

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.5704 of 2012 (O&M)

Date of decision: 31.07.2015

M/s Unitop Apartments & Builders

..... Appellants

versus

Jagjeet Singh Lyallpuri and others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldeep Singh

Present: Mr. Pardeep Dewan, Senior Advocate with
Mr. Vikram Bali and Mr. Manoj Bajaj, Advocates
for the appellant
Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for respondent No.1 to 5

1. *Whether Reporters of Local Newspapers 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?*

Kuldeep Singh, J.

Challenged in the present appeal is the judgment dated 13.9.2012, passed by the learned Additional District Judge, Ludhiana, vide which the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') against the award dated 13.1.2010, passed by the Arbitrator were dismissed.

Brief facts of the case are that the respondents were owners of piece of land measuring 14 kanal 3 marla (8560 square yards), which fell in 225 acres Barewell Development Scheme of Municipal Corporation, Ludhiana. Appellant – claimant and the respondents entered into an agreement dated 14.12.1996 for

development and construction of multi-storey shops-cum-residential complex on the said land. The present appellant was mentioned as party B and the respondents were mentioned as party A in the agreement. Party B is mentioned to have experience in the development and construction of such projects. The relevant clauses of the agreement are reproduced as under:-

- 1. That party 'A' and party 'B' decide to constitute a project committee to execute and dispose of the project through sale etc. and that this project committee will consist of four members from each party and further that nominee of party A will act as chairman, and the nominee of party B as Managing Director of the project committee.*
- 2. That party A will make available their land measuring 14 kanals 3 marlas (8560 sq.yds.) stated above to the project committee for development and construction of a multi-storey shop-cum-residential complex as laid down by the project committee, and party B will arrange for and bear the necessary expenses for this project and it shall be the exclusive responsibility of party 'A' the land owners to get the land under reference cleared from the 225 Acre Barewal Development Scheme.*
- 3. That at least 60% of the total available land area will be brought under actual construction as sanctioned by the Competent Authority and a minimum of six storey*

building, excluding the semi-basement area for shops, car parking, godowns, etc will be constructed.

- 4. That party B undertakes to provide entire amount of finance required for completion of the project within a period of three years from the date of sanction of the Map by the competent Authority, as specified in the brochure attached as Annexure 'D' to this agreement. That party B, the builders/ financiers will bear all expenses for completion of the project, specifically for soil testing, survey testing, of material for quality control, actual field overheads for layout of roads, passages, parks etc. cost of materials of all kinds, incidental charges, and all benefits, dues payable to work charge employees, chowkidars etc., cost of temporary accommodation for stores and site office of the project, preparation of the designs, architectural drawings etc. and their display, publicity etc., as well as provision for infrastructural facilities including water supply, electricity, sewerage etc. However, the levies payable to municipal corporation for change of land use for commercial purpose or for the purpose of clearance of land from any restrictions imposed by the authorities will be shared by the two parties A & B in the ratio of 48% and 52% respectively.*

- 5. That the Managing Director of the project will be Incharge for day to day execution and construction of*

the project. That the project committee shall held its meetings positively atleast once in two months or earlier if the need so arises or demands, wherein the Managing Director will place his report regarding the progress of the construction of the project and allied matters. In between the period of such meetings, the Managing Director will seek consultation with the Chairman of the project.

6. That the project area will be sold on terms and conditions/ rates laid down by the project committee from time to time.

7. That an amount equal to 0.25% of the sale proceeds will be set apart at the disposal of the project committee to meet the expenses of a separate office of the project committee as well as to meet other necessary expenditures as decided by the project committee.

8. That the net amount of sale proceeds from time to time will be imbursed by the project committee between party A and Party B in the ratio of 48% and 52% respectively. Such account will be settled at the time of each meeting held as settled above. In between this period the respective shares of the parties may be distributed by the Chairman and the Managing Director as the need arises.

9. That party B undertakes to make advance payments to

party A (as Guarantee Money) for fulfilling its obligations under this agreement, in the following manner:-

a) Rs.five lac at the time of signing of this agreement.

