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

**FAO-1086-2014 (O&M)
Date of decision : 16.02.2016**

National Institute of Technology, Kurukshetra

...Appellant

Versus

Krishan Kumar Goel

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.S. Virk, Advocate
for the appellant.

Mr. Vishal Gupta, Advocate
for the respondent.

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 set aside of the Award dated 16.08.2012.

Mr. A.S. Virk, learned counsel appearing on behalf of the appellant submits that on 09.02.2007, a contract was awarded to the respondent-Contractor to complete the work within 9 months.

However, the Contractor left the work despite sending any letter or

intimation and ultimately, the contract was rescinded vide order dated 20.03.2007. Since, the contract envisaged the resolution of the dispute through Arbitrator and a claim before the Arbitrator, viz-a-viz the forfeiture of the earnest money and imposition of penalty as well as expenses incurred during certain amount of work was submitted. The respondent-contractor filed a counter-claim claiming the compensation in respect of the work got done at the risk and cost of the claimant, but the Arbitrator did not assign any reasons, rather did not entertain the counter claim, all theses facts were raised before the Objecting Court that the Award was against the public policy, thus, the objections have been dismissed in a most fallacious manner.

Mr. Vishal Gupta, learned counsel appearing on behalf of the respondent-Contractor submits that the Department fixed the date of foundation ceremony on 19.02.2007 and handed over the drawings on 22.02.2007. However, on 01.03.2007, they shifted the site to the distance of 400 feet, the appellant, in this process, started with dealing and ultimately found that the contract was not feasible as the new drawings were submitted in the first week of March 2007, thus, there was no fault of the contractor in not undertaking work, rather the decision was unlawful and illegal. As per the provisions of the Contract Act, the progress of the contract could have been ceased after expiry of 2½ months and the said period has not expired, therefore, the counter claim has rightly been rejected.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that there is no merit in the appeal for the reason that as per the terms and conditions of the clause 2 of the Agreement, the progress of work had to be seen for the month, i.e the time allowed for carrying out the work. It would be apt to reproduce clause No.2 of the Agreement which reads thus:-

"The time allowed for carrying out the work as entered in the tender shall be strictly observed by the contractor and shall be reckoned from the date of which the order to commence work is given to the contractor. The work shall throughout the stipulated period of contract be proceeded with all due diligence (time being deemed to be the essence of the contract on the part of the contract) and the contractor shall pay as compensation an amount equal to one percent, which the Engineer-in-Charge may levy on the amount of the estimated cost of the whole work as shown in the tender for every day that the work remains un-commenced or unfinished after the proper dates. And further to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which the time allowed for any work exceeds one month, to complete one-fourth of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed. One half of the work before one half and such time as elapsed, three-fourth of the work before three-fourth such time has elapsed. In the event of the contractor failing to comply with this condition he shall be liable to pay as compensation an amount equal to one percent, which the Engineer-in-Charge may levy, on the said estimated cost of the

whole work for everyday that the due quantity of work remains incomplete provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed ten percent on the estimated cost of the work as shown in the tender. The Director may on representation from the contractor reduce the amount of compensation and his decision in writing shall be final”.

It is a matter of record that the site was shifted on 01.03.2007 and new drawings were handed over to the Contractor in the first week of March 2007, and the contract was rescinded vide order dated 22.03.2007. In my view, the Arbitrator has rightly set aside imposition of penalty and ordered for refund of the earnest money and also awarded a sum of ₹ 55,000/- as compensation in respect of the work done by the Contractor. The Arbitrator had rightly held that the counter claim was not maintainable, as the progress could not be appreciated within the frame-work of clause 2, rightly so, the same has been dismissed. This Court cannot sit in appeal and re-appreciate the evidence .

Keeping in view the aforementioned fact, I do not find any illegality and perversity in the impugned order, accordingly, the appeal is dismissed.

16.02.2016
yogesh

(AMIT RAWAL)
JUDGE