

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 6905 of 2015(O&M)
Date of decision : October 8, 2015

Haryana State Agricultural Marketing Board, Karnal

..... Appellant

Versus

M/s Harjit Singh and Company and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pritam Saini, Advocate
for the appellant.

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. 21549-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 482 days in filing the appeal is condoned.

The application stands disposed of.

FAO No. 6905 of 2015(O&M)

The challenge in the present appeal is to the order dated 20.2.2014 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') for setting aside the award dated 24.3.2011 has been dismissed.

Learned counsel for the appellant submits that the

arbitrator as well as the court below have not appreciated that the arbitrator did not assign any reason for rejecting the counter claim and in accepting certain claims of the contractor.

There is blatant violation of the terms and conditions of the agreement. The award passed is without jurisdiction. It is in conflict with the public policy. The appointment of the arbitrator was against the provisions of clause 25-A of the agreement.

The arbitrator allowed six claims in favour of respondent No.1 without giving any opportunity to rebut, much less, pendent lite interest at the rate of 9% per annum from the date of date of filing of claims till the award and further interest at the rate of 18% per annum, without any basis, much less contradictory to the evidence on record.

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

The arbitrator, against nine claims, allowed only six claims and declined the counter claim on the premise that the appellant did not produce any documentary evidence to rebut the evidence brought on record by the contractor. It has been proved before the arbitrator that possession of the site was not handed over to the contractor even after the expiry date. The documents tendered by the contractor, were not objected to by the appellant, much less not rebutted.

The appellant did not raise any objection viz-a-viz appointment of the arbitrator, therefore waived the right as per provisions of Section 4 of the Act.

In view of the aforementioned observations, the appellant cannot be permitted to raise such an objection in an appeal filed under Section 37 of the Act. As regards awarding of the interest, the objecting court found that the arbitrator has jurisdiction to award interest under the provisions of Section 31 (7) of the Act and clause 25-A of the agreement. As per provisions of Section 4 (2) (a) of the Interest Act, 1978, interest can be allowed where the money has been deposited as security being an obligation.

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. 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, 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*.

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.

(AMIT RAWAL)
JUDGE

October 8 , 2015
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