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

**FAO-2637-2013 (O&M)
Date of decision : 18.05.2016**

M/s Ramesh Kumar & Company and another

... Appellants

Versus

Managing Director, PUNSUP and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Gupta, Advocate
for the appellants.

Mr. S.S. Brar, 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)

CM-12065-CII-2013

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

CM stands allowed.

FAO-2637-2013

The appellants-claimants are aggrieved of the dismissal of the claim and objection filed thereto under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act').

Mr. Deepak Gupta, learned counsel appearing on behalf of the appellants submits that in pursuance to the contract having entered into on

04.04.2002 supplied 24,900 wooden battons out of aforesaid, 22389 were accepted and rest were rejected. In pursuance to the contract, a sum of ₹ 1,00,000/- security had also been deposited. The claim was with regard to the payment of the accepted wooden battons vide acceptance letter dated 04.04.2002 have been acknowledged by the PUNSUP. Yet the Arbitrator failed to notice the same and assigned no reason for considering the payment rather the award of the Arbitrator is not in consonance with sub-Section 3 of Section 28 of the 1996 Act and therefore, the objections have also erroneously been dismissed in not appreciating the aforesaid facts and law, thus, urges this Court for setting aside the findings rendered in the Award and as well as the impugned order.

Mr. S.S. Brar, learned counsel appearing on behalf of the respondents-PUNSUP submits that once the Contractor had been found to be guilty in supplying the defective material, PUNSUP can legally withhold the payment of the accepted wooden battons, much less, payment of security as vigilance inquiry with regard to the rejected material against the Contractor was held. This Court cannot re-appreciate the evidence and sit over the award of the Arbitrator as the scope of interference is very limited, thus, urges this Court for affirming the findings of the Arbitrator and as well as the Objecting Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the findings arrived at by the Arbitrator for justifying the withholding of the payment for accepted wooden battons and security is highly erroneous and not in consonance with the provisions of the 1996 Act and thus, the Award suffers from the vice of the provisions of sub-

Section 3 of Section 28 of the 1996 Act. Reasoning assigned for withholding of the security is allegedly fortified as per the Clause 8 of the Agreement, whereas, Clause 8 says that only the charges of transportation to be borne by the appellant-contractor, but not with regard to withholding of the security. The Arbitrator did not examine the acceptance letter dated 04.04.2002 acknowledging the receipt of 22389 wooden battons which were confirming to the specification of the Contract. The claim was only with regard to the payment of the aforementioned battons and refund of the security. The award lacks reasons, much less, not in consonance with the provisions of the 1996 Act and the same is not sustainable. The reasons assigned by the Arbitrator is not only fallacious and arbitrary, much less, erroneous. No reasons have been assigned to the acceptance letter dated 04.04.2002. This aspect was required to be noticed by the Objecting Court, which is, in my view, committed fallacy in not appreciating the aforementioned facts and law.

For the foregoing reasons, the Award and as well as the impugned order, under challenge, are hereby set aside and the claim of the appellant(s)-Contractor is allowed by holding that the appellant(s)-Contractor is entitled to the amount of 22389 wooden battons along with the security of ₹ 1,00,000/- with interest @ 12% from the date of the amount due.

With the aforesaid observations, the appeal stands partly allowed.

18.05.2016
yogesh

(AMIT RAWAL)
JUDGE