

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

FAO No.604 of 2012 (O&M)

Date of decision : 17.02.2016

Deepak Jindal

...Appellant

Versus

Punjabi University, Patiala 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. Rakesh Gupta, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-Contractor is aggrieved of the interim award dated 05.09.2009 and consequential order passed thereon, whereby owing to non-compliance of the provision of Clause 25(8) of the agreement, his claim has been rejected.

Mr. Rakesh Gupta, learned counsel appearing on behalf of appellant submits that agreement signed by the appellant did not contain the aforementioned condition of pre-deposit qua receipt of ₹20,000/-, in support of the claim and which was seriously objected to. He further submits that there was interpolation. The Arbitrator instead of addressing the issue or framing any preliminary issue erroneously called upon the Contractor to comply the same. The aforementioned award was challenged by filing the objection, but the same has also been dismissed. Hence, the present appeal. He has drawn the attention of this Court from the record to the provision of Clause 25(8) which does not contain such condition.

There is no representation on behalf of respondents even on the last date of hearing i.e. on 21.01.2016 and on 14.08.2015 whereas on earlier occasion, the respondent No.1 and 2 were being represented by the Counsel. The matter is of 2012, accordingly, I proceed to decide the matter.

Since, there is dispute vis-a-vis the contents of the Clause 25(8) relied upon by the appellant and the other side, Arbitrator should have pondered upon the factum of interpolation by taking into consideration all the clause of the agreement and then form opinion. Instead of addressing such issue, Arbitrator called upon the Contractor to deposit of amount referred upon claim. Since, the claim was running into the tune of ₹4 crores, the Contractor was required to deposit above 10% of the same. There is no adjudication of the lis on merits for want of compliance of aforementioned clause. I am of the view that Arbitrator should not have dismissed the claim on this point and should have kept issue open and consider the same after taking the evidence on record.

Accordingly, award dated 05.09.2009 and order dated 03.11.2011 are set aside. Since, other parties are not represented, I deem it appropriate to appoint Sh. R.C. Gupta, Retired Judge of this Court as independent Arbitrator to act as Arbitrator. Let the notice be sent to him for seeking consent. On receipt of consent, he shall enter into reference and hold proceedings at arbitration centre in Sector-17, Chandigarh as per rules applicable.

Accordingly, the appeal stands disposed of.

17.02.2016

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**(AMIT RAWAL)
JUDGE**