(However, this amount stands already paid by means of a pay order no.085365 dated 12.2.96 issued by Corporation Bank, Ludhiana, in favour of S.Jagjeet Singh, the Chairman)

b) Rs.20 lac within one month from the sanction of the map by the Competent Authority.

c) Another Rs.20 lac within three months from the date of sanction of the said map.

The share of amount payable by party A to the Municipal Corporation, Ludhiana for change of land use, as stated above will also be paid by party B. But, this amount will be deducted out of the Guarantee Money payable by the party B to Party A as per clause 9.

That the advance payment made to party A as per the clause of this agreement will be deductible from the share of party A after completion of 75% of the project area in three equal installments.

10. That the project committee collectively authorizes the Managing Director/ the Chairman to raise loan from any Bank or any Financial Institution by mortgaging the

land owned by party A to which they shall have to objection of any kind whatsoever.

However, such loans including the interest accrued thereon will be borne exclusively by party B to this agreement. The repayment of this amount will be considered as the first liability on the 52% share of party B in the sale proceeds payable to party B as laid down above.

11. That in case party B fails to fulfill its obligations for the completion of the project in the specified period of three years, the advance payments made by party B will stand forfeited and party A may be entitled to get the project completed on its own. The expenditure incurred by party A in this connection will be disbursed from the share of party B. However, if some unforeseen reasons or circumstances beyond the control of the party B or due to any natural calamity or any restrictions imposed by any Competent Authority the project completion is delayed, the period of completion will be extended accordingly. In such a situation the penal clause against party B will not be operative and will stand as null and void.

12. That the project committee will open its account in some suitable bank in the name of its Chairman and Managing Director, in which account the following amounts will be deposited:

a) *Sale proceeds in full or in installments as the case may be.*

b) *0.25% of the sale proceeds at the time of disbursement of the share of party A & Party B.*

c) *The loan amount raised under clause 10 of this agreement, upto a reasonable and need based limit, as may be decided mutually between the Chiarkan and the Managing Director.*

d) *The amount deposited in the bank in the above stated manner will be withdrawn under the signatures of the Chairman and Managing Director of the project jointly and disbursed in the following manner:-*

a) *Sale proceeds according to share of the parties to this agreement, to party A and party B.*

b) *0.25% levied on the sale proceeds as laid down by the project committee from time to time.*

c) *The loan amount will be utilized on construction of this project only and will be released from time to time for the specific purpose of construction.*

13. *That all accounts relating to the expenditure regarding the construction of the project will be the sole responsibility of party B and it will be borne by them exclusively, without any restriction/ interference by the project committee.*

14.....

15.....

16.....

17. *None of the two parties to this agreement will mortgage or transfer its rights and interests in the project without the mutual consent of the other party, before the completion of the project.*

It is further required to be noticed that on the date of agreement i.e. 14.12.1996, Shri Surinder, Singh, Shri Maan Singh, Smt.Suman Chawla wife of Shri Jatinder Chawla were the Directors of the present appellant company, called Party B. Surinder Singh expired on 25.2.2005 and Maan Singh and Smt.Suman Chawla resigned from the Directorship of the company in the year 2007 and the past shareholders transferred their respective shares in favour of the present shareholders, namely, Shri Ashok Mahindru, Sh.Atul Mahindru, Sh.Aseem Mahindru and Sh.Dev Goyal, vide agreement dated 22.2.2007. It further comes out that building plan was sanctioned by the municipal corporation on 4.7.1997. The construction was not completed for next more than three years. After March 1999, the construction was discontinued, allegedly for want of further funds. Thereafter, the respondents sent a legal notice dated 1.11.2001 to the present appellant, giving notice of termination of the agreement. The appellant sent reply on 28.11.2001. Rejoinder of which was sent by the respondent Jagjit Singh on 30.11.2001. In the notice, it was also mentioned that the appellants have taken certain advances from Satbir Singh amounting to Rs.13.5 lac for delivery of a two bedroom flat at the price of Rs.16.5 lac. Rs.6 lac 66 thousand

