

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

FAO No.5023 of 2015 (O&M)

Date of decision: 22.09.2015

Union of India and another

... Appellants

Vs.

M/s Dharam Pal Madaar 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. Rajiv Sharma, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.15463-CII of 2015

For the reasons stated in the application duly supported by an affidavit, delay of 340 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

FAO No.5023 of 2015 (O&M)

Mr. Rajiv Sharma, learned counsel appearing on behalf of the appellants submits that appeal has been filed against impugned order dated 19.03.2014 resulting into dismissal of the objections, filed against the award dated 31.07.2010. Award of the Arbitrator in respect of claim Nos. 1 and 2, was excessive, therefore, the objections in this regard were filed. He further submits that

contractor had not completed the entire work on time and therefore, the claim before the Arbitrator with regard to balance work was not maintainable. Award has not been passed upon the judicial and correct appraisal of the facts, as the Arbitrator mis-conducted in not referring the documents on record, much less, the award lacks reasoning. As per Section 31(3) of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996), award has to be reasoned one. The objections, in support of the aforementioned Award, were filed and the objecting Court declined the same in most atrocious manner, therefore, the impugned order is liable to be set aside.

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

It is a matter of record that Arbitrator was appointed, when the application under Section 11 of the Act, 1996 was pending, in this Court. On going through the award, I am of the view, that the Arbitrator has taken into consideration all the evidence, particularly, the documentary evidence to form an opinion and awarded compensation in favour of the contractor and plea award qua to claim Nos.1 and 2 is excessive, has no force as detailed reasons have been assigned as Arbitrator had not granted the claimed amount, but assessed on the basis of the evidence brought on record.

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, 1996. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. 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 viz-a-viz 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 claim of respective claimants to the parties to the *lis*.

The award read as a whole is just, fair and reasonable and only certain claims have been granted which are duly been supported with reasons. 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.

No parameters for interference.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 22, 2015
savita