

F.A.O.No.6853 of 2010 (O&M)

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

F.A.O.No.6853 of 2010 (O&M)

Date of Decision: August 01, 2016

Central Ware Housing Corporation, Panchkula

...Appellant

Versus

**M/s Jaswinder Singh, Ex.H&T Contractor, resident of Krishna Colony,
Indri Road, Ladwa, District Kurukshetra & another**

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Ms.Ritu Pathak, Advocate,
for the appellant.**

**Mr.Yogesh Chaudhary, Advocate,
for respondent No.1.**

AMIT RAWAL, J.

Appellant-Central Ware Housing Corporation (hereinafter referred as “the Corporation”) is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting-aside of the award dated 25.5.2008.

Ms.Ritu Pathak, learned counsel for the appellant-Corporation submits that vide tender dated 9.8.2002, handling and transport contract was awarded to respondent No.1 for a period of two

years. Respondent No.1 was required to execute an agreement by visiting the Regional Office at Panchkula within a period of one week from the allotment of the tender, but he did not appear for execution of the agreement and, thus, failed to carry out handling and transport contract. Numerous letters/reminders were issued to him but yielded no result. The contract awarded was, therefore, rescinded and temporary contract was awarded to another contractor, therefore, in view of the arbitration clause, the matter was referred to the arbitration.

The claimant preferred a claim petition before the Arbitrator and the Arbitrator erroneously allowed the claim by awarding compensation to the tune of ₹2,46,750/- and the counter claim of the respondent to the extent of ₹2,57,170/- has erroneously been rejected. The Arbitrator failed to notice that the respondent failed to carry out the handling and transport contract by providing vehicles, labour and other required equipments. It also failed to notice that respondent No.1 was in judicial custody w.e.f. 1.9.2002 to mid March, 2003. No such application at the behest of respondent No.1 for taking him to the Stamp Vendor for execution of the GPA moved before the Sessions Court at Kurukshetra has been placed on record. Clause 5(A) of the contents of tender specifically provides that the successful tenderer, within a week of acceptance of his/their tender, will execute an agreement at the Regional

Office in the form annexed at Appendix-VIII and in the event of failure of the successful tenderer to execute the contract within the aforementioned period, the contract was liable to be rescinded at the risk and cost of the tenderer and the earnest money forfeited, therefore, Court ought not to have ordered for refund of the earnest money. The Objecting Court also failed to even mention the aforesaid facts, though the objections were falling with the realm of Section 34 of 1996 Act. The respondent failed to lead any evidence with regard to the actual loss suffered by him and in the absence of the same, the compensation awarded is without basis or reasoning.

As regards the rejection of the counter claim, it has been proved on record that the appellant suffered a loss due to the non-fulfillment of the conditions by respondent No.1 and not doing the work in time and the work had to be awarded to another contractor at higher rate. The award is not reasoned one and based upon the surmises and conjectures. The Arbitrator failed to frame the issues and, thus, urges this Court for setting-aside of the impugned order.

Mr.Yogesh Chaudhary, learned counsel for respondent No.1-Contractor submits that the Arbitrator, on the preponderance of the evidence, found that the agreement was signed by the contractor on 21.8.2002 itself and handed over to Corporation's officials. Since the

GPOA holder legally represented the successful tenderer, he should have been allowed to sign the contract, but in case the Corporation avoided signing of the same, no fault can be attributed to the contractor. The claimant has also deposited a sum of ₹90,000/- on 21.8.2002 as part of the security deposit. Since the claimant was in judicial custody, the appellants could not have cancelled the contract and, thus, urges this Court for affirming the order under challenge, much less award.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submission of Ms.Pathak, for, the Arbitrator categorically recorded a finding with regard to tendering of documents at the behest of the respondent-contractor. The officials of the Corporation should not have been right in calling upon the contractor to sign the agreement as he was in custody and, therefore, had executed GPOA and assignment of right of a principal to the agent is recognised in law and once the Corporation failed to honour the contract and insisted upon the presence of the contractor for signing the agreement, there was no occasion for them to cancel the contract. The intention of the contractor is evident from the deposit of the security deposit. It is the conceded position on record that respondent No.1 was in judicial custody w.e.f. 1.9.2002 and on 6.11.2002, the appellant issued notice to respondent No.1 to sign the

agreement in person by 17.11.2002, failing which the contract shall be rescinded at his risk and cost and earnest money shall also be forfeited.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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 judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of

Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. 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 claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. 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.

I am of the view that the award of the arbitrator is perfect, legal and justice and based upon the appreciation of the evidence.

There is no merit in the appeal. The same is accordingly dismissed.

August 01, 2016
ramesh

(AMIT RAWAL)
JUDGE