from Jagdeep Singh for delivery of three flats of three bedrooms as first installment. Rs.1 ½ lac through Chairman Jagjit Singh for a two bedrooms flat for S.Darshan Singh. It was further stated in the notice that as per clause of agreement the amount has not been deposited in the joint account with the Chairman and the amount has been misappropriated. In the reply, the present appellant had stated that the loan was to be raised from the financial institution by mortgaging the land but the respondents have not handed over the title deeds. Some payments were also alleged which will be discussed in the later part of the order. Party B appellant claimed that they have spent Rs.1 crore 22 lac on the project till date.

In the rejoinder, Shri Jagjit Singh did not enter into the controversy regarding the allegations levelled in the reply but agreed for a meeting on 4.12.2001 at 11.00 a.m. It further comes out that it was claimed by the respondents that Surinder Singh, Managing Director of company appellant had entered into compromise dated 26.10.2004/ 2.11.2004 on behalf of the claimant appellant and security amount of Rs.40 lac, which otherwise stood forfeited for non-construction of building were returned and the agreement was cancelled. The said agreement was denied by the appellant, as forged and fabricated. Thereafter, the claimant sent a notice dated 23.11.2004 for initiation of proceedings under the Arbitration and Conciliation Act, 1996 and appointed Shri Rajesh Mahajan as sole arbitrator. Respondents were called upon to concur with the said appointment, failing which proceedings under Section 11 of the Act would be initiated. Since there was no reply from the respondents,

the appellant had filed a petition under Section 9 of the Act, seeking interim measures, for restricting the respondents from demolishing or damaging or causing any loss to the property in dispute. Suffice to say that the relief was granted in favour of the appellant. Thereafter, in FAO No.3261 of 2006, the Hon'ble Chief Justice appointed Hon'ble Mr. Justice Kuldip Singh (a retired Judge of Supreme Court) as Sole Arbitrator, who passed the impugned award.

Before further proceeding with the matter, it is also necessary to reproduce the claims made by the present appellant before the Arbitrator. The appellant had made the following 13 claims before the learned Arbitrator:-

- 1. The Agreement dated 14.12.1996 continues to remain in force and the project could not be completed due to the default committed by the Party A and supported due by the members of the project committee nominated by party A/ Respondents. No fault or lapse can be attributed to party B/ claimant in this respect. The circumstances leading to the stoppage of construction in March 1999 were beyond the control of party B as funds could not be managed due to non cooperation of party A/ respondents, more specifically Shri Jagjeet Singh. Hence the claimant has a right to continue with the construction from the same stage existing on 31.3.1999 subject to your lordship permitting the existing structure to be remodeled and repaired in view of damage caused by party A in the*

year 2004. The cost of repair and remodeling should be to the account of party A.

2. Party A should provide documents of title for the purpose of mortgage and raising loan for completion of the project.

3. On failure of party A to comply, the party B may be permitted to invest its own funds for completion of construction subject to just exceptions and taking into consideration the delay occurred due to the act and conduct of party A. In such option, the respondents be directed to keep the original title documents of the project land with some custodian to be appointed by this Hon'ble Tribunal.

4. The claimant may be compensated for the amount approximately Rs.1,22,00,000/- already invested in terms of the agreement, which has almost gone waste in view of the circumstances brought about by the act and conduct of Party A. Such compensation may kindly be awarded with interest @ 24% per annum.

5. Due to change in the constitution of claimant company with the resignation of Directors and transfer of shares, the project committee may be ordered to be reconstituted.

6. Necessary orders may also be passed against party A not to cause any hindrance in the construction and completion of the project building.

