

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

F.A.O.No.2425 of 2016 (O&M)

Date of Decision: April 29th, 2016

Chandigarh Housing Board, Sector 9, Chandigarh

...Appellant

Versus

M/s Hans Raj Kohli & Company & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Vishal Sodhi, Advocate,
for the appellant.**

AMIT RAWAL J. (ORAL)

The appellant-Chandigarh Housing Board is aggrieved of the dismissal of the objections filed for seeking setting-aside of the award dated 29.2.2012 passed by their Chief Engineer acting as an Arbitrator.

Mr.Vishal Sodhi, learned counsel appearing on behalf of the appellant confines his argument with regard to the amount payable on account of earth work undertaken by the Contractor beyond 10% of the variation as mentioned in the agreement @ ₹195/- per cubic meter instead of ₹125/-. He submits that condition No.1 provided the applicability of the justified rates to be worked out by the Chandigarh Housing Board (for short "CHB") on the date of tender plus any escalation as provided in the tender/agreement and, therefore, the justified rates, according to the tabulated form extracted in the memorandum of appeal, should be ₹125/- per cubic meter instead of ₹195/- and at that rate, the payment has already

been made. The terms and conditions of each contract have to be seen. The present contract was for a total lump-sum ₹10.00 crores as the rate awarded is on higher side, i.e., ₹213/- per cubic meter. Each contract is having different terms and conditions, therefore, the Contractor did not lay much emphasis, much less rely upon the decisions of the CHB enabling the Arbitrator to form an opinion against the terms and conditions of the contract and, therefore, award was not as per the provisions of Section 28(3) of the Arbitration and Conciliation Act, 1996 (for short “the Act”). All these points were seriously objected to in the objection petition, but the Objecting Court has declined to interfere on the ground that the CHB has not been able to lead evidence contrary to what has been made by the Contractor and, thus, urges this Court for setting-aside of the award and the impugned order.

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

For the sake of brevity, it would be apt to reproduce the relevant portion of the award, which reads thus:-

“I find logic in the arguments advanced by the Claimants and opine that the condition put forth by the Respondents for allowing a rate of Rs.74.05 per cum beyond 10% variation was too harsh and there had to be some limit beyond which a Contractor can be forced to execute the work at the agreed rates. Under the given circumstances I hold that even if the said limit is fixed at 200% variation that too will be against the principles of natural justice. However in the interest of adjudcating the issue I presume that even if the claimant was required to undertake additional quantity of 4928, cum (2462x2) of earth at the stipulated rate of Rs.74.05 per cum, the Claimant should stand reasonably compensated by allowing him a market rate of Rs.195 per cum (if not Rs.213 or

Rs.223 per cum as contended by the claimant) on the remaining quantum of earth work. The Claimant is thus entitled for a claim of Rs.3,08,640/- (7500 cum-4924 cum] x [Rs.195-Rs.74.05) subject to the precise calculations to be done by the respondents.”

As already mentioned above, Mr.Sodhi has confined his prayer with regard to the award of rate qua work of filling earth beyond 10% variation @ ₹195/- per cubic meter. There had been instances where the CHB had given the justified rates ranging from ₹213/- to ₹223/- per cubic meter and, therefore, the Arbitrator, being the expert and Chief Engineer of CHB, assessed the justified rate, i.e., ₹195/- per cubic meter instead of ₹74.05. The CHB did not give the justification in fixing the rate of ₹125/- per cubic meter. The Objecting Court cannot sit as a Court of appeal and re-appreciate the evidence, particularly when the award has been pronounced by an expert, as noticed above.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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 judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. 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 claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. 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 arises from the award. The same is perfect and justified.

There is no merit in the appeal. The same is accordingly dismissed.

April 29th, 2016
ramesh

(AMIT RAWAL)
JUDGE