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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.04.2016

1.

FAO-7153-2011(O&M)

Union of India

...Appellant

Versus

Jasbir Singh Kohli and another

...Respondents

2.

FAO-57-2012(O&M)

Jasbir Singh Kohli

...Appellant

Versus

Union of India and another

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Rathee, Advocate
for the appellant (in FAO-7153-2011) and
for respondent No.1 (in FAO-57-2012).

Mr. Anurag Arora, Advocate
for respondent No.1 (in FAO-7153-2011) and
for the appellant (in FAO-57-2012).

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.7153 of 2011 titled as **“Union of India V/s Jasbir Singh Kohli and**
another” and **FAO No.57 of 2012** titled as **“Jasbir Singh Kohli**

V/s Union of India and another”.

In pursuance to the contract having been entered between the parties, the matter was referred to the Arbitrator. The respondents in this FAO bearing No.7153 of 2011 and the appellants in the appeal bearing FAO No.57 of 2012, filed respective claims and the Arbitrator accepted all the claims, but rejected claim No.1. However, with regard to claim No.5, awarded interest @ 9%.

Aggrieved of the aforementioned Award, both the parties filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act;). The Objecting Court has accepted the claim No.1 which was rejected by the Arbitrator and modified claim No.2 and rejected claim No.5.

It is, in these circumstances, the Union of India has filed the appeal viz-a-viz the acceptance of claim No.1 and modification of claim No.2 and the Contractor is for the rejection of claim No.5.

Mr. Anil Rathee, learned counsel appearing on behalf of the Union of India submits that the Objecting Court cannot assume the role of an appellate court and sit on the chair of an Expert to determine the amount of compensation, as having been awarded by the Arbitrator. The Arbitrator on the basis of oral and documentary evidence, rejected the claim No.1 on the ground the claimant did not lead any evidence to establish the amount of the claim, based upon the increase owing to direct result of coming into force of any fresh law or statutory rule or order, after the awarding of the work. As regards the other claims, the Union of India accepted the same, but it was the Contractor, who was not aggrieved with regard to the awarding of the lesser amount. As

regards the claim No.2 and non-grant of interest @ 18% qua claim No.5, he submits that as per the clause 10 (c) of the agreement, the Contractor was required to submit a specific notice with regard to the escalation in price and the same was never served. While ignoring the aforementioned clause, the Objecting Court accepted claim No.1 and modified Claim no.2 and therefore, the order of the Objecting Court is not sustainable in the eyes of law.

Mr. Anurag Arora, learned counsel appearing on behalf of the Contractor submits that as per the provisions of sub-Section 7 of Section 31 of the 1996 Act, arbitrator has jurisdiction to award interest @ 18% in the absence of the any restriction of the same in the agreement. The Contractor is entitled to interest @ 18% as it was a commercial transaction, thus, the order of the Objecting Court is not sustainable as the same is against the public policy. The Arbitrator failed to advert to the certain documents, in these circumstances, the Objecting Court, after noticing the aforementioned facts, accepted claim No.1 which was rejected by the Arbitrator and modified the claim No.2 and urges this Court for dismissal of the appeal filed by the Union of India and allowing of the appeal filed by the Contractor.

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

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 and statutory provisions 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 those circumstances, interference with the award would be justified. 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.

Therefore, in my view, the objecting court cannot act as Court of appeal while re-appreciating the evidence and therefore, allowing of claim No.1 and modification of claim No.2, is not sustainable and accordingly, the order of the Objecting Court is hereby set aside and the Award of the Arbitrator viz-a-viz claim No.1 and 2, is restored.

As regards the awarding of interest viz-a-viz claim No.5, I am of the view that the Arbitrator has awarded lesser amount of interest @ 9% as there was no stipulation in the Contract qua amount of rate of interest and therefore, in view of the commercial transaction and as well as the provisions of sub-Section 7 of Section 31 of the 1996 Act, the Contractor is entitled for interest @ 18%. This fact has escaped the notice of the Objecting Court and erroneously rejected the claim.

Accordingly, the order of the Objecting Court viz-a-viz the rejection of the claim No.5 is hereby set aside and Award of the Arbitrator qua claim No.5 is hereby modified. The interest factor is hereby ordered to be

increased from 9% to 18%. The Contractor shall be entitled for interest of all the payment from the date of lodging of the claim.

With the aforesaid observations, both the appeals are allowed.

11.04.2016
yogesh

**(AMIT RAWAL)
JUDGE**