

**FAO No. 3278 of 2016**

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**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**FAO No. 3278 of 2016**  
**Date of decision : June 1 , 2016**

**M/s Gargson Builders**

**..... Appellant**

**Versus**

**Union of India and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

**Present:- Mr. D. K. Singal, Advocate  
for the appellant.**

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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).**  
**CM No. 11897-CII of 2016**

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 67 days in refiling the appeal is condoned.

The application stands disposed of.

**CM No. 11898-CII of 2016**

This is an application under Section 149 read with Section 151 CPC for making good the deficiency in court fees.

The application is allowed.

Permission granted to make good the deficiency in court fee.

**FAO No. 3278 of 2016**

The appellant-contractor is aggrieved of the dismissal of objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground that the arbitrator while ordering for refund of earnest money and security has adjusted the amount as liquidated damages in view of the letter dated 19.7.2007.

Learned counsel appearing on behalf of appellant submits that as per contract dated 28.2.2005 the appellant was awarded a contract for raising construction of Electrical sub station augmentation of parking facilities at EME complex. The work was to be done within six months. However, extension was granted from time to time and last extension was 30.8.2007 without penalty and with penalty upto 30.9.2007.

However, before the expiry of aforementioned period a show cause notice dated 25.7.2007 was served to undertake the work within a period of seven days and subsequently, a 48 hours notice, dated 3.8.2007 was issued and thereafter the agreement was cancelled on 6.8.2007 i.e. before the expiry of extended date, therefore the action of the department was totally against their own decision, thus they are not entitled to liquidated damages.

I have heard learned counsel for the appellant appraised the paper book and of the view that for the alleged admitted loss the appellant-contractor has failed to lodge any claim, therefore the aforementioned argument is not able to cut ice, much less is not sustainable in the eyes of law. As regards adjustment of security and refund of earnest money, rightly so the arbitrator has ordered for adjustment in terms of letter dated 19.7.2007 in which extension was granted with charges of ₹2,000/- per week upto 30.9.2007.

It is conceded position on record that the contract was at the risk and cost of the appellant, thus, in my view there is no substance in the submissions much less objections were not falling within the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

No ground for interference is made out. The appeal is accordingly dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**June 1 , 2016**  
**archana**