

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

F.A.O.No.3404 of 2004 (O&M)
Date of Decision: May 20th, 2016

M/s Shiv Shankar Gram Udyog Samiti & another

...Appellants

Versus

The Punjab State Civil Supplies Corporation Ltd. & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Dr.Anmol Rattan Sidhu, Senior Advocate with
Mr.Manhar S. Saini, Advocate,
for the appellants.

Mr.Anil Kumar Sharma, Advocate with
Mr.Ajay Pal Singh, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-Society is aggrieved of the ex-parte award and the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”).

Dr.Anmol Rattan Sidhu, learned Senior Counsel assisted by Mr.Manhar S.Saini, Advocate, appearing on behalf of the appellant-Society submits that Mr.Satbir Singh Katnoria, Advocate had appeared on behalf of the appellant and thereafter he did not appear and after a gap of 213 days he appeared and thereafter without assigning any reasons, much less any intimation to the appellants stopped appearing. The appellants were not

aware of the outcome of the ex-parte proceedings. Even the award does not spell out the compliance of provisions of Section 31(5) of 1996 Act *de hors* of the fact that the objections were filed on 13.12.2001. The same were also erroneously dismissed. However, this Court vide order dated 12.11.2007, noted the contention of the appellant for depositing of 50% of the awarded amount and, therefore, 50% of the amount was deposited in the treasury of this Court on 27.1.2010 vide receipt No.1156. He further submits that the appellants should not be made to suffer for the lapse of the Advocate as there are umpteen number of documents to belie the claim of the PUNSUP.

Mr.Anil Kumar Sharma, learned counsel appearing on behalf of the respondents submits that the compensation awarded by the Arbitrator had been reduced considerably, i.e., to the tune of ₹5.62 lacs and as per the statement of account, a sum of ₹30,46,278.22P is due as on 31.12.2015 along with interest. He further submits that even if the simple interest is charged instead of compound interest, even then amount would not be more than ₹15.00 lacs. The District Judge has examined the matter threadbare and found that no cogent reasons, much less material has been placed on record for the absence of the counsel and even the Society was not prevented from pursuing the matter, much less ascertainment of the information from the concerned counsel. The appellant-Society was well aware of the proceedings and willful absence of the counsel was intentional, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that it is a case where the appellants have been prevented from putting forth the defence as lawyer engaged on their behalf had not informed about his non-appearance. There is no order of the

Arbitrator regard satisfaction of the unintentional absence of the counsel. It was incumbent upon the Arbitrator to at least send a notice to the Society after the counsel had stopped appearing and thereafter would have resorted to the ex-parte proceedings. In the absence of this, I am of the view that the appellants have been made to suffer for the lapse of the counsel, which is not permissible under law in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Rafiz and another Versus Munshi Lal and another**, AIR 1981 SC 1400.

I do not intend to ponder upon the outstanding amount as it would be matter of evidence before the Arbitrator and the outcome of the arbitration proceedings is still unaware. Accordingly, the impugned award is set-aside and the matter is remitted back to the Arbitrator to decide the matter afresh by affording opportunity to the appellants to file the statement and defence supported by documents and also statement qua adoption of procedure by the Arbitrator. The PUNSUP is also permitted to file the revised claim in view of the change in circumstances qua the claim of 1½ times economic cost and interest, in essence they may make certain claims which may be falling under the excepted clause.

The Managing Director of the PUNSUP shall be at liberty to decide the matter after receipt of the claims whether it would have the jurisdiction or someone else, i.e., Arbitrator. I am of the view that the Arbitrator shall proceed in accordance with law before recording any satisfaction, i.e., by affording opportunity to the parties to the lis.

The amount deposited as per the interim order shall also be considered by the competent authority/Arbitrator while determining the claim and counter claim, if any.

With the aforementioned observations, the appeal stands disposed of.

Parties, through their counsel, are directed to appear before the Arbitrator on 15.7.2016.

May 20th, 2016
ramesh

(AMIT RAWAL)
JUDGE