

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2651-2016 (O&M)

Date of decision : 01.06.2016

Punjab Small Industries and Export Corporation Ltd. and another

... Appellants

Versus

M/s Raj Kishan and Company

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Sharma, Advocate
for the appellant(s).

Mr. D.K. Singal, Advocate
for the respondent.

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(s)-Punjab Small Industries and Export Corporation Ltd. is aggrieved of the impugned order whereby they have been entrusted an assignment of maintaining the plant and machinery of the Contractor till the adjudication of the dispute by the Arbitrator.

Mr. Sanjeev Sharma, learned counsel appearing on behalf of the appellant(s)-PSIEC submits that the Contractor had not approached the Court with clean hands as at the time of the rescission of the Contract, an advance of ₹ 97,79,611/- was outstanding against the respondent, whereas, the final bill is to the tune of ₹ 73,94,288/-, thus, substantial amount is required to be refunded by the respondent-Contractor. The dispute is with

regard to the plant, machinery and as well as the other material lying at the site. It is not the matter which could be adjudicated by the Arbitrator.

He further submits that the respondent abruptly and in a haste stopped the work rather abandoned the same even without exhausting the advance payment given to him. A notice dated 29.06.2012, in this regard, was also sent. As per the Clause (iv) of the Contract, the PSIEC is within his right to take the control of the tools, plant, machinery and other material lying at the site for recovering the due from the applicant and after settling the final claim, a sum of ₹ 24,00,000/- is recoverable from him. Though, the Arbitrator has already been appointed in the matter, but the respondent has not submitted his claim and therefore, the impugned order is causing an impediment in execution of the work at the risk and cost of the Contractor and the plea of returning of the goods was seriously objected to before the Court below.

Mr. D.K. Singal, learned counsel appearing on behalf of the respondent-Contractor, submits that time and again, the appellant(s)-PSIEC was informed about the delay in the work and various letters were also, in this regard, sent, but the funds which were provided by the Punjab Government to the PSIEC, were not deposited in the account of PSIEC and it decided to foreclose the contract, this fact is reflected in the letter dated 30.04.2012. In view of such predicament, respondent refused to accept the extension. Even the bank guarantee of ₹ 50,00,000/- submitted in this regard, has been released. The Arbitrator has already been appointed and before whom acknowledged the order, under challenge. He further submits that the aforementioned plant, machinery etc., ought to have released,

though the land and site of the PSIEC is free from any impediment, hindrance or obstruction.

I have heard the learned counsel for the parties and appraised the paper book and of the view that vide impugned order dated 25.08.2015, the PSIEC has been directed not to auction the aforementioned articles till the adjudication of the matter by the Arbitrator and a direction has been issued that the articles be kept in such a manner so as to preserve and prevent their deterioration. I am of the view that the order, under challenge, would not suffice the claim of the appellant(s), for, in view of the interim order, aforementioned, at the best, the PSIEC is entitled to claim damages, in case, they are able to prove their claim with regard to the refund of the alleged amount of ₹ 24,00,000/-.

It is expected that the Arbitrator shall decide the matter in a most pragmatic and reasonable manner after considering the documentary evidence.

In view of what has been noticed above, the impugned order, under challenge, is upheld.

Resultantly, the appeal stands disposed of.

01.06.2016
yogesh

(AMIT RAWAL)
JUDGE