

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**FAO No. 1815 of 2015(O&M)
Date of decision : May 12th , 2016**

State of Punjab and others

..... Appellants

Versus

M/s S. P. Singla Construction Pvt. Ltd.and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Piyush Bansal, DAG., Punjab.

Mr. Arun Jain, Senior Advocate with
Mr. Anirudh Wadhwa, Advocate
for the respondents.

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.

The appellant-State of Punjab is aggrieved of the impugned order whereby objections filed under Section 34 of the Arbitration (hereinafter called as 'the Act') seeking setting aside of the award dated 20.7.2013 rendered in favour of the respondent has been dismissed.

Mr. Piyush Bansal, learned DAG.,Punjab in support of grounds has raised multifold arguments which are

enumerated hereinbelow:-

That respondent No.1 was awarded a contract vide agreement No. 61/2006-07 for the construction of ROB (exclusive Railway Portion) on level crossing No.A-34 on Ludhiana-Ferozepur Rail Section at Jagraon. The work was to start on 17.11.2006 and the time limit was 14 months i.e. intended date of completion was 16.1.2008 whereas, as per the completion certificate Ex.C63, the work was completed in the month of June, 2010 spanning over 29.5 months.

After decision dated 17.5.2010 Ex. C-75 given by the Dispute Review Expert the matter was referred to arbitrator as per the terms of the contract.

The arbitrator and the objecting court have not taken into consideration the fact that the material documents produced on record show that Railway Pier 1 and 2 were to be constructed by the Railways and the site earmarked for the same, thereafter the respondent No.1-claimant-contractor was to lay the deck slab on the said piers at the site to be handed over by the Railways. The execution of the work by respondent No.1-claimant at the site in question was dependent on the execution of the work by the Railways. There was no negligence or delay attributed on behalf of the State of Punjab in handing over the site as Railways did not construct the aforesaid pier. The counter claim in this regard was also filed before the arbitrator but the same has been declined in a most fallacious and erroneous manner.

The award of the arbitrator does not prove delay on

the part of the appellant, therefore the compensation ought not to have awarded. There had been a mis-interpretation of clause 47 of the Agreement yet amount of ₹63,83,310/- has been awarded but the account between the parties had not finally settled. There was no question of change of contract price. The arbitrator ignored the fact that the respondent No.1-claimant utilized the machinery and men on profitable works awarded to it by IRCON at ROB's near Bhogur(2), one at Tanda and one at Bhangala near Dasuya in addition to the project in issue, thus, the finding that the aforementioned equipment, machinery and personal remained idle is neither here nor there.

He further submitted that umpteen number of letters were written to the Railways for construction of Pier 1 and 2 so that the deck slab could be get laid by the contractor. State of Punjab cannot be attributed to any delay. The claimant was aware of the factum of construction of Pier 1 and 2 by the Railways, therefore the claim of compensation was rightly repudiated.

He further submitted that counter claim for a sum of ₹1,84,34,100/- as liquidated damages was sought on account of delay on the part of the claimant. The aforementioned claim was formula based in terms of contract agreement as according to it there was delay of 258 days on the part of the claimant thus appellant was liable to be compensated at the rate of ₹71450/- per day upto 30.9.2008 and also interest @18% was also claimed, thus urges this Court for setting aside the award as impugned order as objections were falling within the realm and parameters of Section 34 of the Act.

Mr. ArunJain, learned Senior counsel assisted by Mr. Anirudh Wadhwa, appearing on behalf of the respondents submitted that work had been completed as is evident from completion certificate C-63. It is a matter of record the undisputedly the time was extended as the claimant had given a warning of not handing over the Piers where the Deck slap was to be laid after the Railways had constructed Pier 1 and 2.

He further submitted that the arbitral tribunal consisting of three arbitrators, out of them two were retired judges and one expert examined the matter thread bare and in extenso and found that the claim was justifiable. The delay was attributed to the appellant. In fact the delay was not at all attributed to the claimant, for, on simple reading of Clause 28 and 44 of the contract agreement and as well other documents on record, it surfaces that the contractor had been sending letters to hand over the site, in other words, had been taking steps/intention to do the work. Clause 44.1 takes care of the element of compensation where the delay was caused. The appellants were aware of the factum of work to be undertaken by the Railways over the railway lines. Infact there is no documentary evidence placed on record to show that respondent failed to discharge the duty, much less did not complete the work.

He further submitted that there is little scope of interference that the objections are not falling within the parameters of provisions of Section 34 of the Act, thus, urges this Court for affirming the finding and prays for dismissal of the appeal.

I have heard learned counsel for the parties,

appraised the paper book and of the view that there is no substance and force in the submissions of Mr. Piyush Bansal, for, it is a matter of record that the Railways were required to construct Pier 1 and 2 and thereafter the respondent-contractor-claimant was to lay deck slab on the said piers at the site to be handed over by the railways. In case, the aforementioned site was not handed over by railways, delay cannot be attributed to the claimant and therefore the payment of compensation as per provisions of Clause 47 of the agreement to the tune of ₹63,83,310/- had rightly been awarded by the arbitrator. In my view, the arbitral tribunal has not mis-interpreted clause 21,44 and 47 of the agreement, for, both the parties to the *lis* were given proper opportunity and arbitrator after examining the entire evidence, awarded compensation. Delay cannot be attributed to the contractor of having not completed the work in time. The arbitral tribunal has left no documents un-touched, much less the provisions of law in arriving at a finding of fact that the claim was substantiated not only on the basis of terms and conditions of contract but also evidence brought on record. The contract was for a sum of ₹14.29 Crores. No evidence has been placed on record to show that the contractor had utilized the machinery and other materials for construction and railways bridges as mentioned above. In the absence of evidence, the arbitrator has rightly rejected the counter claim as the claim was on the basis of costs incurred by him in completing the entire work in prolongation period of 14 months as originally contained in the agreement in 43.5 months due to the act of the respondents, the arbitral tribunal also

examined the judgment rendered by Hon'ble Supreme Court in **P.M.Paul Vs. Union of India AIR 1980 SC 1034** for the purpose of awarding compensation by way of damages as envisaged under Section 73 of the Indian Contract Act, 1872 as well as terms and conditions of the contract.

In my view, the award of the arbitrator cannot be said to be not in consonance of Section 28(3) of 1996 Act. Though the Engineer had extended the time after 15.7.2008 but did not take care of the factor of increase in the contract price, for, clause 44.2 of the agreement envisages such situation. The tribunal has also assigned reasons for declining the counter claim. It cannot be said that the arbitrator rejected the same on the ground which was never taken and awarding of interest @ 6% per annum w.e.f.17.1.2008 to 10.6.2010 and 11.6.2010 till the date of the award @12% per annum is not on the higher side. The future interest @ 12% per annum is also lesser than what has been prescribed under Section 31(7) of the Act whereas the appellants were aware of the factor that the certified area of construction was to be undertaken by the railways. They could have made prior arrangement so that as and when the contract is awarded to the contractor. Simultaneously the railway authorities were required to start the work of construction of pier 1 and 2 on receipt of the information so that such a situation do not arise which entails into prolonged litigation resulting into awarding of compensation including the element of interest. I deem it appropriate to issue directions to the State of Punjab to ensure that all the construction, particularly railway over

bridges, the delay on the part of the railway should not be there and there should be synchronization in getting the work executed as early as possible preferably within a time frame prescribed in the Indian Contract Act, 1872. This Court cannot re-appreciate the entire documentary evidence and sit on the arm chair of the arbitral tribunal to form a different opinion.

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. Vs. 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

May 12th , 2016
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