7. *Permission may be given to the claimant to reapply to the Municipal Corporation Ludhiana for renewal of plan earlier sanctioned on 4.7.1997 and also with PUDA for renewal of license as per rules applicable.*
8. *To arrange all facilities including electric connection, water supply etc. for the purpose of raising construction.*
9. *The claimant also makes claim for damages for delay caused by the act of party A in non performing of terms of the contract. The damages are assessed at Rs.10 crores (Rs.ten crores only), as 10 years have passed and the minimum damage which the claimant estimates per year is Rupee one crore. In case the property had been completed by the year 2000 the sale proceeds to the extent of 52% would have come to party A at that time and it would have invested the funds in other properties and would have made further profits.*
10. *The claimant has been having extreme reputation and goodwill in North India as it has been involved in construction work but due to non completion of this project and due to the litigation, the claimant has suffered heavily in reputation and goodwill and the claimant estimates at least Rs.10 crores, suffered as such by it.*
11. *Strictly without prejudice to the aforementioned pleas/*

claim, in the alternative, it is submitted that in case your lordship does not feel it viable to permit party B to complete the project, then the resultant loss which is equivalent to 52% of the present value of the property including value of the land and also value of the project which would have been completed, less approximately the amount to be spent on the project may be awarded to the claimant along with damages which have been claimed above.

12.The claim for liquidated damages is strictly in the alternative and first claim of the claimant is for completion of project.

13.Any other relief to which the claimant is held entitled may also be granted along with costs of litigation and arbitration as may be quantified by your lordship.

The respondents, in reply, made certain counter claims and pleaded that compensation to the tune of Rs.10 crore as damages with interest @ 12% per annum w.e.f. 4.7.2000 till the date of payment under various heads as mentioned in the counter claim be awarded to them.

Before the learned Arbitrator, both the parties vide statement dated 28.11.2009, agreed that affidavit filed by the parties should be taken into consideration. They agreed and consented before the learned Arbitrator that they do not wish to cross examine any of the witness, whose affidavits have been filed by the parties concerned. Therefore, considering the affidavits and documents filed

by the parties, the learned Arbitrator, after considering the evidence on file, dismissed the claim as well as counter claim without recording separate findings on each claim and counter claim.

The said award was unsuccessfully challenged before the learned Additional District Judge, Ludhiana.

This is how the parties are before this Court.

I have heard learned counsel for the parties and have carefully gone through the file and record.

Learned counsel for the appellant has argued that in this case, they have been prejudiced by the non-cross examination of the witnesses. The cross-examination of the witnesses would have brought forth the truth. Rather it was argued that the Arbitrator mis-conducted himself by not permitting the parties to cross-examine the witnesses. It has been argued that the Arbitrator is more than 70 years of age. He was suffering from knee problem and was under medical treatment, for which, he was to go out of India for operation. Therefore, he strongly pressurized the claimant –appellant company to speed up the matter and therefore, evidence was closed on 28.11.2009.

Learned counsel for the appellant was confronted with the statement made before the Arbitrator. Learned counsel has stated that it was under pressure of the learned Arbitrator and out of respect for the learned Arbitrator that they came under pressure and agreed to close the evidence without claiming the right of cross examination of the witnesses. It is argued that now they are of the view that cross examination of the witnesses is necessary.

On the other hand, learned counsel for the respondents has argued that he was present when both the parties agreed not to cross-examine the witnesses and had stated that the matter can be decided on the basis of affidavits of the parties and documents placed on file.

Learned counsel for the appellant has further argued that the learned Arbitrator relied upon the balance sheet to hold that the expenses are not proved, whereas the balance sheet will mention only the expenses. Whether the expenses are actually incurred or not is to be determined from the accounts books and bills. Therefore, cross-examination of the witnesses was necessary.

