

**C.M.No.21048-CII-2016 in/and
FAO No.3279 of 2016 (O&M)**

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

**C.M.No.21048-CII-2016 in/and
FAO No.3279 of 2016 (O&M)
Date of decision:05.12.2016**

Haryana State Agricultural Marketing Board ... Appellant

Vs.

M/s Sigma Construction Co. and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Punit Malik, Advocate, for
Mr. Partap Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.21048-CII-2016

For the reasons stated in the application, duly supported by an affidavit, order dated 29.09.2016 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

The main appeal is taken on board for hearing today itself.

C.M.No.11909-CII-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 628 days in re-filing the appeal is condoned.

C.M. stands disposed of.

FAO No.3279 of 2016 (O&M)

The appeal is accompanied by an application seeking

condonation of delay of 230 days in filing the appeal on the premise that after obtaining the certified copy of the order dated 11.07.2013, the case was put up by the office for further necessary action and on obtaining the legal opinion, the appellant decided to file the appeal. It is in this background of the matter, delay of 230 days has occurred in filing the appeal. The affidavit does not disclose the moment of the file, much less date of opinion, therefore, in my view, the application seeking condonation of delay is not backed by reasons, much less, cogent reasons.

On merits, Mr. Punit Malik, Advocate for Mr. Partap Singh, learned counsel appearing on behalf of the appellant submits that there was no agreement between the parties, therefore, the matter could not have been referred to the Arbitrator. The passing of the award is nothing but without jurisdiction and this aspect was specifically raised and urged before the Objecting Court but the same was met with the same fate. In the absence of the contract, the matter could not have been referred to the Arbitrator and thus, the proceedings are liable to be set aside.

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

It is conceded position on record that parties were at loggerheads and and this Court, vide order dated 30.08.2008 appointed the Arbitrator. No such objection has been taken before the Arbitrator. In pursuance to the tender notice dated 3.9.2002, the allotment was made, vide letter dated 31.10.2002. All these facts would leave to irresistible

conclusion that the work could not have been allotted in the absence of the contract. Once having failed to take objections, the appellant is estopped to raise objection, much less deemed to have waived the right, as per the provisions of Section 4 of the Arbitration and Conciliation Act, 1996.

No ground is made out for interference in the findings under challenge while seeking condonation of delay. Accordingly, the appeal is dismissed on the ground of limitation, as well as on merits.

(AMIT RAWAL)
JUDGE

December 05, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No