

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

F.A.O.No.5271 of 2013 (O&M)

Date of Decision: September 17, 2015

**State of Haryana, through Executive Engineer, Provincial Division, PWD
B&R Branch, Hisar**

...Appellant

Versus

Jagga Bara Vikas Co-op. L&C Society Ltd. & 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.Ravi Partap Singh, AAG, Haryana,
for the appellant.**

**Mr.Narender Kaajla, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

CM No.9684-CII of 2015

Prayer in the application is for placing on record the reply to
the application seeking condonation of delay.

CM allowed. Reply taken on record.

CM No.22470-CII of 2013

After considering the reply and the reasons stated in the
application, which is supported by an affidavit, the delay of 73 days in filing
the appeal is condoned.

CM stands disposed of.

F.A.O.No.5271 of 2013

Challenge in the present appeal is to the impugned order dated 1.5.2013 passed by the Additional District Judge, Hisar, whereby the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting-aside the award dated 14.7.2009, has been dismissed.

Mr.Ravi Partap Singh, learned Assistant Advocate General, Haryana, appearing on behalf of the appellant-State, submits that the award dated 14.7.2009 suffers from illegality and perversity, inasmuch as that there was no fault on behalf of the department in handing over the work to the contractor and the claim of ₹68,000/- has wrongly been rejected. The objections filed against the same have also been dismissed. He further submits that umpteen number of documents brought on record reveal that there was no fault on behalf of the department and, therefore, the work executed by the department at the risk and costs of the contractor was liable to be reimbursed.

Mr.Narender Kaajla, learned counsel appearing on behalf of respondent No.1 submits that as per the award, the department has not disputed the contract between the parties, inasmuch as, it reveals that the department has not disputed the receipt of the communication, whereby the contractor had time and again requested the department to complete the earth work, but the claimant failed to complete the work within the time stipulated, and, thus, the arbitrator, on the basis of the documentary evidence, rejected the claim.

He further submits that the objections filed did not fall within

the parameters of Section 34 of 1996 Act and, therefore, the same have also been dismissed.

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

It would be apt to reproduce the relevant paragraph of the award, which reads thus:-

“The respondent has several times requested the claimant for getting the earth work completed even on earlier dates prior to 06.09.06 but the claimant failed to perform his duty and made it impossible for the respondent to the and complete the work. The claimant has admitted the receipt of such letters during hearing on 09.07.09.

That, I am of the opinion that the breach of agreement has been done by the claimant himself.

Also that actions under clause 2 & 3 have been initiated at a belated stage i.e. After more than 13 months of expiry of the original time stipulated in the agreement.

In my opinion, the action taken by the claimant under clause 2 & 3 are illegal making the claims baseless. The claimant is responsible for its own acts leading the performance as per agreement impossible for the respondent society.

I, therefore, award NIL against the claim.”

From the aforementioned findings rendered by the arbitrator, it is apparent that the claimant had admitted the receipt of the letters sent by the contractor requesting the claimant for getting the earth work completed, but the department, as per the award, could not have got the work done at the costs and risk of the department.

In my view, the claim of the department was not only fallacious

but not maintainable. The Additional District Judge has also dismissed the objections by taking into consideration the findings, aforementioned, of the arbitrator.

I do not find any illegality and perversity in the award, much less, the impugned order. Accordingly, the same are upheld. The appeal is devoid of merits.

Dismissed.

September 17, 2015
ramesh

(AMIT RAWAL)
JUDGE