

225

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

**FAO-4805-2013 (O&M)
Date of decision : 06.05.2016**

Punjab Alkalies and Chemicals Ltd.

... Appellant

Versus

M/s Amar Nath Aggawal Construction (P) Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Nehra, Advocate
for the appellant.

Mr. P.S. Rana, Advocate
for respondent No.1.

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-Punjab Alkalies and Chemicals Ltd., is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitrator and Conciliation Act, 1996 (hereinafter called the 1996 Act') seeking setting aside of the Award dated 12.05.2009.

Mr. Arun Nehra, learned counsel appearing on behalf of the appellant submits that in view of the contract having been entered into with the Contractor, the work was to be completed within one year. there was a delay of 9 months. Both the parties attributed the delay on each other. The talks of settlement arrived at and accordingly, as per the terms and conditions of the agreement, 0.5% of liquidated damages was liable to be levied on the

Contractor, which was ultimately agreed to 0.25% and the Contractor, in this regard, had agreed to pay by treating it as commercial settlement. After having considered it as commercial settlement, the claim before the Arbitrator was not maintainable. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in **"M/s P.K. Ramaiah and Company V/s Chairman & Managing Director, National Thermal Power Corporation", 1994 Supp. (3) SCC, 126.**

Mr. P.S. Rana, learned counsel appearing on behalf of the respondent(s)-Contractor submits that specific issues, in this regard, was framed by the Arbitrator and after examination of the evidence and provisions of law, found that the Contractor had no other choice, but to give undertaking as bank guarantee of ₹ 58 Lacs was sought to be en-cashed by the Agency-respondent(s). It is, in these circumstances, the Arbitrator awarded the compensation to the tune of ₹ 12 Lacs along with interest @ 12%, thus, urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the plea of Mr. Arun Nehra, for, the Arbitrator is the best judge to examine the the claim and rival claim of the parties, but the facts as noticed above reveal that the Contractor, though had agreed to the aforementioned settlement as a commercial settlement, but payment of ₹ 11 Lacs, would not be a estoppel to claim the same, in view of the ratio decidendi culled out in the judgment of Hon'ble Supreme Court rendered in **"M/s Ambika Construction V/s Union of India", 2007 (1) RCR (Civil), 257,** thus, the objections regarding maintainability are hereby overruled.

As regards on the merits, the fact remains the Arbitrator, on the examination of the evidence, found that the delay was attributable to the appellant. For the sake of brevity, the operative part of the award reads thus:-

"It is common ground between the parties that commercial settlement comprising settlement/compromise regarding three works executed by the claimant with the Respondent was made between the parties. That settlement insofar as it pertained to the other two works, is not shown by the claimant to have been disputed by it. Its attack is confined to the part of that settlement relating to the work in question in the present case. The learned counsel for the claimant disputes its legality on the grounds that (i) it was sought to be made by the Respondent with respect to quantum of liquidated damages to be levied upon the claimant under clause 4 of the work agreement in question for the represented delay stated to have been made by the claimant in executing the work in question, whereas there was actually made no delay inasmuch as the period for the execution of this work had been extended uptill 31.07.1995 and the work in question was executed within that extended period, (ii) the delay, if any, occurred in executing this work, was attributable to the respondent and not to the claimant on account whereof, the Respondent could not levy upon the claimant under clause 4 of the work agreement in question, any liquidated damages for its own default, (iii) the settlement had been brought about by the respondent by exercising pressure and duress upon the

claimant.”

This Court, while sitting in appeal, cannot re-appreciate the evidence as the Arbitrator Tribunal being the expert examined and dealt the matter in extenso.

In view of the foregoing reasons, no ground is made out for interference, in the order, under challenge, and accordingly, the appeal is dismissed.

06.05.2016
yogesh

(AMIT RAWAL)
JUDGE