

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

F.A.O.No.2755 of 2015 (O&M)
Date of Decision: August 18, 2015

State of Punjab & others

...Appellants

Versus

M/s S.P.Singla Constructions Private Limited, Sector 9, Panchkula & others

...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.Kamal Sehgal, Addl.Advocate General, Punjab
for the appellants.**

**Mr.Akshay Bhan, Senior Advocate with
Mr.Alok Mittal, Advocate,
for the caveator.**

AMIT RAWAL, J. (Oral)

CM No.16672-CII of 2015

Prayer in the application is for placing on record documents
Annexures A-1 and A-2 and for granting exemption from filing certified
copies of the same.

Application allowed subject to all just exceptions.

FAO No.2755 of 2015

Notice of motion.

Mr.Alok Mittal, Advocate, who is for the caveator, accepts

notice on behalf of caveator-respondent No.1.

Mr.Kamal Sehgal, learned Additional Advocate General, Punjab appearing on behalf of the appellants submits that the Additional District Judge, Hoshiarpur has committed an illegality and perversity in not giving any reasoning, much less, has not dealt with objections No.3, 5, 7 and 9. In order to lend support to the aforementioned submission, he has drawn the attention of this Court to the impugned order. He further submits that since the aforementioned objections have not been dealt with, the objector has been deprived of right of consideration of the objections, which are germane and go to the root of the controversy. He also submits that the impugned order is liable to be set-aside and if not, the matter should be remanded back to the Additional District Judge to decide the objections, particularly the aforementioned objections afresh.

Mr.Akshay Bhan, learned Senior Counsel assisted by Mr.Alok Mittal Advocate, appearing on behalf of respondent No.1 submits that the scope of interference in the award under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") in view of the judgment rendered in **Associate Builders Versus Delhi Development Authority, (Civil Appeal No.10531 of 2014 (arising out of SLP (Civil) No.14767 of 2012)**, decided on 25.11.2014 is very limited and on going through the contents of the objections, the same are not only capricious, but general in nature. He further submits that the Arbitral Tribunal, while taking into consideration all the facts and evidence brought on record, has decided the claims totally in conformity with the documentary evidence on record and there is no element of misreading, much less, exercise of illegality, or

exceeded its jurisdiction. He, therefore, submits that the order passed by the Additional District Judge is fair, legal and is in consonance with the proviso to Section 34 of the 1996 Act and, thus, the prays that the appeal be dismissed.

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

On going through the contents of the objections, I find that the Additional District Judge has not deliberated upon objections No.5 and 9. Objections No.3 and 7, according to me, have been taken into consideration and are general in nature. For the sake of brevity, objections No.5 and 9 are extracted herein below:-

“5. That the Arbitral Tribunal has mis-conducted in awarding the amount of Rs.28.5 lacs for claim No.1 beyond the scope of the agreement whereas clause 47 in the agreement provided for the price adjustments and the claimant was already compensated on account of the price escalation under this clause for an amount of Rs.66,43,242/- and nothing beyond this amount was payable to the claimant as there was no breach of contract on the part of the applicants.

9. That the Arbitral Tribunal has mis-conducted in awarding the amount of Rs.57.91 lacs for claim No.5 by taking the base of figure 7% depicting in the agreement at page 82 while awarding this amount against the claim of the claimant as the Arbitral Tribunal failed to differentiate this figure on 7% which was to be considered while calculating the amount of price adjustment and not for any other purpose for awarding any extra amount to compensate the cater the unproductive use of labour, POL, Plant and machinery. Moreover, this figure of 7% was already considered by the applicants while

making the payment on account of price adjustments as per clause 47 of the agreement which has already been made to the claimant/respondent.”

The appellants have been deprived of right of consideration on the aforementioned objections, much less, the Additional District Judge, what to talk of assigning any reason, has not pondered upon such objections, which, according to me, squarely fall within the proviso to Section 34 of the 1996 Act.

Keeping in view the aforementioned reasons and without commenting on the merits and de-merits of the matter, by setting-aside the impugned order, I remand the matter back to the Additional District Judge, Hoshiarpur to give the decision on objections No.5 and 9 only.

The parties, through their counsel, are directed to appear before the Additional District Judge, Hoshiarpur on 15.9.2015.

It is expected that the Additional District Judge shall take a decision on objections No.5 and 9 in accordance with law, preferably within a period of three months from the date when the parties appear before him.

The appeal qua objection Nos.5 and 9 is allowed and with regard to other objections stands dismissed.

August 18, 2015
ramesh

(AMIT RAWAL)
JUDGE