

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.1355 of 2014 (O&M)
Date of Decision.14.07.2016

Union of India

.....Appellant

Vs.

M/s Shakti Construction Co. and another

.....Respondents

Present: Dr. Ashwinie Kumar Bansal, Advocate
for the appellant.

Mr. Rajesh Goyal, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

C.M. No.4734-CII of 2014

For the reasons stated in the application, delay of 2 days in filing the appeal is condoned.

Application is allowed.

FAO No.1355 of 2014

The appellant-Union of India is aggrieved of the dismissal of the objections moved under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the Award dated 22.02.2010.

Mr. A.K. Bansal, learned counsel appearing on behalf of the appellant submits that the appeal is confined to two claims only namely (i); that as per the terms and conditions of the contract, surplus material supplied to the contractor was to be returned, failing which the appellant was entitled to double the amount of the same and (ii) claim pertaining to compensation

on account of delay. The same has been declined by the Arbitrator and in this regard, objection petition was filed but the same has been dismissed.

He further submits that the Award has been passed against the terms and conditions of the contract as well as in violation of Section 75 of the Indian Contract Act. The Arbitrator is not supposed to go beyond the terms and conditions of the contract agreement. Even an application for correction of the Award by invoking provisions of Section 33 of the Arbitration and Conciliation Act, 1996 was moved but no response was received. An extra expenditure was incurred by Union of India due to non completion of the work but the Arbitrator has not taken care of the aforementioned fact. The Arbitrator has misread the statement made by the Union of India and wrongly reduced the claim of Union of India from Rs.76,46,873/- to Rs.21,13,854.73 while allegedly considering the building work catered in schedule 'A' of Section 1 and also reducing the recovery rate of over issued schedule 'B' store and also disallowing the compensation amount which was rightly claimed as per the terms and conditions of the contract, thus, urges this Court for setting aside the Award and the impugned order under challenge.

Mr. Rajesh Goyal, learned counsel appearing on behalf of the respondent submits that the Award passed by the Arbitrator and the order passed by the Court dismissing the objection are based on correct appreciation of facts and thus, urges this Court to confirm the Award and the order.

I have heard the counsel for the parties, appraised the paper book and of the view that there is no force and substance in the submission of Mr. Bansal, for, it is an admitted case that the Arbitrator was appointed by

the respondent-contractor for providing Md Accn for officers of Inf Bde at Amritsar Cantt on 10.05.1988. The Arbitrator after considering the entire evidence came to the conclusion that there was no merit in the claim of the Union of India seeking double the amount of the surplus material and granted only actual amount of the surplus material. The reasoning assigned by the Arbitrator is based upon rationale which cannot be interfered unless and until the Award is found to be against public policy.

As regards the other claim qua compensation for delay, I am of the view that the Arbitrator being an expert examined the entire evidence on record and has taken into consideration the work done or not done in detail, much less, the escalation amount and other expenses incurred on stores, STE Observations, rent, electric bill etc. It also worked out recovery of over issued schedule 'B' stores and expenditure for execution of balance work and amount claimed by the Union of India in this regard, much less, compensation due to delay of completion of the work. In this regard, no evidence has been led to give break up of the alleged compensation on account of delay.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now raised in the aforementioned appeal, has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 34 of the Act, the same cannot be interfered with. In this context, I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the

aforementioned judgments, the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances, it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator, who is expert, has dealt with the matter and decided the claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arises from the award. The same is perfect and justified.

There is no merit in the appeal. The same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

July 14, 2016
Pankaj*