

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

FAO No.2727 of 2014

Date of Decision.21.11.2016

M/s Aman Construction Company and another
Vs

.....Appellants

Executive Engineer Public Health and another

.....Respondents

Present: Mr. Somesh Gupta, Advocate
for the appellants.

Ms. Deepali Puri, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-constructor is aggrieved of the partial allowing of the claim by the Arbitrator and dismissal of the objection thereto.

Mr. Somesh Gupta, learned counsel appearing for the appellants submits that in pursuance of the terms and conditions of the agreement dated 02.01.2007, the appellant was to execute the work of additional SWD for Karsan Colony, Chandigarh. The total cost of the work was ₹39,91,330/-. The completion of the work was to be done within three months from the date of award of work i.e. 02.01.2007. The department rescinded the contract during the period of extension and imposed a penalty of 5% whereas the contract envisaged of 1%. In the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, the witness of the Engineering Department, Municipal Corporation, Mr. B.K. Dhawan, SDE had admitted that notice did not indicate the imposition of penalty of 1% per week and penalty imposed at 5% is lacking reasons, in essence, not backed

contention, he has also drawn attention of this Court to para 2 of the agreement. Only claim No.4 has been allowed and therefore, the objections were falling within the parameters of Section 34 of the 1996 Act. The Arbitrator ought to have noticed the aforementioned fact and allowed the claim on this point.

Ms. Deepali Puri, learned counsel appearing for the Municipal Corporation submits that the terms and conditions of the agreement are sacrosanct between the parties which envisaged induction of the penalty by Engineer-in-Charge and the contractor did not avail the remedy and it was not in the domain of the Arbitrator, rightly so, the claim was rejected, though the aforementioned claim has been declined on merits, thus, urges this Court for confirming the finding under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that though the proceedings under Section 34 of the 1996 Act are summary in nature yet at certain point of time, the Objecting Courts are treating the objection as if an appeal and allowing the parties to lead evidence after framing of issues. The aforementioned procedure has been pondered upon by the Hon'ble Supreme Court in **Fiza Developers and Inter Trade (P) Ltd. Vs. AMCI (I) Pvt. Ltd. 2009(17) SCC 796** and Division Bench of this Court in **M/s Punjab State Industrial Development Corp. Ltd. Vs. Sunil K Kansal 2013(7) RCR Civil 2606** wherein the following principles have been culled out:-

“In view of the above, we answer the question of law framed as follows:-

(i) The issues, as required under Order 14 Rule 1 of the Code as in the regular suit, are not required to be mandatorily framed by the court. However, it is open to the court to frame questions which may arise for adjudication.

- (ii) The Court while dealing with the objections under Section 34 of the Act is not bound to grant opportunities to the parties to lead evidence as in the regular civil suit. The jurisdiction of the Court being more akin to the appellate jurisdiction;*
- (iii) The proceedings before the Court under Section 34 of the Act are summary in nature. Even if some questions of fact or mixed questions of law and/or facts are to be decided, the court while permitting the parties to furnish affidavits in evidence, can summon the witness for cross-examination, if desired by the other party. Such procedure is keeping in view the principle of natural justice, fair play and equity.”*

Be that as it may. Once there is categoric admission of B.K. Dhawan, SDE that notice did not indicate the imposition of penalty of 1% per week, much less, imposition of penalty of 2.5% of the contract amount then imposition of penalty somewhere to 5% was not permissible. I am of the view that imposition of penalty in view of categoric admission of the witness of the Municipal Corporation was not sustainable. Accordingly the same is hereby reduced to 1% with regard to both the claims.

The impugned order is set aside and the appeal is partly allowed. The contractor shall also be entitled to the element of interest as awarded by the Arbitrator.

(AMIT RAWAL)
JUDGE

November 21, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No