

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O.No.7159 of 2011 (O&M)

Date of Decision: October 20th, 2016

Punjabi University, Patiala

...Appellant

Versus

M/s Rajinder Kumar, Contractors through its Managing Partner & another

...Respondents

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

Present: Mr.Kanwaljit Singh, Senior Advocate with
Ms.Gurdeep Kaur, Advocate,
for the appellant.

Mr.Naresh Kaushik, Advocate for
Mr.TPS Bhatti, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-Punjabi University is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”) seeking setting-aside of the award dated 19.2.2008.

Mr.Kanwaljit Singh, learned Senior Counsel assisted by Ms.Gurdeep Kaur, representing the appellant, *inter-alia*, submits that in order to construct Itihas Bhawan of the University, the contract was awarded to the Contractor on 22.7.1991 and an agreement was executed on 30.6.1992. Initially, the contract was for ₹30.00 lacs, but was subsequently enhanced to ₹85.00 lacs. The work was to be completed within 18 months, but the same was completed in 1995. There were certain disputes with

regard to the payment of the bills and other items and since the contract envisaged resolution of dispute through arbitration, the matter was referred to the Arbitrator. The Arbitrator, vide interim award dated 20.1.2000, ordered for payment of the security and final bill along with interest @ 12% w.e.f. 8.3.1996. Though the principal amount was paid, but the interest was not paid. The award of the Arbitrator is not sustainable in the eyes of law. The same was challenged, but the objections have also been dismissed on the ground that the same were not falling within the parameters of Section 34 of 1996. Act. Respondent-Contractor failed to lead evidence qua liquidated damages as per Section 73 of the Contract Act. However, during the pendency of the objections before the Objecting Court, he was cross-examined and feigned ignorance about the list of labour, staff and machinery and this has totally been ignored by the Objecting Court and, thus, there is falsity and perversity.

He further submits that the interest awarded by the Arbitrator during the reference of the proceedings @ 15% and future interest @ 12% is too phenomenal. There has to be commonality and parity with the rate of interest. Certain claims have been granted without there being any evidence, therefore, the same are liable to be set-aside.

Per-contra, Mr.Naresh Kaushik, Advocate for Mr.TPS Bhatti, Advocate, representing respondent No.1-Contractor submits that the Court cannot form a different view on re-appreciation of the evidence in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Navodya Mass Entertainment Ltd. Versus J.M. Combines, 2015 (5) SCC 698**. The objections were not falling within the provisions of Section 34 of 1996 Act as the appellant has failed to point out that the award was suffering from

patent illegality, much less against the public policy and, thus, urges this Court for affirming the findings.

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

As regards Claim No.6, which had been vehemently argued by Mr.Kanwaljit Singh, I am of the view that the Arbitrator against the claim of ₹15,37,500/- has awarded ₹5,33,900/- after taking into consideration the fact that the list of labour and staff mentioned in the letter dated 21.4.1993 was enclosed and submitted to the respondent, which was not verified. It is a matter of record that due to poor financial condition of the University, the cement in less quantity was supplied and, therefore, there was delay in raising the construction and this fact has been noticed by the Arbitrator. All the claims have not been accepted. Few have been rejected. The Arbitrator examined the evidence threadbare and awarded compensation to the tune of ₹6,29,007/- by awarding interest as noticed above.

I am of the view that the findings given by the Arbitrator regarding the awarding of the claim is as per the preponderance of the evidence brought on record. The provisions of Section 31(7)(b) of 1996 Act provide the payment of interest at the rate of 18%. It is a commercial transaction, therefore, awarding of interest at the rate of 15% during the reference and future interest @ 12%, in my view, is not phenomenal and is within the aforementioned provision. This Court cannot sit on the arm chair of the Arbitrator to re-appreciate the evidence.

For the foregoing reasons, I do not intend to differ with the findings arrived at by the Arbitrator and as well as the Objecting Court. No case for interference is made out.

Appeal stands dismissed.

October 20th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No