

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3842 of 2009 (O&M)

Date of decision:05.02.2016

State of Punjab

... Appellant

Vs.

M/s Natha Singh 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. Piyush Bansal, DAG, Punjab
for the appellant.

Mr. P.S.Rana, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

Appellant-State is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') for setting aside of the Award dated 14.05.2004.

Mr. Piyush Bansal, learned Deputy Advocate General, Punjab appearing on behalf of the appellant-State submits that admission order reveals that there was only claim 13, which was to be entertained by the Arbitrator. Claim No.13 (Escalation Clause) does not envisage in the contract, therefore, award is beyond the contract, thus, objections were fallen within the provisions of Section 34 of 1996 Act. The objecting Court has committed illegality and

perversity in declining the objections. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court in **Rashtriya Chemicals and Fertilizers Limited vs. Chowgule Brothers and others 2010 (8) Supreme Court Cases 563**. He has also relied upon the the judgment of the Supreme Court in **Bharat Coking Coal Ltd. vs. M/s Annapurna Construction, 2003(2) Apex Court Judgments 514 (SC)** as noticed in the order dated 27.01.2014, which has clearly drawn the error within the jurisdiction, error in access of jurisdiction. It has been held therein that the role of Arbitrator has to be escalated within the terms and conditions of the contract and cannot travel beyond the contract, thus, prays for setting aside of the award.

Mr. P.S.Rana, learned counsel appearing on behalf of respondent No.1 submits that escalation "clause" was envisaged with regard to alleged delay of handing over. The Arbitrator on the basis of the oral and documentary evidence found that delay was contributed to the dispute. Claim of damages cannot be part of the terms and conditions of the contract but can always be claimed under the provisions of Section 73 of the Indian Contract Act, thus, objections were not within the provisions of Section 34 of 1996 Act.

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

Section 73 of the Indian Contract Act reads thus:-

"73. Compensation for loss or damage caused by breach

of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.”

Thus, Court under Section 73 of the Indian Contract Act cannot re-appreciate the evidence examined by the Arbitrator as

scope of interference under Section 34 of 1996 Act is very limited. The Arbitrator on the basis of the evidence found that there was alleged delay on the part of the Arbitrator in awarding Rs.8 lacs. The ratio decidendi culled out by the Hon'ble Supreme Court in *Rashtriya Chemicals's case* (supra) would not apply to the present case as contract would not envisage claim of damages. In case, party is effected in respect of any omission, adverse party cannot be directed to claim damages as envisaged under Section 73 of the Indian Contract Act.

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 dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2016
savita