

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

1. FAO No.449 of 2014 (O&M)
Date of decision : 15.09.2016

The Chandigarh Young Dwellers Cooperative Housing Building Society
Ltd. and another

...Appellants

Versus

M/s A.K. Construction Company and another

..Respondents

2. FAO No.4633 of 2014 (O&M)
Date of decision : 15.09.2016

The Chandigarh Young Dwellers Cooperative Housing Building Society
Ltd.

...Appellant

Versus

M/s A.K. Construction Company

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ashok Goel, Advocate for the appellants.
(In both appeals)

Mr. Vivek Suri, Advocate for the respondents.
(In both appeals)

AMIT RAWAL, J. (Oral)

CM No.16819-CII of 2016

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Main appeal is taken on board.

Main Case

This order of mine shall dispose of two appeals bearing No.449 of 2014 against the order dismissing the objections under Section 34 of the Arbitration and Conciliation Act, for setting aside of the award dated 07.07.2006 and another against the order, whereby relief under Section 9 has been granted in favour of the Contractor.

Mr. Ashok Goel, learned counsel appearing on behalf of appellants submits that respondent-Contractor was awarded the contract for construction of 119 numbers of flats at the site of objector at plot No.28, Sector-49A, Chandigarh. The date of tender was 30.04.1998 and started the work on 01.06.1998. The work was completed on 31.12.1999. Certain disputes arose between the parties and resulted into resolution of the disputes through arbitration. The Arbitrator had taken the certain facts that Contractor was at fault in not completing the work on time on account that there was material defects in the construction and use of the material. The objector was credited the amount of ₹4,00,000/- in the account of the respondent which was received as security. The arbitrator illegally and erroneously awarded the interest on amount of ₹13,79,670/- @ 18% p.a.

from 14.11.2001 to 07.07.2006 and from 07.07.2006 till its realisation. In fact the amount of interest cannot be said to be as per the provision of Section 31(b)(7) of the Act as interest cannot be more than the bank rate i.e. 9% p.a.. Awarding of the interest at the rate of 18% p.a. is against public policy. The arbitrator also awarded cost at the rate of ₹30,000/-. The Counter Claim has also erroneously been rejected. Payment of the contractor was withheld as the Contractor failed to rectify the defects pointed out to him. The claim of the Contractor before the Arbitrator was not sustainable. The objections were falling within the realm of Section 34 but the Objecting Court had dismissed the same in a most perverse manner and urges this Court for setting aside of the award as well as impugned order under challenge.

In order to secure the amount of Contractor, Contractor had moved application under Section 9 but the same has been disposed of, whereby two flats had been ordered to be reserved in lieu of the amount of compensation awarded by the Arbitrator. The aforementioned order cannot be passed in view of provision of Section 36 of the Act as the award does not come into force and particularly when the objections were filed.

Per contra, Mr. Vivek Suri, learned counsel appearing on behalf of respondents submits that owing to the dates given above, the Contractor completed the work and handed over the possession and as per the terms and conditions, society was liable to return the security within a period of one year and rest of the payment was withheld due to no fault of the Contractor. All these facts has been examined by the Arbitrator which this

Court cannot re-appreciate. In support of his contention, qua awarding of interest @ 18% p.a., he relies upon the judgment rendered by Hon'ble Supreme Court in case *M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa through Chief Engineer, 2015(2) SCC 189*, and urges this Court for affirmation of the opinion under challenge in both the appeals.

I have heard learned counsel for the parties and appraised the paper book and am in agreement with the submission of Mr. Vivek Suri, vis-a-vis the contents of the award and the objections. In my view, Arbitrator being the expert had already examined the entire evidence and on enquiry found that withholding of the payment was without any rhyme and reasons. The award has unnecessarily been objected to rather intended to cause the delay in the payment. Even the security of ₹4,00,000/- which was liable to be refunded within a period of one year, has not been returned back and in this process, incurred huge interest. It has not been proved on record whether the amount was used or some interest incurred on it and rightly so, the Arbitrator awarded for refund of the same, over and above the compensation of ₹13,00,000/- an odd amount.

I am in agreement with the submission of Mr. Ashok Goel, vis-a-vis granting of interest at the rate of 18% p.a. to be on higher side though Hon'ble Supreme Court in many cases held that the interest awarded is in consonance with the sub-Clause-(b) of Sub-Section 7 of Section 31 of 1996 Act. Amount of interest at the rate of 18% p.a. is little high. Learned counsel for respondent submits that interest is totally in consonance with the provisions of the Act and therefore it should not be reduced.

In view of peculiar facts and circumstances of the case and particularly the society was registered in 1996 of retirees, therefore, rate of interest is ordered to be reduced from 18% p.a. to 12 % p.a.. This order of mine shall not considered as a precedent.

With the aforementioned modification in the award, the findings on the other issues/claims are upheld. Both the appeal stands partly allowed with the modification that over and above the amount of compensation, it shall entail the interest at the rate of 12% p.a.. There shall be no change in the period of interest.

As regards the other appeal, I am of the view that so long as appellant does not make the payment of the award so modified by this Court at the rate of 12% p.a., the entire amount granted by the Arbitrator @ 18% p.a. shall be in operation.

In case, the Society-appellant failed to honour the same, the respondent-Contractor shall be at liberty to seek the execution of the award in accordance with law.

15.09.2016

pawan

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No