

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

Civil Revision No.6136 of 2013 (O&M)

Date of decision: **11**.01.2016

State of Punjab and another

... Petitioners

versus

M/s Kuljit Singh and Company and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Kamal Sehgal, Additional Advocate General, Punjab.
for the petitioners.

Mr. P.S. Rana, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The revision petition brings to challenge the judgment delivered by the Additional District Judge confirming the judgment of the court of first instance which, in turn, was a decree passed in terms of the award issued by the Arbitrator under the Arbitration Act of 1940. The matter related to a contract as awarded for construction of bridge of SYL Canal for a contract value of ₹ 20 lakhs and issued on 11.11.1986. As per the terms of the contract, the work was to be completed before 10.07.1987 but admittedly, the work was not so completed. There had been a delay of nearly 15 months and the work had been completed by 18.09.1991 and certified as such. The

claims made by the contractor were on the basis that the delay in completion of the work was wholly attributable to the State and was also on account of additional works entrusted. There had been entrustment of the work relating to the deck slab at a particular point being lower than the NSL. There was a strike by Junior Engineers who were work charged employees.

2. There were other justifications for delay which have been set forth in the award of the Arbitrator and I do not feel compelled to restate them. There were as many as 26 heads of claims, all of which have been considered and the Arbitrator had set out the respective sums which were awarded under each one of the claims. The Arbitrator had also awarded interest at 15% from 01.08.1990 to the date of award on 12.07.1995 and also subsequent interest at 15%. When the contractor applied to the court for making the award the rule of court, the State had filed objections under Sections 30 and 33 of the Arbitration Act contending that the award was not legally supportable. Apart from general objections being that the award was passed on conjectures and not supported by reasoning, there was an objection taken that the claim No.22 that dealt with payment on account of increase in the quantity of de-watering was on a high scale of ₹1,24,58,669/-. The objection was that the rates quoted were inconsistent with Item No.12, Schedule 1 of the Agreement which related to carrying out construction of piers,

abutment and well cap etc. However, the Arbitrator had actually reasoned in his order that the rates for de-watering on RCC works were always higher than the earth work. The court of first instance and the appellate court held that there was nothing to suggest that the Arbitrator had misconducted himself and had provided for rates which were beyond the agreed rates.

3. The counsel for the petitioners reiterated the arguments placed before the two courts below which were rejected by them. I must observe that the argument that the rates worked out by the Arbitrator were beyond what was agreed upon, is fundamentally flawed for the simple reason that the rates as prescribed were for the work actually entrusted during the contract period, but in this case, there had been already a finding that the delay in completion of works was not on account of any misconduct of the contractor but on account of factors that were directly attributable to the State. The additional works had been with reference to subjects left undone by some other contractor and which were entrusted to the contractor by way of additional works. There was no way by which same rates could be applied to the petitioner as was possible if the work had been completed within the time. The Arbitrator was himself a Chief Engineer of SYL (Designs) and he was the most competent person to decide the proper rates on the basis of evidence let in before him. The Arbitrator had taken note of the fact that from July 1989 to

March 1990, de-watering had been done by the Department of Flood but for a period of 33 ½ months instead of 8 months, the contractor had done the de-watering and the magnitude of the work itself having increased due to SSWL on 1988 floods. This was actually 4 times more than the originally contracted work. The Arbitrator, however, reduced the claim as admissible only to 2 ½ times and after giving credit to the amounts paid determined at ₹37,96,975/- against a claim of more than a crore which we have referred to above.

4. There was also argument made by the learned counsel appearing on behalf of the petitioner nit-picking on the other defects in calculations and his alleged assessment to more than the work entrusted. They have nothing in particular to the characterization of misconduct of the Arbitrator and the attempt was literally to invite the court for a reappraisal of the entire adjudication made by the Arbitrator, a jurisdiction that is simply unavailable for a court while adjudging on limited area of interference to the award of Arbitrator. There is nothing seriously amiss in the award passed and the two courts below have consistently come to a correct conclusion that there is no error for interference in the revision.

5. I maintain the award and dismiss the revision petition with costs assessed at ₹10,000/-.

(K.KANNAN)
JUDGE

11.01.2016
sanjeev