IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2511 of 2016 (O&M)
Date of decision:03.05.2016

M/s T.P.A. Builders and Developers ... Appellant

Vs.

Municipal Corporation, Jalandhar and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vikram Anand, Advocate
for the appellant.

Mr. Sudhir Paruthi, Advocate
for respondent No.3/caveator.

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of the Court, Mr. Ashok Kumar Bazaz, Advocate accepts notice on behalf of respondents No.1 and 2.

The appellant-contractor is aggrieved of the cancellation of the agreement and as well as declining of the counter claim of ₹50 lacs.

Mr. Vikram Anand, learned counsel appearing on behalf of the appellant-contractor submits that an agreement dated 18.08.2006 was entered into between the appellant and the Municipal Corporation, Jalandhar, for construction of 3 ATM with Ice Cream Parlor and car parking on Built-Operate-Transfer (B.O.T)

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basis in Jyoti Chowk, Jalandhar. Accordingly, the contractor deposited a sum of ₹2,00,000/- as earnest money in the municipal funds. The estimated costs of the work was ₹40 lacs. The construction was to be done strictly as per the design enshrined in conceptual plan. The aforementioned construction was meant for two wheelers and same can be changed for four wheelers and therefore, the construction raised was for the purpose of four wheelers, therefore, there were certain changes in the ramp area and as well as in the shape of restaurant. There was no condition imposed in the agreement with regard to size of the advertisement. Two ATMs had already been constructed and while constructing third ATM, the Municipal Corporation has razed and the matter was taken up before this Court, whereas, the Arbitrator had declined the relief with regard to the counter claim in the absence of any evidence and many adjournments would show that appellant-contractor had been deprived of utilizing the area on BOT basis as they had been causing advertisement in the newspaper with regard to litigation and no one was willing to take the shop on rent for Ice Cream Parlor, much less park their vehicles.

Mr. Ashok Kumar Bazaz and Mr. Sudhir Paruthi, learned counsel appearing on behalf of respondents No.1 to 3 submits that area on which the construction raised was 5,771 square feet whereas, it was to be raised on area of 6,549 square feet. The contractor had included the area more than one required for construction of the parking. There is no scope of widening of road

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which was kept in original conceptual plan. There were other grounds for cancellation of the agreement. In the absence of evidence, counter claim has rightly been dismissed. Even the contract period was only for 07 years which expired in 2015 and therefore, the contractor is liable to hand over the possession of the same.

I have heard learned counsel for the parties and appraised the paper book and of the view that since the contractor had not been able to lead any evidence with regard to damages as claimed under the provisions of Section 73 of the Contract Act and rightly so, the claim has been rejected. Despite cancellation of the agreement, the contractor has enjoyed the possession of the premises and by that time, contract time is over. There can be no grievance with regard to cancellation of the agreement as the claim of the contractor was not in terms of money. No prejudice would be caused to the contractor qua cancellation of the agreement.

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**

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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.

(AMIT RAWAL)
JUDGE

May 03, 2016
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