Learned counsel for the appellant has further assailed the award on the ground that it has been wrongly held that the project was to be completed within three years from the date of sanction of the site plan by the municipal corporation and it is also wrongly taken to be admitted fact that it was the sole and exclusive obligation of the claimant to provide funds for the construction and completion of the project. It has been argued that the appellant was to obtain the loan from the bank. Since the land could be mortgaged only by its recorded owners, therefore, the respondents were asked to hand over the title deeds but these were not handed over. The learned Arbitrator has held that claimants/ Managing Director/ Project Committee never made any demand either in writing or verbally from respondents to supply the title deeds. It has been argued that the project was the joint venture of the appellant as well as the respondents. The attention of the Court has been drawn towards

clause 4, the relevant extract of which is reproduced as under:-

4. That 'party B undertakes to provide entire amount of finance required for completion of the project within a period of three years from the date of sanction of the Map' by the Competent Authority, as specified in the brochure attached as Annexure 'D' to this agreement.

It has been argued that clause 4 clearly shows that it was undertaken by party B i.e. the present appellant to provide the 'entire amount of finance' required for completion of project within the period of three years from the date of sanction of site plan. It was nowhere agreed that project will be completed within three years from the date of sanction of site plan as held by the learned Arbitrator. It has been further argued that in the Project Committee, the Chairman was nominee of party A i.e. the respondents and the Managing Director was nominee of Party B i.e. the appellant and equal number of members of both the parties were also inducted. Therefore, it was not the Managing Director but also the Chairman who had the supervision over the project. Party A i.e. the land owners were to get the permission for change of land use. Further attention of the Court has been drawn towards clause 11 wherein it was mentioned that in case Party B fails to fulfill the obligation for the completion of the project in the specified period of three years, the advance payment made by the party B will stand forfeited and Party A may be entitled to get the project completed of its own. The expenditure incurred by Party A in this connection will be disbursed from the share of Party B.

It shows that on the failure of Party B 'to fulfill its obligation for

completion of project' the penal action could be taken. The obligation of Party B under the Clause 4 of the agreement for the completion of the project was to provide finance within three years from the date of sanction of map by the municipal corporation. It has been further argued that in clause 11, the concession was also given i.e. if for some unforeseen reasons or circumstances beyond the control of party B or due to any natural calamity or any restrictions imposed by any competent authority, the project is delayed, the period of completion will be extended accordingly. In such a situation, the penal clause against party B will not be operative and will stand as null and void. Therefore, it has been pressed that time was not essence of the agreement and the findings of the learned Arbitrator that the time was essence of agreement, are also illegal and liable to be set aside.

Learned counsel for the appellant has also pointed to Clause 10 where Project Committee had collectively authorized the Managing Director/ the Chairman to raise loan from the bank or financial institution by mortgaging the land owned by Party A to which they shall have no objection of any kind whatsoever. It has been argued that it is wrong to state that only the Managing Director of party B was authorized to raise loan. The power was given to Managing Director/ Chairman. Therefore, if it was found that there is shortage of funds, the Chairman could also act to raise the loan and for that purpose, he could assist party B. Therefore, it has been argued that it is wrong to say that it was sole responsibility of party B i.e. the present appellant to raise the entire loan and

complete the building within three years.

Learned counsel for the appellant has also argued that in this case, in the year 2004, Jagjit Singh accompanied by some unknown persons armed with deadly weapons entered the office of the project committee. They had also brought tractors trolleys and removed the certain articles and demolished the office and caused certain losses.

I am of the view that Clauses mentioned above shows that a provision was made for granting more time to party B to complete the project, who had experience and expertise in the construction of building and completion of such projects. Therefore, in the strict sense of terms, it appears that the time was not the essence of the contract. However, would it mean that it gives unbridled right to the party B to delay the completion of the project for indefinite period? I find the reply in negative. The agreement was concluded in the year 1996 and now it is year 2015. Period of 19 years has elapsed but the project is hanging fire and has not been completed. It also comes out that the site was inspected in the year 2005 by Executive Engineer of PWD B&R Branch Ludhiana on the orders of the District Judge, Ludhiana, apparently, in the proceedings under Section 9 of the Act and the dimensions of the existing structures at the site were also mentioned in the report, which is reproduced as under:-

2. Dimension of existing construction at the site:-

The building has been constructed longitudinally along the Gurdev Hospital side. The size of the block facing

