

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.2287 of 2013 (O&M)
Date of decision: 13.08.2015

Executive Engineer, Provincial Division No.2, PWD (B&R)
Branch, Kurukshetra

..... Appellant

versus

The Kirmach Co-operative L & C Society Kirmach and another

..... Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.K.Yadav, AAG Haryana for the appellant
Mr.Gaurav Sharma, Advocate for respondent No.1

- 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?*

Kuldip Singh, J.

Challenged in the present appeal is the order dated 11.2.2013, passed by the learned Additional District Judge, Kurukshetra, whereby the objections filed by the present appellant under Section 34 of the the Arbitration and Conciliation Act, 1996 against the award dated 11.7.2009 passed by the Arbitrator were dismissed.

Brief facts of the case are that respondent No.1 was allotted work for construction of link road between Durala to Adhoni falling in Kurukshetra district. Respondent No.1 submitted the tender. He was required to complete the entire work within three

months. But the same was not done. Therefore, as per condition No.2 of the agreement, a compensation of Rs.38,000/- was levied upon respondent No.1 vide memo No.5740 CB dated 3.10.1997. As respondent No.1 did not start the work, therefore, work was re-allotted to one Raj Kumar contractor at the risk and cost of respondent No.1 and same was got completed after incurring extra expenses of Rs.2,10,730/-. Thus the said money was claimed. Both the said claims were declined by Arbitrator.

Learned Additional District Judge came to the conclusion that the award is well reasoned and has been passed after hearing the parties. It was further held that there is nothing on record to show that the award is in conflict with the public policy of India.

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

Before the Arbitrator, two claims were made by present petitioner. One was that recovery of Rs.38,000/- imposed as per clause 2 of the agreement for not completing the work within the stipulated time period of three months and the second claim was for Rs.2,10,730/- on account of work got done from another contractor at the risk and cost of respondent No.1.

Perusal of award shows that the Arbitrator has passed a reasoned award. He has given the following reasoning while declining claim No.1:-

“This work was allotted on 29th August 1996 and the action under clause-2 was taken on 3.10.1997 i.e. After 13 months where as the stipulated time permitted to

complete the work was only 3 months. After expiry of stipulated period 3 months neither the contractual society nor the department has got extended time for completion of the work implying thereby that the agreement remained un operative and not in force. So action taken by the claimant Executive Engineer clause-2 of the agreement is held invalid and hence the compensation leveied there under is illegal. I, therefore award nil in favour of the claimant.

For declining claim No.2, following reasoning is given:-

“This claim is on account of extra amount spent by the claimant on completing the work at the risk and cost of the society after taking under clause-3 of the agreement vide Executive Engineer memo No.2727/CB dated 11.5.2000 after 42 months of the expiry of the time of 3 months for which the agreement was drawn between the two parties. Since agreement was not in force there can be no action against any party. I am, therefore, of the opinion that the action by the claimant is illegal and thus the claim against the respondent society is baseless and not valid. I therefore award nil against the claim in favour of the claimant.”

I am of the view that the above noted operative portion of the award shows that the Arbitrator has applied his mind. He has given sufficient reasoning in favour of the conclusion drawn by him. Therefore, the learned Additional District Judge was justified in not interfering in the award under Section 34 of the the Arbitration and Conciliation Act, 1996. The order passed by the learned Additional District Judge is perfectly in accordance with law. No public policy has been violated. Objections under Section 34 of the Arbitration and Conciliation Act, 1996 are not to be dealt as if it is regular appeal

on merits. Certain grounds have been provided in the Act on which the award could be challenged. There is nothing illegal in the award. Hence, the present appeal stands dismissed.

13.08.2015

gk

**(Kuldip Singh)
Judge**