

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**FAO No. 1797 of 2015(O&M)
Date of decision : March 18, 2016**

M/s D. R.Traders, Desu Majra, Kharar and another

..... Appellants

Versus

Food Corporation of India and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Thakur , Advocate
for the appellants.

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-miller is aggrieved of the order dated 23.12.2004 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') seeking setting aside of the award dated 12.10.2011 has been dismissed.

Learned counsel appearing on behalf of the appellants submits that the arbitrator did not have jurisdiction as the dispute is of the year 1995 whereas the claim was filed in the year 1998 and first time the arbitrator entered into reference in the year

2006 and as per Rule 63 of the Act, the arbitrator was required to pass the order within a period of six months which could be further extended to another two months. In the absence of the agreement, the award is not sustainable in the eyes of law. The jurisdiction of the arbitrator was specifically challenged vide a separate application and objection was also taken but the same remained un-decided. The claim was with regard to two agreements, signatures on one of the agreement was denied, however, the arbitrator did not give any opportunity to cross-examine the witnesses, thus, the award is against public policy and the objections were within the parameters of Section 34 of the Act.

I have heard learned counsel for the appellant, appraised the paper book and also seen the record of the arbitrator and of the view that no such objection viz-a-viz jurisdiction of the arbitrator was taken. The procedure as per provisions of Section 12 and 13 of the Act was not followed to decide the dispute. Section 13 gives liberty to the parties to challenge the same but no such procedure has been followed. Even there is no force in the contention of the learned counsel with regard to the change of rate of interest, much less alleged claim as no objection in this regard has been taken. Section 4 of the Act deals with the waiver.

In view of the aforementioned observations, that no objection viz-a-viz jurisdiction of the arbitrator and the procedure being followed, in my view, the appellant deemed to have waived off the right, as regards limitation, the objecting court had dealt with the issue in extenso by holding that the claim was referred before the

arbitrator on 26.2.1998 and the period of contract was upto 28.2.1995 which was extended to 31.5.1995.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been 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 31 (3) 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. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment 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 embarked on a path by substitution in its own view. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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 arise from the award. The award is perfect and justified and all the objections filed against

the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

March 18 , 2016
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