said that Arbitrator did not ponder upon the extent of work actually done by the Contractor.

I have gone through the award, which in my view is based upon the appreciation of the measurement, which is within the realm/domain of an expert.

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.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

I do not find illegality and perversity in the order.

Appeal is accordingly, dismissed.

22.09.2015

pawan

**(AMIT RAWAL)
JUDGE**