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

FAO No.245 of 2013 (O&M)

Date of decision : 06.05.2016

Executive Engineer, Construction Division No.2 PWD (B&R), Ludhiana

... Appellant

Versus

M/s Sandhu Builders (P) Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Piyush Bansal, DAG, Punjab.

Mr. P.S. Rana, Advocate
for the respondent(s).

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)

The appellant is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 29.11.2006.

Mr. Piyush Bansal, DAG, Punjab submits that a contract was entered into with the Contractor on 20.12.2004 for the construction of Judicial Complex, Samrala. The Contractor submitted the drawing plans of the pile foundation on 06.07.2005 and the same was approved in December 2005. Since, the payment of the Contractor was withheld, the Arbitrator was sought to be appointed and after entering into reference, the Contractor submitted the claim of ₹ 38 lacs. The Arbitrator attributed the delay on the part of the

Corporation of having not supplied approved the plans in the month of December 2005 and therefore, awarded the compensation to the tune of ₹ 38 lacs along with interest @ 12%. No fault can be found on account of the act and conduct of the concerned Department as only five months had been taken for approval, thus, the objections were falling within the parameters of Section 34 of the 1996 Act and prays for setting aside of the order, under challenge.

Mr. P.S. Rana, learned counsel appearing on behalf of the Contractor submits that the earlier the contract was for open foundation and drawings were submitted on 03.01.2005, but owing to the topography, the foundation could not be laid in the manner and mode agreed to and accordingly, as per the directions of the Department, the designs were called for pile foundation and the Contractor resubmitted the designs on 06.07.2005, which were approved in the month of December 2005, therefore, there is no fault on the part of the Contractor, thus, the objections were not falling within the parameters of Section 34 of the 1996 Act.

During the course of arguments, Mr. Piyush Bansal, DAG, Punjab further submits that as per Clause-13, no compensation for alteration in the designs is permissible, therefore, the Arbitrator exceeded the jurisdiction and thus, Award is not in conformity with the provisions of sub-Section 3 of Section 28 of the 1996 Act.

Mr. P.S. Rana, Advocate, in rebuttal, submits that damages did not envisage the compensation for change of the designs, but for other reasons.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the plea of Mr. Piyush Bansal, DAG, Punjab, for, in view of change in the foundation

from open to pile, the Contractor had resubmitted revised plans on 06.07.2005, which were approved in the month of December, 2005. The Arbitrator, being Superintending Engineer, being a technical expert, awarded the compensation. I am of the view that this Court cannot sit as appellate court and re-appreciate the evidence. However, since, the contract awarded for compensation of judicial complex, I am of the view that the interest @ 12% is on higher side.

In view of the foregoing reasons, the interest is reduced from 12% to 9 % and accordingly, the Award is modified with the aforesaid modification and the rest of the award is upheld.

The appeal is partly allowed as noticed above.

06.05.2016
yogesh

(AMIT RAWAL)
JUDGE