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

FAO-4736-2010 (O&M)

Date of decision : 16.08.2016

Haryana State Agricultural Marketing Board, Rohtak

... Appellant(s)

Versus

Basant Kumar and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parveen Chauhan, Advocate
for the appellant(s).

Mr. Jagjeet Beniwal, Advocate
for respondent No.1.

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 Haryana State Agricultural Marketing Board, Rohtak (hereinafter called 'the Board') is aggrieved of the impugned order dated 03.04.2010, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside the Award dated 14.06.2006 has been partly allowed.

Mr. Parveen Chauhan, learned counsel appearing on behalf of the appellant-Board submits that the Arbitrator though had against the claim of ₹ 24,00,000/- qua 10 claims awarded a sum of ₹ 4,62,381/- by declining the other claim bearing No.4, 7, 9 and 10. However, in the objections, another amount of ₹ 25,000/- had been reduced viz-a-viz the claim Nos.1, 2 and 5. The Arbitrator has gone beyond the scope of the

contract and awarded more compensation which could not have been done, particularly for impaction charges of earth, road roller charges and 75 mm layer. All these aspects specifically raised in the objections under Section 34 of the 1996 Act, but the Objecting Court only partly allowed the objections, thus, urges this Court for setting aside the impugned order under challenge.

Mr. Jagjeet Beniwal, learned counsel appearing on behalf of respondent No.1-Contractor submits that the Contractor has not assailed the findings rendered by the Objecting Court, whereby a sum of ₹ 25,000/- has further been reduced from ₹ 4,62,381/-. The scope of interference under Section 34 of the 1996 Act is very limited, much less, in appeal. Neither the Objecting Court nor this Court can sit in the Arm chair of the Arbitrator to re-appreciate the evidence, even if two opinions are to be followed, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and substance in the submissions of Mr. Parveen Chauhan, for, the Arbitrator being an Expert had examined the entire controversy at threadbare, viz-a-viz claim No.1, the Arbitrator has examined the average dry bulk density of natural soil and after assessing the entire aspects, gave the impaction charges of ₹ 2,03,963/- under the aforementioned claim. As regard the claim No.2, findings are based on preponderance of both oral and documentary. Qua claim No.5 i.e. road roller charges, the Arbitrator found that the first running bill till the last running bill, the Junior Engineer, Sub-Divisional Engineer, Executive Engineer and even the Audit staff had accepted the hire

charges @ ₹ 102/- per hour as asserted by the Contractor and this period had run over 30 months and therefore, awarded the compensation of ₹ 88,596/-. All these facts have been examined by the Arbitrator and in my view, the objections were not falling within the realm of Section 34 of the 1996 Act, yet the Objecting Court has reduced the amount of ₹ 25,000/- which has not assailed by the Contractor.

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.

16.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**