

FAO No. 3793 of 2015(O&M)

Date of decision: 5.11.2015

M.C.U.T.Chandigarh

.....Appellant

versus

M/s Shree Vaishnavi Pipes Pvt. Ltd. and another

.....Respondents

Coram: Hon'ble Mr. Justice Amit Rawal**Present:** Ms. Deepali Puri, Advocate, for the appellant.

Mr. Deepak Jain, Advocate for respondent No. 1.

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?

Amit Rawal, J.(Oral)**CM No. 11549-CII of 2015**

This is an application under Section 151 CPC seeking condonation of delay in re-filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 306 days in re-filing the appeal is condoned.

The application stands disposed of.

CM NO. 11550-CII of 2015

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 106 days in filing the appeal is condoned.

The application stands disposed of.

FAO No. 3793 of 2015(O&M)

The appellant has filed the present appeal under Section 37 of the Arbitration Act, 1996 (hereinafter referred to as the 'Act') against the order dated 23.10.2013 passed by the Additional District Judge, Chandigarh whereby objections filed against the award dated 05.06.2006 has been dismissed.

Learned counsel for the appellant has confined her arguments vis-a-vis granting of claim Nos. 2, 5 and 6 by the Arbitrator, which according to her, were not within his jurisdiction. As per the terms and conditions of the agreement, the contractor was to finish the work within a period of six months. Clause 2 of the contract envisaged imposition of volunteer cost of ₹ 31,54,509/-.

As per the terms and conditions of the contract, the grievance, if any, could have been filed before the Superintending Engineer, who had an authority to reduce or reject the same. Having not done so, the dispute had arisen. Ultimately, with the intervention of this Court, vide order dated 20.07.2005 passed in CWP No. 15988 of 2004 retired Hon'ble Judge of this Court was appointed as an Arbitrator. She further submits that the Arbitrator could not have deviated from the seven conditions of the contract by setting aside the levy of said compensation, as the contractor did not challenge the same. She further submits that the Arbitrator has erroneously ordered for refund of the security amounting to ₹ 6,80,000/- along with the interest @14% per annum, which is in excess, thus, prays that the appeal be allowed, much less the order be set aside.

Mr. Deepak Jain, learned counsel for respondent No. 1 submits

that the delay in filing the appeal had occurred for the reason that at one point of time, the appellant had thought of not filing the appeal, whereas in the noting part, it is mentioned that the Corporation had earned interest i.e. @8% p.a. on the security amount and the award did not suffer from any illegality. Ultimately, the appeal had been filed and therefore, the delay of 106 days occurred. He further submits that the Commissioner, vide letter dated 27.08.2004, granted the extension of time and the contractor continued with the work, but, however, the said letter was purported to have been withdrawn through letter dated 16.10.2004 written by the Executive Engineer. He submits that once the Senior Officer of the Corporation had granted the extension, Executive Engineer without seeking the approval, much less approved by the higher authority could not have recalled the extension, therefore, the requirement of Section 20-F of the Act as per the terms and conditions of the contract was not permissible. The respondent had deposited the security and the Arbitrator has awarded the interest @ 14% per annum, though as per the provisions under Section 31(7) of the Act, Arbitrator has the power to grant the interest @18% and thus, prays for dismissal of the appeal.

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

It would be apt to reproduce the relevant paragraph of the award whereby the Arbitrator, adjudicated the claim No. 2:-

“In view of Clause 2 of the contract agreement, the Executive Engineer could levy compensation if the delay in execution of the work occurred on the part of contractors. The plea taken on the behalf of the

Corporation is that the petitioners having failed to avail of the opportunity of filing a representation before the Superintending Engineer against the levy of said compensation could not now challenge the said levy. I have carefully examined clause 2 of page 7 of the contract agreement. Surely if the delay in execution of the work was solely attributable to the contractors, the compensation at the rate mentioned therein could be levied on the contractors. It is also true that towards the end of this clause, it is provided that the petitioners could move a representation to the Superintending Engineer against the levy of such compensation by the Executive Engineer and the Superintending Engineer could reduce the amount of levy of compensation and his decision was final. But in view of the peculiar circumstances of this particular case as detailed in the earlier part of this award, the delay in execution of the work cannot be held to be wholly on the part of petitioners contractor because it has been found that held herein before that the Executive Engineer did not supply the material from the stores of the department. He insisted that the petitioner-contractors had to make their own arrangements for the procurement of the said material which plea is clearly against the contract agreement. Therefore, I record a firm finding that the Executive Engineer has erred legally in levying a compensation of Rs. 31,54,509/- on the petitioners under clause 2. Claim No. 2 of the petitioners is allowed.”

Similarly, objecting court in paragraph No. 23 of the order noticed the communication of the letters, aforementioned, whereby it was informed that nothing was wrong with the order of the Commissioner

granting the extension. The same reads as thus:-

“I have gone through the award. It is a well reasoned award. The petitioner has failed to make out any ground as specified under Section 34 of the Act. Learned Arbitrator rightly held that even the law, when the matter was placed before the Chief Engineer, Municipal Corporation and the matter was also referred for legal opinion and it was held that the material including steel was to be supplied by the Department and in view of that the Commissioner vide letter dated 27.8.2004 had decided that the Department will issue MS sheet to the contractor and the department was advised to take action for arranging the material and issue the same to the contractor and then in compliance of the said decision, the contractor was asked to shift his plant in the complex of the Water Works Sector 39, Chandigarh and to start the work as per terms and conditions, mentioned in the letter dated 30.08.2004 in addition to the terms and conditions noted in the allotment letter and according to the said directions, the contractor started dismantling their plant to shift the same to Sector 39. Once the decision of Commissioner was acted upon, then Executive Engineer on 16.10.2004 wrote a letter superceding the decision of Commissioner vide his letter(Annexure 28). Learned Arbitrator rightly held that no rule and regulations were cited before him; that the Executive Engineer was having any power to supercede the decision of Chief Engineer.”

In view of the findings arrived at by the Arbitrator, I do not intend to differ with the finding which are based on appreciation of oral and documentary evidence, much less the provisions of the contract. Once the

Commissioner had granted the extension, the Executive Engineer could not have superseded the decision without any authority of the Commissioner or any other Authority. Thus, rightly so, the Arbitrator quashed the imposition of penalty to the tune of ₹ 31,54,509/-. vis-a-vis claim Nos. 5 and 6, it is apparent from the noting that the Corporation had earned interest @8% on the security amount of ₹6,80,000/-. On completion of work, Contractor is also liable for the refund of the security amount and the interest and the Arbitrator, therefore, awarded 14% interest which, in my opinion, is not on the higher side. I do not intend to differ with the findings rendered by the Arbitrator and the Commissioner.

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 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 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, inasmuch as, the Arbitrator who is expert has dealt with the matter and decided the respective claims of 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.

5th November, 2015
Shivani Kaushik

[AMIT RAWAL]
JUDGE