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

FAO-1303-2010

Date of decision : 25.07.2016

The Friends Cooperative Labour and Construction Society Ltd.

... Appellant

Versus

Punjab Mandi Board and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Akshita Chauhan, Advocate
for the appellant.

Mr. Ajaib Singh, Advocate
for the respondents.

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)

The appellant-Contractor is aggrieved of the order dated 08.09.2009, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside of the part of the relief denied by the Arbitrator, have been dismissed.

Mr. D.V. Sharma, learned Senior Counsel assisted by Ms. Akshita Chauhan, learned counsel appearing on behalf of the appellant-Contractor submits that the appellant-Contractor was awarded a contract for construction of the platforms and roads in New Sabji Mandi, Phagwara(Punjab). The contract was to the tune of ₹ 21,00,000/-. It was to commence on 24.04.1990 and was completed within one year i.e. on

23.04.1991. But till the date of completion, the respondent-Punjab Mandi Board failed to hand over the possession. It is, in these circumstances, the dispute arose and the matter was referred to the Arbitrator owing to the resolution of dispute through the intervention of the Arbitrator. The Arbitrator has only granted the compensation by ordering the refund of the earnest money and the security along with simple interest @ 10%, but no explanation/reason has come forth in not awarding the claim of damages, rather the explanation given is that the appellant-Contractor has been compensated in respect of some other contract which is not the factual position as the contract was handed over to some other Contractor. All these aspects have not been noticed by the Objecting Court, thus, urges this Court for setting aside the findings under challenge.

Mr. Ajaib Singh, learned counsel appearing on behalf of the respondents submits that since, the Contractor failed to lead evidence viz-a-viz the claim of damages, therefore, the Arbitrator did not have any occasion to ponder upon such aspect. The Contractor had defaulted in making the payment of other contract and after adjustment of the security, a sum of ₹ 35,102/- had become due to the Society. The Society has been compensated with interest @ 10%, thus, urges this Court for dismissal of the appeal as the objections were not falling within the realm/parameters of Section 34 of the 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. D.V. Sharma, for, the Contractor has failed to lead evidence in pursuance of the provisions of Section 73 of the Contract Act.

The damages to the tune of ₹ 4,00,000/- have been claimed, but no evidence has been led. In my view, the Arbitrator did not have any occasion to even ponder upon such aspect. The amount of security stated to have been paid by the appellant-Contractor was ₹ 70,000/-. Since, another contract was awarded to the appellant-Contractor, certain amount has been adjusted in respect of amount of ₹ 35,102/- and remaining has been awarded along with interest @ 10%. I am in agreement that the objections were not falling within the realm of Section 34 of the 1996 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 accordingly dismissed.

25.07.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No