

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

FAO No.5983 of 2013 (O&M)

Date of decision: 05.12.2015

The Punjab Urban Planning and Development Authority ... Appellant

Vs.

M/s Khiali Ram Gupta & Co. 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:- Mr. Naresh Prabhakar, Advocate
for the appellant.

Mr. A.K.Walia, Advocate
for respondent No.1 (in FAO No.5983, 5999, 6002, 6004
of 2013)
for respondent No.2 (in FAO No.6000, 6001 and 6003 of
2013).

AMIT RAWAL J.

This order of mine shall dispose of bunch of seven
appeals bearing Nos.5983, 5999, 6000, 6001, 6002, 6003 and 6004
of 2013.

The appellant-Punjab Urban Planning and Development
Authority is in appeal under Section 37 of the Arbitration and

Conciliation Act, 1996 (for short '1996 Act') against the order dated 09.04.2013, whereby, the objections filed against the Award/corrigendum dated 27.06.2006 of the Arbitrator, have been dismissed.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of the appellant has raised multi-fold arguments which are enumerated herein below:-

i) The award is vitiated in law for the reasons that it contains the element of compound interest inasmuch as that while awarding compensation, the Arbitrator has awarded interest @ 12 %, thereafter by adding the element of such interest in the principle, has further ordered interest @12%.

ii) The Award is not as per the terms and conditions of the contract and the items taken into consideration are non-scheduled items, for which no rate was agreed and the domain for settlement of the compensation vis-a-vis, aforesaid, was with the competent authority which had already disagreed to award compensation, therefore, the Arbitrator could not determine/introduce his own rates.

In support of his contention vis-a-vis element of interest

on interest, he relied upon the judgment of the Hon'ble Supreme Court in **State of Haryana and others vs. S.L.Arora and Company 2010(3) SCC 690.**

Mr.A.K.Walia, learned counsel appearing on behalf of respondent-contractor submits that Award is not vitiated in law as Arbitrator has power to award the interest on interest. He further submits that work of construction of 42 houses at Dugri Road, Ludhiana was allotted to the contractor vide allotment letter dated 13.08.1981. Owing to the dispute, the matter was referred to the Arbitrator. As regard element of interest @ 12% w.e.f.11.02.1986 and future interest @ 6%, is in accordance with ratio decidendi culled out by the Hon'ble Supreme Court and the awarding of rates of non-scheduled items cannot be said to be arbitrary.

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

Vis-a-vis awarding of simple interest @ 12% on the aforementioned compensation the award reveals it is to start from the date of first hearing till the passing of the award has been directed to be paid within a period of three months and in case, the amount is not deposited within the stipulated period, further simple interest @12%,

in my view, cannot be said to be irrational, much less, erroneous and illegal, in view of the latest law laid down by the Hon'ble Supreme Court in **M/s Hyder Consulting (UK) Limited versus Governor, State of Orissa through Chief Engineer 2015(1) RCR (Civil) 165**, whereby, the view expressed by the majority of 2:1, it has been held that law laid down in S.L.Aora's case (supra) cited by Mr. Naresh Prabhakar, is not good law. It has also been held that power to grant interest by the arbitrator must be taken as sum determined on the amount assessed which would include interest and, therefore, power to award compound interest also must be taken as impliedly available to the Arbitrator. Thus, plea of Mr. Prabhakar, that as per the ratio decidendi culled out in S.L.Arora's case (supra) would be applicable, is hereby rejected.

Vis-a-vis other plea of fixing the rates of non-scheduled items, Arbitrator is none-else but Superintending Engineer, PUDA, Ludhiana, who is an expert in assessing the rates vis-a-vis non-scheduled items. The determination of the rates by an expert cannot be tinkered with by a Court while sitting on the arm chair of an expert. It has been consistently held that Court should not interfere with the finding rendered by an expert, particularly involving the detailed

examination of the extent work and the items involved in executing and implementing the contract.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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 judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public

policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. 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 claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. 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.

Dismissed.

(AMIT RAWAL)
JUDGE

December 05, 2015
savita