

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

FAO No.5643 of 2012 (O&M)

Date of decision : 28.03.2016

Avtar Singh

...Appellant

Versus

District Food and Supply Controller, Ambala and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Bhag Singh, Advocate for the appellant.

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

AMIT RAWAL, J. (Oral)

CM No.25940-CII of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 585 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The Contractor 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 05.05.2007.

Mr. Bhag Singh, learned counsel appearing on behalf of Contractor submits that in pursuance to the agreement dated 01.04.2002, appellant had deposited the sum of ₹70,000/- as security in addition to

earnest money of ₹20,000/-. Agreement was with respect to the lifting of the foodgrains bags from the grain market, Ambala City to Godowns. He submits that respondents unilaterally raised the dispute vide letter dated 13.04.2002 reiterated on 15.04.2002 which had never been received. Counter claim vis-a-vis refund of security of the earnest money was sought but no reasoning has been assigned, thus, there is violation of provision of Sub-Section 5 of Section 34 of 1996 Act. This aspect has not been noticed by the Objecting Court.

Mr. D.K. Mittal, DAG, Haryana, submits that award is liable to be upheld as it has categorically been pleaded that there had been delay on the part of the Contractor, thus there is a loss of ₹3,86,590/- and after deducting the security and earnest money, a sum of Rs.2,17,421/- determined has been awarded by the arbitrator. In fact, the appellants are not entitled to any counter claim and, therefore, non-assigning of reasons is not fatal.

I have heard learned counsel for the parties and appraised the paper book and of the view that Arbitrator has failed to give reasons, much less, cogent reasons for declining the counter claim. For the sake of brevity, operative part of the findings rendered by the Arbitrator reads thus:-

“I have carefully examined the evidence and the documents brought on record by both the parties and the point raised by them during arguments. I find no force in the arguments raised by the respondent in his defence.

It is not disputed that after inviting tenders from the various contractor for lifting of stock from the mandi the tender of the respondent was accepted and thereafter an agreement dated 01.04.2002 was executed between the

claimants and the respondent. A copy of which has been placed on record by the claimant. It also has been established on the record that the letter dated 13.04.2002 pointing out therein the lapse on the part of respondent sent by the claimant to the respondent was duly received by the respondent and similarly letter dated 15.04.2002 in directions on the part of respondent in lifting the stocks from Mandi was also received by him. In these letter DFSC, Ambala has brought to the notice of the respondent that the work of lifting the stock from the mandi was not carried out properly as a result of which the stock has cumulated in the mandi. As there was no response from the respondent order of the Deputy Commissioner, Ambala for recalling of the tender were obtained and thereafter work was further allotted to another contractor in accordance with the procedure laid down by the department. It is also evident from the record that the claimant was fully competent to make alternative arrangements for lifting the stocks by engaging another contractor in terms of clause 7 of the agreement. As per provision in this clause the claimant is fully competent to get the work from the open market at the risk of the contractor who has been engaged and recover the amount incurred by him on this account from the previous contractor from his security and pending amount bills. It has also been provided in the said clause that in case still amount remain recoverable then that would be recovered from the securities and even if till some amount remains recoverable that would be recovered from the contractor in accordance with law.

On the basis of evidence brought on record by the claimant. I am fully satisfied that the respondent has derelicted his duties and failed to lift the entire stocks from the mandi in time despite the repeated letters sent by the

claimant. In these circumstances the action of the claimant to engage another contractor was fully justified and the claim put forth by the claimant deserves to be allowed. I find no force in the counter-claim filed by the respondent and the same is rejected.”

Thus there is no compliance of Section 5 of Section 34 of 1996 Act. The question put before me is whether the case would fall within the provision of Sub-Section 4 of Section 34 of the 1996 Act. In view of such fact, I deem it appropriate to remand back the matter for deciding it afresh in view of law laid down by Division Bench of Bombay High Court in Geojit Financial Services Ltd. Vs. Kritika Nagpal decided on 25.06.2013. I am of the view that since Arbitrator has failed to address the issue vis-a-vis counter claim, it is a fit case which falls within the provision of Sub-Section 4 of Section 34 of 1996 Act and thus, the matter is required to be re-addressed vis-a-vis claim and counter claim.

Accordingly, impugned order of Objecting Court as well as award is set aside. Matter is remitted back to the Arbitrator to decide the controversy afresh in most pragmatical manner.

It is expected that he shall decide the matter as early as possible preferably within a period of five months from the date of receipt of certified copy of this order. Record of the Arbitration be sent back to the concerned Department for reference and record.

Appeal stands allowed.

28.03.2016

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**(AMIT RAWAL)
JUDGE**