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

**FAO-2880-2015 (O&M)
Date of decision : 21.01.2016**

Chaudhary Charan Singh, Haryana Agriculture University, Hisar

...Appellant

Versus

Deepak Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sailender Singh, Advocate,
for the appellant.

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 is aggrieved of the order dated 17.03.2015, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 05.09.2013 passed by the Arbitrator have been dismissed.

Mr. Sailender Singh, learned counsel appearing on behalf of the appellant submits that the Contractor as per the agreement

was required to undertake the renovation of 62 houses. However, he did not complete the renovation work of all the houses except 9, rightly so, penalty to the tune of 10% of the agreement amount was imposed. Since, the dispute arose, the matter was referred to the Arbitrator. The Arbitrator has not appreciated the fact that it was fault of the contractor in not undertaking the renovation of all the houses. The objections have also met with the same fate. However, the Award is not sustainable in the eyes of law, much less, it is against the public policy.

I have heard the learned counsel for the appellant and appraised the paper book.

It would be apt to reproduce the findings rendered by the Arbitrator reads thus:

"5. From the statement/submission of the claimant as well as respondent, it is crystal clear that not a single vacant house was available with the respondent on the date of allotment of work which could be handed over to the claimant for carrying out the renovation work except terrace of the houses for re-title terracing. Even the respondent admitted that 5 vacant houses were made available to the claimant for carrying out the work during the month of November, 2011 and another 5 houses were made available during the month of January/February, 2012. So the breach of agreement occurred from the day one when the work was allotted by the respondent and full site was not available with him which could be handed over to the claimant for carrying out the work. Breach has also occurred from claimant side because he delayed the signing of the agreement

and also delayed starting of the re-tile terracing work for which the site was available. The work of re-tile terracing and repair of 9 houses was started by the claimant during the month of January, 2012 and completed during April, 2013. Due to delay and slow progress, the respondent imposed 10% compensation amounting ₹ 9.00 lacs vide his letter No.1299-1303 dated 15.03.2013. The action of respondent imposing penalty equal to 10% of the total amount of the agreement is not justified when the total site was not made available to the claimant. The total value of renovation work done in 9 houses including Civil, PH and Electric and re-tile terracing has been intimated by the respondent to be ₹ 9.11 lacs. The claimant remains liable for 10% compensation on this ₹ 9.11 lacs only as only, this much site was made available to him and he had delayed the work in this area. Balance site was not made available to the claimant till the imposition of penalty. Therefore, imposing penalty over the total amount of agreement is not justified when even the site has not been handed over to the claimant for carrying out the work.

6. The contract has become null and void by the act and conduct of both the parties and the same needs to be closed. Whatever dues are due to the claimant need to be paid to him. The respondent is entitled to deduct the compensation amounting to ₹ 91,100/- equivalent to 10% of total amount of work done on the portion of site which was made available to him on account of delay caused in completion of this part of work. No other relief especially damages worth ₹ 2.00 lacs can be awarded to the claimant being hypothetical as no detail of the same has been produced before me.

It is ordered accordingly."

On going through the aforementioned reasons, in my view, the Arbitrator is none else but was the Estate Officer-cum-Superintending Engineer of the appellant, who examined that renovation work of 9 houses started and work of other houses were not available to the claimant for carrying the renovation work and accordingly, reduced the penalty and held that the respondent is not entitled to deduct the compensation amounting to ₹ 91,100/- equivalent to 10% of the total amount of work done on the portion of the site. It further observed that whatever, dues are due to the claimant are required to be paid to him.

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.

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 claim of respective claimants to the parties to the *lis*.

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 as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

21.01.2016
yogesh

(AMIT RAWAL)
JUDGE