

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

FAO No.4232 of 2013 (O&M)

Date of decision:20.11.2015

Darshan Kumar Garg

... Appellant

Vs.

Union of India 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:- Appellant in person.
Mr. Aseem Aggarwal, Advocate,
for the respondent-Union of India.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the Award dated 07.09.2010 and, as well as, the order dated 19.02.2013, whereby, the objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act'), for setting aside of the aforementioned Award, have been dismissed.

Mr. Darshan Kumar Garg, appellant-in-person submits that Arbitrator has not taken into consideration the claim after 24.09.1995 as he had started the work of road after supply of bitumen and the claim petition was partly accepted for a sum of ₹1,00,000/- and dismissed the remaining claim. He further submits that numerous letters were written for supply of bitumen which was

never supplied and, therefore, the appellant/contractor could not do the work upto 24.09.1995 being the last date for completion of the work, as the contract was for a period of six months, which commenced from 25.03.1995 and was to be completed on 24.09.1995. The alleged cancellation was on 11.07.96, revocation of the contract was on 02.08.1996 and 2nd and final cancellation of the contract was on 20.10.1997, therefore, the same are erroneous and perverse and could not have been done for non-supplying of the material. The Arbitrator and, as well as, Objecting Court erroneously found that there was no contract, whereas, on going through the award, it is clearly discernible that the contract had actually been entered into between the parties, but the same was erroneously cancelled.

Mr. Aseem Aggarwal, learned counsel appearing on behalf of the respondent-Union of India submits that there is no illegality and perversity in the impugned orders and the objections do not fall within the realm/parameters of Section 34 of 1996 Act, therefore, the appeal is liable to be dismissed.

I have heard Mr. Darshan Kumar Garg, appellant and, as well as, learned counsel for the respondent-Union of India.

I am of the view that the present appeal is liable to be dismissed for the following reasons:-

Admittedly, the amount of the contract was for ₹ 9,93,340/- . The work consisted of bituminous carpet with paver and

the work for this portion was to be completed within a period of six months. The contract was to commence from 25.03.1995 and to be completed by 24.09.1995. The contention that the contractor issued various reminders/letters, vide Ex.P1 to Ex.P11 to the respondents for supply of bags of cement and 75 MT Bitumen 80/100, but did not pay any heed or yielded result and therefore, there was no occasion for implementing the work of special repair as the contract was only for special repair. The Arbitrator accepting the aforementioned contention held that claimant is entitled to the damages from the respondents on the basis of the expected profit by adopting a criteria, being a technical person arrived at a compensation of ₹1,00,000/- and the remaining claim was dismissed. The Arbitrator found that the 75 MT Bitumen from start of the work till 01.12.1995 was not in store of the respondents. It is in these circumstances, the compensation has been granted. The plea of Mr. Garg that he has not been compensated after 25.09.1995, falls flat, as no evidence has been led to the claim/damages for the aforesaid period. The objecting Court also did not find any weight in the aforementioned averments on the premise that there is limited scope of interference in the objections. In my view, objections vis-a-vis the claim of damages from 25.09.1995 onwards, appellant is not entitled for want of evidence and such claim does not fall within the realm of Section 34 of 1996 Act.

The objections, in my view, were not within the

realm/parameters of Section 34 of 1996 Act.

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 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. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view the award of the Arbitrator does not suffer from any illegality, in as much as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

November 20, 2015
savita