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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2817-2011 (O&M)

Date of decision : 27.10.2016

M/s Raj Kishan and Company

... Appellant

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.K. Singal, Advocate
for the appellant.

Mr. D.K. Mittal, DAG, Haryana.

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 dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') for setting aside the Award dated 12.11.2007.

Mr. D.K. Singal, learned counsel appearing on behalf of the appellant-Contractor submits that owing to the contract having been entered into between the parties, a dispute arose and the matter was referred to the Arbitrator. Both the parties had their respective claims, in essence, the appellant-Contractor also filed the counter-claim. The counter-claim was not entertained by the Arbitrator for non-deposit of the security money. He submits that the counter-claim cannot be treated at par with the claim, for, the requirement of the terms and conditions was to deposit the same by a

person, who had lodged the claim.

He further submits that the Award of the Arbitrator is lacking reasons and is not in consonance with the provisions of Section 31(3) of the 1996 Act. Besides the aforementioned primary argument with lot of vehemence and eloquence submitted that the appointment of the Arbitrator was lacking jurisdiction as the terms and conditions envisage the appointment by the Engineer-in-Chief, whereas the appointment was by the Financial Commissioner. All these points were taken in the objections but the same have not been addressed by the Objecting Court, thus, urges this Court for setting aside the findings under challenge as the objections were falling within the realm of Section 34 of the 1996 Act

Per contra, Mr. D.K. Mittal, DAG, Haryana submits that award of the Arbitrator cannot be tinkered/set aside even if the Court had formed a different opinion. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Navodaya Mass Entertainment Ltd. V/s J.M Combines” (2015) 5 SCC 698.**

He further submits that counter-claim is an independent reference just like a claim. Since, the appellant-Contractor failed to adhere to the terms and conditions of the Contract viz-a-viz the deposit of the security money, rightly so, counter-claim has been rejected, thus, urges this Court for affirming the findings under challenge as the objections were not falling within the realm of Section 34 of the 1996 Act.

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

For the sake of brevity, the operating part of the Award of the

Arbitrator reads thus:-

“I have heard both the parties i.e. party no.1 and Party No.2 M/s Raj Kishan and Co. has not come personally or through his authorized representative to argue or address arguments though last opportunity was given to his vide No.18449-50 dated 5.11.2007 which was very much received by him as is apparent from his subsequent correspondence. None the less the point in controversy is very short. The matter had already been settled by no less authority than my learned predecessor vide his order dated 18.11.2006 which run as under:-

Order of the Arbitrator

“The plea of M/s Raj Kishan & Co. has been considered and the counter claims means the claims itself and as per Section 2(9) of the Act provides that where any Section 9 excepting Section 25(a) and Section 32(2) Part I of the Act refers to claim, it shall also apply to counter claim and where it refers to a defence, it shall also apply to a defence to that counter-claim. So far as the counter claim is concerned the defendant occupies the position of a plaintiff and the counter claim is to be treated a cross reference or an position of a plaintiff and the counter claim is to be treated a cross reference or an position of a plaintiff and the counter claim is to be treated a cross reference or an independent reference. The Patna High Court observed as follows in Rajiv Sachdeva V State Bank of India (2000) 101 Comp. Cas.216:-

“It is also a clear that even if a suit in which a counter claim is made by the defendant is stayed or discontinued or dismissed, the Court shall proceed with the counter claim as if it were a suit and shall pronounce judgment”.

Keeping in view the above, the plea of M/s Raj Kishan & Co. is considered on merits. They are directed to

deposit the necessary sum provided under the agreement so that their claims (counter claims) be considered by the Arbitrator.”.

In view of the above, categorical orders, no alternative is left before me to discuss this matter again because neither any appeal nor any revision has been filed to challenge the above order dated 18.11.2006. As such, it attained finally & M/s Raj Kishan & Co. (Party No.2) is estopped now by his act and conduct now to challenge the above orders or agitate the matter again at such a belated stage either on merits or otherwise. As I have already given last opportunity to M/s Raj Kishan & Co. (Party No.2) but he did not address arguments nor he send his authorized representative or him self attended.

I dismiss the counter claim of M/s Raj Kishan & Co. Keeping in view the following points:-

- 1. It failed to challenge the order of the Arbitrator dated 18.11.2006.*
- 2. Ample opportunity was given to the agency to address the arguments but he failed to attend.*

In view of the above discussion the claims of the Party No.1 Executive Engineer, PWD, Public Health Divn. No.1, Yamuna Nagar (now Executive Engineer, PWD, Water Supply and Sanitation Divn. No.1, Yamuna Nagar) are hereby allowed.

I, V.M. Handa, Arbitrator-cum-Superintending Engineer, PWD, Water Supply and Sanitation Circle, Ambala Cantt. After heard both the parties and having carefully considered the various oral and written submissions put forwarded by both the parties before me during the course of hearings, do hereby award as under:-

Claims of the Petitioner:-

Claim No.1

I award ₹ 436000.00 in favour of Claimant/Petitioner

Claim No.2

I award ₹ 145409.00 in favour of Claimant/Petitioner. The total amount of award to be paid to the Executive Engineer, PWD, W/S & Sanitation Division No.1, Yamuna Nagar (Petitioner) by M/s Raj Kishan & Co. Chandigarh (respondent agency) is ₹ 5,81,409.00 (Rupees Five Lacs, Eighty One Thousands, Four Hundred and Nine only). The cost of stamp papers for writing this award shall be borne by the department. The total cost of stamp papers is ₹ 110.00 (Rupees One Hundred and Eleven Only).

M/s Raj Kishan & Co. (Party No.2) are hereby directed to pay the award amount to the Executive Engineer, PWD Water Supply & Sanitation Divn. No.1 Yamuna Nagar within 90 days to be counted w.e.f. 01.12.2007 otherwise interest @ 18% is payable on the award amount till the payment of the award amount.

In witness, I the said V.M. Handa, Arbitrator-cum-Superintending Engineer, PWD, Water Supply and Sanitation Circle, Ambala Cantt. do hereby affix my signature on this day 12/11/2007 and order that a copy thereof be supplied to both the parties”.

On going through the aforementioned findings, I am of the view that the Award is not confirming to the statutory requirement of law as indicated above. The Arbitrator is enjoined upon the obligation to refer each and every document for not only entertaining but allowing the claim either of the parties, thus, in my view, it suffers from a patent illegality which has been brought within the ambit of expression “Public Policy” in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“National Highways Authority of India V/s Cementation India Ltd.” 2015 (3) RAJ 1.**

This aspect was required to be examined by the Objecting Court but having

failed to do so, I am afraid that the Award under challenge is not sustainable and accordingly, the impugned order dated 08.01.2010 and as well as the Award dated 12.11.2007 are hereby set aside.

With the aforesaid observations, the appeal stands allowed.

27.10.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No