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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 15.03.2016

1. FAO-4750-2008 (O&M)

S.R. Beadings Ltd.

...Appellant

Versus

Haryana Roadways Engineering Corporation and another

...Respondents

2. FAO-4751-2008 (O&M)

S.R. Industries

...Appellant

Versus

Haryana Roadways Engineering Corporation and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lakhinder Singh, Advocate
for the appellant (in both the appeals).

Mr. Naresh Prabhakar, Advocate
for the respondents (in both the appeals).

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)

This order of mine shall dispose of two appeals bearing **FAO No.4750 of 2008** titled as **“S.R. Beadings Ltd. V/s Haryana Roadways Engineering Corporation and another”** and **FAO No.4751 of 2008** titled as **“S.R. Industries V/s Haryana Roadways Engineering Corporation and**

another”.

The appellant-Contractor is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside and modification of the Award and the counter-claim of the respondent(s) has been allowed.

Mr. Lakhinder Singh, learned counsel appearing on behalf of the appellant-Contractor submits that a contract was entered into between the parties. The respondent(s)-Haryana Roadways Engineering Corporation (hereinafter called 'the Corporation') lodged a complaint with regard to 9342 kgs of the defective material, whereas vide challan of 20th and 22nd January, 2003, advance supply of the 5073 Kgs of the material was given. However, the respondent(s) only returned back 3580 kgs of the defective material. The respondent(s)-Corporation did not make the payment and necessitated the appellant-contractor to seek the resolution of the dispute through arbitration. Before the Arbitrator, the copy of the challan C-9 and C-10, at page 47, 48 and 52 of the record, reveals that the advance material was supplied, but there is no reference of the same, thus, the Award of the Arbitrator suffers from illegality and perversity, much less, is not inconsonance with the provisions of Section 28 of the 1996 Act and thus, the same was liable to be set aside, viz-a-viz the rejection of the claim regarding recovery of the outstanding amount. He further submits that the Arbitrator has only allowed the counter-claim of the respondent(s). The objections, in this regard, were specifically raised, but the same have not been dealt with by the Objecting Court and thus, there is a travesty of justice. The objections were falling within the parameters of Section 34 of the 1996 Act and thus, prays for setting aside of the impugned

order, much less, Award.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of the respondent(s)-Corporation submits that the Arbitrator being of fact finding-forum noticed all the documentary evidence on record and rejected the main claim, but only partly allowed and also allowed the counter claim to the extent mentioned in the Award. The objectors failed to take the specific objections as noticed the order of the Objecting Court and therefore, they are estopped to raise such objections, for the first time in this Court, in essence, they have waived right to raise the objections. The Objecting Court could not sit in an appeal, in view of the settled proposition of law and rightly so, rejected the objections as the same were not falling within the realm of Section 34 of the 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book and as well as the record of the arbitration proceedings and of the view that the copy of the challan referred to as C-9 and C-10, at page Nos.47, 48 and 52, have not been dealt with by the Arbitrator. It would be apt to reproduce the relevant portion of the Award, whereby the plea with regard to the defective material has been dealt with, which reads thus:-

"As regard the material, in view of the continuous complaints, adverse field performance and premature developing of cracks the quality of supply of substandard material is not ruled out and the claim for the same is restricted to ₹ 2,70,270/- as claimed by the respondent for balance of 4296 kg (9342 kg – 5073 kg) of material, which is yet to be replaced"

On going through the aforementioned findings, the Arbitrator has

not taken into consideration the fact that concededly, the respondent(s) supplied 3580 Kg of the defective material, the balance of the 1493 kg material has not been counted for, thus, the calculations done by the Arbitrator, viz-a-viz the balance amount of alleged defective material of 4296 kgs, is an act of mis-reading and mis-appreciation of the documentary evidence. Obviously the claim and the counter claim of the party would be different had the aforementioned material, taken into consideration, this fact has not been taken into consideration by the Objecting Court while dismissing the objections.

As regards the other appeal bearing *FAO No.4751 of 2008*, the Arbitrator has rejected the claim on account of the Award rendered in *FAO No.4750 of 2008*.

Keeping in view the aforementioned facts and circumstances, the impugned order and the Award of the Arbitrator are not sustainable and the same are hereby set aside. The Award of the Arbitrator is set aside on this point only and rest of the Award is affirmed. The parties are relegated to seek the vindication of the dispute in accordance with law.

Record of the arbitration proceedings as well as the Objecting Court is hereby remitted back to the Objecting Court for further reference, if required.

With the aforesaid observations, the appeals stand allowed.

15.03.2016
yogesh

(AMIT RAWAL)
JUDGE