

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

F.A.O.No.5660 of 2012 (O&M)

Date of decision: 9.8.2016

Executive Engineer HSAMB and others

... Appellants

Versus

M/s Narender Kumar and Company and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Parveen Chauhan, Advocate, for
Mr.Gagandeep S. Wasu, Advocate,
for the appellants.

Mr.V.K.Jindal, Sr. Advocate, with
Mr.Amardeep Sheoran, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-Haryana State Agricultural Marketing Board is aggrieved against the findings dated 29.5.2012 rendered by the objecting court whereby the final award of the arbitrator dated 6.5.2009 has been set aside in toto primarily based on the following reasons : -

- i) Arbitrator as per order dated 15.9.2007 was directed to pass the arbitration award within a period of 4 months whereas the award has been pronounced on 6.5.2009 and, therefore beyond the period of four months and the period could not be extended of its own.

ii) With regard to Claim No.II and counter claim No.III, the objecting court has modified the findings of the arbitrator.

Mr.Parveen Chauhan learned counsel appearing on behalf of the appellants submits that both the parties had filed claim and counter claims in pursuance of the agreement having entered into between the parties. No doubt, the trial court before whom the application was filed, appointed arbitrator and gave him 4 months time to decide the controversy but participation of both the parties itself tantamounts to extension of time as there is no provision under 1996 Act vis-a-vis provisions of Section 1940 Act and, therefore, the objections at the behest of the contractor was not falling within the realm of Section 34 relied upon. Thus, the findings on this point are liable to be set aside. The findings of the objecting court neither here nor there and, therefore, the objections are not within the realm of Section 34. The objecting court cannot go beyond the findings of the arbitrator and re-examine the evidence, arbitrator being expert in examining the entire controversy threadbare and thus, urges this Court for setting aside of the findings.

Mr.Jindal learned senior counsel assisted by Mr.Amardeep Sheron, Advocate submits that vis-a-vis ground of extension of time, has relied upon the judgment rendered by Hon'ble Supreme Court in **N.B.C.C. Limited v. J.G.Engineering Private Limited**; 2010 (1) RCR (Civil) 725 to contend that Hon'ble Supreme Court had an occasion to ponder upon the controversy as to whether the arbitrator have jurisdiction for enlargement of time in the absence of the consent of the parties or not? In examining the aforementioned issue, it was held that without the consent, the arbitrator has

no jurisdiction vis-a-vis the other grounds, i.e., the claim as referred above he submits that the objecting court has not re-appreciated the evidence muchless misread any documentary evidence but only found that the findings of the arbitrator were contradictory as in certain part of the award, it was found that the earth work was not done by the department. It is in this backdrop of the matter that the findings came to be modified and urges for confirming the findings of the objecting court. He further submits that the department had not completed the earth work and, therefore, he could not complete the carpeting of the road as the contractor was given the contract of only carpeting.

I am of the view that so far as the submission of Mr.Chauhan vis-a-vis extension of time is concerned, it has force and merit. The conceded position on record is that after the expiry of a period of 4 months, both the parties continued to participate in the arbitration proceedings. The award came to be passed on 6.5.2009 in the essence that there is a implied consent of the parties to the jurisdiction of the arbitrator and, therefore, they cannot turn around as per the provisions of Section 4 of the 1996 Act to challenge the jurisdiction of the arbitrator to continue with the arbitration proceedings beyond the time limit.

Accordingly, the findings of the objecting court vis-a-vis objection of the contractor regarding extension of time is set aside. As regards modification of the claim, I am of the view that the objecting court has only examined, read and found that there was glaring contradiction regarding assigning of role with regard to the laying of the earth work and re-carpeting. I am of the view that the said findings are perfectly legal and

justified rather in consonance with the pith and substance of the arbitration award and, therefore, award is upheld.

With the above modification, the award of the arbitrator is upheld and the appeal stands allowed in the aforementioned terms.

(AMIT RAWAL)
JUDGE

August 9, 2016
Paritosh Kumar

Whether speaking/reasoned : Yes

Whether reportable : Yes/No