Ferozepur Road is 61'-9" x 96 feet and size of the block constructed towards Aggar Nagar site is 58'x3" x 51 feet and with centre passage of 6 feet wide and thus total length of the building is 153 feet. The plinth area of the building thus worked out to be 9248 sq.ft. The cut out area (open to sky) in the slab is 1061 sq.ft. and thus area of the slab laid on the ground floors works out to be 9248-1061=8187 sq.ft. As no stair is available to reach to 1st floor and 2nd floor nor any temporary stair was available but it has been seen that 4 spans of this slab measuring 12' x 18' each approximately appears to be dismantled subsequently at some later stage.

Similarly the area of the 1st floor slab is 8187 sq.ft. which is intact. Similarly the area of the slab of 2nd floor is also 8187 sq.ft. out of which (3840 sq.ft. approxmiately) seems to be dismantled at some later stage.

Therefore, it is evident that in the year 2005, some construction on the ground, first and second floor existed.

Learned counsel for the appellant has also relied upon the authority the Hon'ble Supreme Court in Oil and Natural Gas Corporation Limited v. Western Geco International Limited, (2014) 9 Supreme Court Cases 263 and it has been argued that the present award is liable to be set aside on the ground that there is a lack of judicial approach and non-application of mind. The award is irrational. It is also unfair and unreasonable and shock the conscious

of the Court. For this purpose, reliance has been placed on the following observations of the Hon'ble Supreme Court:-

*34. It is true that none of the grounds enumerated under Section 34(2)(a) were set up before the High Court to assail the arbitral award. What was all the same urged before the High Court and so also before us was that the award made by the arbitrators was in conflict with the "public policy of India" a ground recognised under Section 34(2)(b)(ii) (supra). The expression "Public Policy of India" fell for interpretation before this Court in **ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705** and was, after a comprehensive review of the case law on the subject, explained in para 31 of the decision in the following words:*

"31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to

narrower meaning given to the term “public policy” in Renusagar case¹⁰ it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.”

*26. What then would constitute the ‘Fundamental policy of Indian Law’ is the question. The decision in **Saw Pipes Ltd.** (supra) does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression “Fundamental Policy of Indian Law”, we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the Fundamental Policy of Indian law. The first and foremost is the principle that in every*

determination whether by a Court or other authority that affects the rights of a citizen or leads to any civil consequences, the Court or authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the Court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of Judicial approach in judicial and quasi judicial determination lies in the fact so long as the Court, Tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a Court, Tribunal or Authority vulnerable to challenge.

It has been argued that the award is against the fundamental policy of Indian law. Further reliance has been placed on the following observations of the Apex Court in the said authority:-

40. It is neither necessary nor proper for us to attempt an

exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an arbitral tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.

Learned counsel for the appellant has also relied upon authorities of the Hon'ble Apex Court in Associate Builders v. Delhi Development Authority, (2015) 3 Supreme Court Cases 49 and Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd., (2003) 5 Supreme Court Cases 705.

Learned counsel for the appellant has argued that the award is irrational. It has been argued that as many as 13 claims were made by the claimant, which included the claim regarding Rs.1.22 crore spent by the claimant, which required inquiry by the learned Arbitrator. In claim No.7, they had also sought permission to reapply to the municipal Corporation Ludhiana for renewal of plan earlier sanctioned on 4.7.1997 and also with PUDA for renewal of license as per rules. They had also claimed damages to the tune of

Rs.10 crore. However, the learned Arbitrator did not decide the each claim separately and simply dismissed all the claims without making discussion on each and every claim and thereby leaving the parties where they were. Nothing has been decided as to what should be done regarding the construction already existing on the site and who is entitled to retain said construction or whether the construction is to be removed and if so, who is to get the Malba. No findings have been given as to which party is entitled to damages and if so, how much. It is to be added here that the respondents have also claimed damages to the tune of Rs.10 crore from the claimant appellant. In this way, the learned Arbitrator was required to go into the facts and determine as to how much amount was spent by Party B, the extent of liability of each party and their entitlement to the damages if any and further as to what is to be done with the land and the construction thereon. Nothing is decided about Rs.28.16 lacs received by the appellant from different persons. Nor it has been decided as to what is the fate and effect of agreement dated 26.10.2004/ 2.11.2004 with Surinder Singh, Managing Director and alleged payment of Rs.40 lac to him.

