IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.7374 of 2010 (O&M)
Date of Decision: August 28, 2015

Sharad Sood

...Appellant

Versus

Haryana Urban Development Authority, Faridabad & 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.Aalok Jagga, Advocate &
Mr.Karanyog Singh Riar, Advocate,
for the appellant.

Mr.Arun Walia, Senior Advocate with
Mr.Servedaman Rathore, Advocate,
for respondent No.1-HUDA.

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AMIT RAWAL, J. (Oral)

CM No.32451-CII of 2010

For the reasons mentioned in the application, which is supported by an affidavit, delay of 436 days in refiling the appeal is condoned.

CM stands disposed of.

CM No.32452-CII of 2010

Exemption granted from filing certified copy of Annexure A-1.

CM stands disposed of.

CM No.32453-CII of 2010

Documents Annexures A-1 and A-2 are taken on record.

CM stands disposed of

CM No.1378-CII of 2014

Order dated 19.6.2008 (Annexure A-1) is taken on record.

Exemption is also granted to file certified copy of the order.

CM stands disposed of.

FAO No.7374 of 2010

The challenge in the present appeal is to the order dated 3.3.2009 passed by the District Judge, Faridabad, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act (for short "the Act") against the award dated 12.3.2007 have been partly allowed.

Mr.Aalok Jagga, learned counsel appearing on behalf of the appellant submits that against the order of resumption, the appellant had approached this Court by filing CWP No.12499 of 2001 and the said writ petition was disposed of vide order dated 2.8.2004 and the operative part of the same has been reflected in the award, which referred the matter to the arbitrator to decide the dispute between the parties to the lis. He further submits that as per the order of the High Court, the scope of the arbitrator was confined within Clause (5) of the allotment letter dated 23.5.1989. The arbitrator, keeping in view the directions and the scope of reference, held that the possession was offered by the Haryana Urban Development Authority (for brevity "HUDA") on 24.2.1992 and, therefore, the appellant-allottee was liable to pay 10% interest. The granting of 10% interest has been challenged by the HUDA by filing objections by taking the aid of

Clause (4) of the allotment letter.

Mr.Arun Walia, learned Senior Counsel assisted by Mr.Servedaman Rathore, Advocate, appearing on behalf of the HUDA submits that the charging of 18% interest has been upheld by the Division Bench in LPA No.933 of 2009 (Haryana Urban Development Authority & another Versus Vinod Mittal & others), decided on 16.10.2012 and, therefore, rightly so, the objecting court has allowed the objections awarding interest @18% per annum. He further submits that there is no illegality and perversity in the impugned order, under challenge, and interference is, thus, not warranted.

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

It would be apt to extract the relevant portion of the order passed in the aforementioned writ petition and as well as Clause 5 of the allotment letter.

> *"For the reason aforesaid, the writ petition is disposed of with the direction that the Chief Administrator, Haryana Urban Development Authority shall refer the dispute relating to the rate of interest and correctness of the calculations made by the concerned authority of the HUDA to the arbitrator in terms of Clause (20) of the allotment letter dated May 23, 1989 (Annexure P-1). The Arbitrator shall decide the matter within a period of three months from the date of receipt of reference. While deciding the dispute, the arbitrator shall take into consideration the claim set up by the petitioner as well as the stand taken by the respondents on the issue of delivery of possession. If he/she comes to the conclusion that the possession of the plot had, in fact, been offered to the*

petitioner on February 24, 1992, as claimed by the respondents, then the petitioner shall be liable to pay interest in terms of clause (5) of the allotment letter. Else, he shall not be required to pay interest. In any event, the petitioner shall not be charged compound interest at the specified rate in view of the judgment of this Court in Smt.Kanta Devi Budhiraja Vs. State of Haryana through the Commissioner and Secretary to Government Haryana and others 2000 H.R.R.78."

Clause 5:

"The balance amount i.e. Rs.1,01,250/- of the above price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in six half yearly/annual instalments. The first instalment will fall due after the expiry of six months/one year of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. The interest shall, however accrue from the date of offer of possession."

From the operative portion of the order passed in the writ petition aforementioned, it is discernible that the arbitrator was directed to enter into reference, vis-a-vis payment of interest in terms of Clause (5) and not with Clause (4). I would be committing a fallacy in not quoting Clause (4) of the terms and conditions of the public auction notice. The same reads thus:-

"*Balance 75% may be recovered within 60 days without interest or in six half yearly instalments. Interest @10% p.a. May be charged from the date of offer of possession with the provision to charge 18% interest per annum on delayed payment of the instalments."*

No doubt, the Division Bench of this Court in **Vinod Mittal's**

case (supra), has held that the HUDA is entitled to interest @ 18% per annum in case the allottee fails to make payment of instalments as per the schedule, but the fact remains that the order of this Court confined the reference only vis-a-vis Clause (5) of the allotment letter, which does not entitle the HUDA to charge 18% interest, but only 10%. The objections, in my view, were not in accordance with the parameters/provisions of Section 34 of the Arbitration and Conciliation Act, 1996. It cannot be said that the arbitrator had acted beyond the terms and conditions of the agreement and, therefore, the objections were liable to be accepted. The arbitrator, in my view, has passed the award in terms of Clause (5) as noticed by the High Court and there is no illegality and perversity in the same. The Additional District Judge has committed an illegality and perversity in relying upon Clause (4), which was not the scope of the reference before the arbitrator.

In view of what has been observed above, the impugned order is hereby set-aside.

The appeal is accordingly allowed.

August 28, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**