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

**FAO-1113-2014 (O&M)
Date of decision : 17.03.2016**

M/s Swadeshi Cement Ltd. and another

...Appellants

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shailender Jain, Senior Advocate with
Mr. Bhagender, Advocate
for the appellants.

Mr. D.K. Mittal, DAG, Haryana.

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(s)-Contractor is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') against the Award dated 10.12.2002.

Mr. Shailendra Jain, learned Senior Counsel assisted by Mr. Bhagener, learned counsel appearing on behalf of the appellant(s)-Contractor submits, that the respondent(s)-Department had chosen to invoke the jurisdiction of Section 11 of the 1996 Act by moving an application before

the Civil Judge (Senior Division), Chandigarh and the same was decided vide order dated 06.10.2000. The Arbitrator was appointed. However, those proceedings were ex parte as the firm of the appellant(s)-Contractor was closed, in essence, there was no effective service. Even, before the Arbitrator, the appellant(s)-Contractor were also proceeded ex parte despite alleged service through publication. It is only during the execution proceedings, the Award of the Arbitrator was sent at the address given in Delhi, came to know about the same, accordingly, objections were filed, in essence, there is no compliance of sub-Section 5 of Section 31 of the 1996 Act. He further submits that the Award is lacking reasons, and therefore, the objections were falling within the realm of Section 34 of the 1996 Act, but the same have not been noticed by the Objecting Court. The Objecting Court dismissed the objections on ground of limitation and as well as on merits.

Mr. D.K. Mittal, DAG, Haryana, submits that the appellant(s)-Contractor was served by way of publication through national newspaper and therefore, cannot take the benefit that they did not have the knowledge, even if, they have an abode of residence at Delhi, intentionally not appeared before the Arbitrator and avoid, thus, there was not a *mala fide*, much less, intentional default in not appearing before the arbitration proceedings, and thus, the Award is based upon the documentary evidence which cannot be set aside. Neither the Objecting Court nor this Court cannot sit in an appeal and decide the controversy.

I have heard the learned counsel for the parties and appraised the paper book. The Award dated 10.12.2002 is not conforming to the provisions of Sections 31(3) of the 1996 Act. For the sake of brevity, certain paragraphs

of the Award were required to reproduce, which reads thus:-

“The claimant has filed his claims supported with the documents and has produced copy of supply order dated 01.03.1995 placed with M/s Swadeshi Cement Ltd. for the supply of 6200 MT cement. Thereafter, another supply order for the supply of 6277 MT cement was placed on 30.03.1995, as per supply order the respondent was required to supply the total quantity upto 31.07.1995. The respondents failed to supply the material as per schedule given in supply order. Hence, the risk purchase notice dated 16.06.1995 was served, copy of which is also available on the record.

The respondent firm failed to supply the ordered quantity of cement and the firm also did not respond to the risk purchase notice dated 16.06.1995. The risk purchase quotations were called which were opened on 03.08.1995 and supply orders were placed on 11.09.1995, 18.09.1995 and 17.10.1995. The supply was received by the different deptt. at different destinations and the total extra expenditure on the account of higher rates of cement was ₹ 47,41,075/-. The copies of letters of different deptt., intimating the risk purchase amount has also been produced by the claimant, the detail of extra expenditure is as under:-

<i>PWD: Public Health</i>	<i>₹ 10,08,000</i>
<i>PWD: B&R</i>	<i>₹ 7,72,000</i>
<i>Haryana State Agricultural Mkt. Board</i>	<i>₹ 6,08,000</i>
<i>Haryana State Industrial Dev. Corpn.</i>	<i>₹ 5,95,935</i>
<i>Haryana Urban Development Authority</i>	<i>₹ 10,47,500</i>

The claimant has also produced the copy of letter dated 17.02.1998 by which the respondent was requested to deposit the amount of risk and cost. The respondent was also again requested on 30.03.1998 to deposit the recoverable amount within 15 days or give his consent for the appointment of Arbitrator. But

the respondent failed to respond to letters of the claimant.

After perusal of the documents and arguments advanced by the Ld. ADA on behalf of the claimant I am fully convinced that the Director, Supplies and Disposals, Haryana is entitled to recover the risk purchase amount as per condition of the contract agreement. Therefore, I allow the claim of Director, Supplies and Disposals, Haryana for ₹ 47,41,075 along with @ 12% interest per annum from the date of payment till realization. Announced in open Court.”

The Arbitrator has not assigned any reason how the claim of the respondent(s) was justifiable, even if the appellant(s) were ex parte. Even there is no reference to compliance of the provisions of sub-Section 5 of Section 31 of the 1996 Act. The copy of the Award was sent at the official address of the party concerned. Once, the respondent(s)-Department were aware of the residential address of the appellant(s)-Contractor, nothing prevented it to disclose to the Arbitrator in order to avoid the subsequent complications. Having not done so, in my view, the appellant(s)-Contractor has been deprived to put-forth his plea, much less, defence viz-a-viz the claim of the State. This fact has not been noticed by the Objecting Court, thus, the findings of the Objecting Court and as well as the Award of the Arbitrator are not sustainable and the same are hereby set aside.

Mr. Shailender Jain, has given a consent for seeking an appointment of any retired Judge of this Court as Arbitrator, in order to avoid any unnecessary expenses, much less, precious time of either of the parties in seeking the appointment of independent Arbitrator by moving an application under Section 11 (6) of the 1996 Act.

Accordingly, I appoint Mr. S.N. Aggarwal, retired Judge of this

Court as an Arbitrator who shall conduct arbitration proceedings at Arbitration and Conciliation Centre, Sector 17 Chandigarh, as per the prevailing the procedure and rules framed thereon. The Registry is directed to intimate Sh. S.N. Aggarwal regarding his appointment and seek consent. On receiving consent, he shall enter into the reference by calling the parties to file their respective claims.

It is expected that the Arbitrator shall decide the arbitration proceedings within in a period of six months from the date of entering into the reference.

With the aforementioned observations, the appeal stands disposed of.

17.03.2016
yogesh

(AMIT RAWAL)
JUDGE