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

Date of decision : 24.02.2016

1. FAO-4395-2007

Hari Om Aggarwal

...Appellant

Versus

Punjab Water Supply Sewerage Board and another

...Respondents

2. FAO-4394-2007

Hari Om Aggarwal

...Appellant

Versus

Punjab Water Supply Sewerage Board and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Randhawa, Advocate
for the appellant(s) (in both the appeals).

Mr. Vijay Kumar Kaushal, Advocate
for the respondent(s) (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.4395 of 2007 and FAO No.4394 of 2007 filed against the order dated 01.06.2007 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside the Award dated 28.05.2001 passed by the Arbitrator, have been

accepted.

Mr. R.S. Randhawa, learned counsel appearing on behalf of the appellant(s)-Contractor submits that in pursuance to the contract agreement having entered into between the parties, the dispute arose and the matter was referred to the Arbitrator. 13 claims were lodged before the Arbitrator, but arbitrator rejected 12 claims and allowed the claim No.1. Aggrieved of the aforementioned finding, the respondent No.1-Board challenged the Award by filing the objections which have been accepted on the ground that the claim was not filed within the period of 180 days from the last date of the preparation of the Bill. He further submits that the provisions of Section 29 of the Indian Limitation Act, does not oust the applicability of the Limitation Act. The claim was filed within three years. The only two provisions of the 1996 Act, prohibits the applicability of the Limitation Act i.e. Section 34 and 37 of the 1996 Act. The Arbitrator pronounced the Award as per the clause of the Agreement, but the Objecting Court had entertained the objections while sitting in an appeal, in fact the objections were not falling within the realm of Section 34 of the 1996 Act.

Mr. Vijay Kaushal, learned counsel appearing on behalf of the respondents submits that there is no illegality and perversity in the order. The objections have rightly been entertained as the claim was not filed within the period of limitation i.e. 180 days as prescribed in the agreement, thus, prays for dismissal of the appeal.

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

I am in agreement with the submissions of Mr. R.S. Randhawa as

Section 29 of the Limitation Act, is saving clause. The agreement entered into between the parties do not prescribe the ousting of the provisions of the Limitation Act, in my view, does not debar the appellant to file the claim beyond the period of 180 days. The said provisions of the agreement is against the provisions of Section 23 of the Indian Contract Act. The Objecting Court despite having noticed the argument in this regard, negating the plea by holding that the 1996 Act prohibits the redressal of the grievance beyond the period of limitation, in my view, it has misread the provisions of the 1996 Act as the Limitation Act does not apply to Section 34 and 37 of the 1996 Act. The party cannot be precluded from filing the claim within three years as per the provisions of the Limitation Act. The aforementioned view of mine is supported by Section 29 of the Limitation Act. The Award of the Arbitrator is in consonance with the terms and conditions of the Contract, which could not have been upset, viz-a-viz the claim No.1 by the Objecting Court as the objections were not falling within the realm of Section 34 of the 1996 Act.

Keeping in view the aforementioned facts, the order dated 01.06.2007, is hereby set aside and the Award dated 28.05.2001 of the Arbitrator is restored. However, the Award of the Arbitrator is modified and the appellant(s)-Contractor shall be entitled to interest @ 9% from the date of lodging of the claim till its realization.

With the aforesaid observations, the appeals are disposed of.

24.02.2016
yogesh

(AMIT RAWAL)
JUDGE