

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.574 of 2014 (O&M)
Date of decision:02.11.2015

H.V.P.N through its Executive Engineer ... Appellant

Vs.

M/s Bhagwan Dass and Sons 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. Pardeep Singh Poonia, Advocate, for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.1734-CII-2014

The application is allowed, subject to all just exceptions.

Deficiency, if any, in making up the Court fee, is made good.

C.M.No.1735-CII of 2014

For the reasons stated in the application, duly supported by an affidavit, delay of 82 days in re-filing the appeal, is condoned.

C. M. stands disposed of.

C.M.No.1736-CII of 2014

For the reasons stated in the application, duly supported by an affidavit, delay of 27 days in filing the appeal, is condoned.

C. M. stands disposed of.

FAO No.574 of 2014 (O&M)

Challenge in the present appeal is to the impugned order dated 02.03.2013, whereby, the objections filed under Section 34 of

the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act'), for setting aside the Award dated 20.09.2007, have been dismissed.

Mr. Pardeep Singh Poonia, learned counsel for the appellant submits that dispute between the parties to the lis was with regard to erection of towers on labour basis on 220 K.V/D.C, Badshapur Rewari Lines, on a particular site, vis-a-vis non-release of payment, had arisen and the matter was referred to the Arbitrator and the Arbitrator on the basis of the evidence, erroneously awarded a sum of ₹21,04,344/- along with interest at the rate of 12% and another amount of ₹12,07,210/- without interest, was also awarded. The aforementioned amount was challenged by filing objections and the Objecting Court dismissed the same by holding that the same were not within the provisions of Section 34 of 1996 Act. In fact, the Award was against the public policy and was not in accordance with the terms and conditions of the contract.

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

The Arbitrator after noticing the detailed evidence and the correspondence exchanged between the parties to the lis, found that the department did not object to the tabulation of the claim regarding work done in a particular month and payment made month-wise. The department got the work done on 30.09.1997 and the line was energized in October, 1997. It found that the agency had completed the work in September, 1997 which was confirmed vide SE/TCC-III

Gurgaon, as per letter dated 06.04.1999 and while recommending the case for extension of time to the Chief Engineer, the Chief Engineer, confirmed and communicated the time extension upto 30.09.1997, thus, there was no delay on the part of the contractor and the objections raised, in my view, are stereotype and do not fall within the domain and 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. 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.

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. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

November 02, 2015
savita