It has been argued that as the learned Arbitrator was in hurry due to his medical problem, therefore, he summarily decided the matter and did not go into the merit of each and every claim separately.

Learned counsel for the appellant has further argued that under Section 51 of the Transfer of Property Act, 1882, the appellant being the transferee of immovable property in a lawful manner is

entitled to value of the improvements, estimated and paid or secure to him.

Learned counsel for the appellant has argued that word 'may' in clause 11 of the agreement should be read as word 'shall', which would mean that the party A i.e. the respondents shall have to complete the project.

I am of the view that overall reading of the clause 11 shows that in the given circumstances, word 'may' in clause 11 cannot be read as shall. Over all interpretation of the clause would mean that a right was given to party A to complete the project if it so desires. There was no mandate that on the default of party B, the project must be completed by party A. This is in view of the background that party A did not have necessary funds and expertise and it was for this reason that a collaboration agreement was executed with party B which was to provide the funds. Therefore, the said contention is found to be without any force and hence rejected.

Learned counsel for the respondents on the other hand has argued that he does not press his counter claims. He has argued that in this case, 19 years have already elapsed. Claimant/ appellant party B has neither completed the project nor they are ready to leave the land. Respondents now want that the claimant should go away leaving the land with the respondents (land owners). It has been further argued that the present appellant had in fact bought the litigation. The original owners/ directors had resigned and the appellant knew that only litigation is left. Therefore, they purchased the litigation.

After going through the rival contentions and the documents and the notices exchanged between the parties, I am of the view that though in the strict terms, the time was not the essence of the agreement but at the same time, there has to be some reasonable time limit to complete the project. In this case, now 19 years have elapsed which would mean that even that reasonable time limit has elapsed. In such a situation, the learned Arbitrator was required to decide each and every claim and counter claim of the parties, for which purpose the extent of the fault of either or both parties was to be determined. The accounts were also to be checked to find out as to how much amount was spent by each party and how much amount has been received by any party, which is liable to be adjusted. It was further required to be decided as to whether any party is entitled to damages on the grounds mentioned in the claim and counter claim and if any party is entitled to damage for breach of contract by the other party, then how much damages/ penalty amount is to be awarded. The fate of the super structure was also required to be decided taking into consideration its value. All these matters appear to have escaped the notice of the learned Arbitrator. I am also of the view that in view of the allegations and counter allegations, the parties should be allowed to examine and cross examine the witnesses and produce all the documents to take stock of the expenses/ damages incurred by each party.

In these circumstances, the present award cannot be sustained in the eyes of law and the same is accordingly set aside.

The case is remanded back to the sole Arbitrator, Hon'ble Mr. Justice

Kuldip Singh (a retired Judge of Supreme Court) for giving opportunity of leading evidence to both the parties and also grant opportunity to cross-examine the witnesses and thereafter decide each and every claim and counter claim separately on merits.

It is further directed that the learned Arbitrator shall pass the fresh award independent of any observations or comments made by this Court while disposing of the present appeal.

Learned counsel for the appellant in the last has pleaded that they are ready for compromise with the respondent /party A. They are also ready to execute the project. Such plea can be raised before the learned Arbitrator, who may in his discretion, also probe the possibility of any mutually acceptable settlement between the parties.

Pending disposal of the arbitration, the parties shall maintain status quo regarding the property in dispute.

The parties through their counsel are directed to appear before learned Arbitrator on 20.8.2015.

The appeal stands allowed.

31.07.2015
gk

(Kuldip Singh)
Judge