IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.465 of 2015 (O&M)
Date of decision : 02.06.2016

Haryana State Industrial and Infrastructure Development Corporation Ltd.

...Appellant

Versus

R.P. Bedi through LRs

...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. Rajvir Singh Sihag, Advocate for the appellant.

Mr. P.S. Rana, Advocate for respondent Nos.1 to 3.

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AMIT RAWAL, J. (Oral)

The appellant-HSIIDC is aggrieved of the dismissal of the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the award dated 31.01.2011.

Mr. Rajvir Singh Sihag, learned counsel appearing on behalf of appellant submits that Corporation by invoking the provision of Section 29(b), the State Financial Corporation Act had sold the plot in question, in open auction on 26.03.1998. The respondent was the highest bidder, who gave the bid to the tune of ₹25,12,000/-. In August 1998 (Annexure A-1), agreement was entered into between the parties and the possession as per the agreement was required to be handed over immediately on that very day but it is conceded position on record that possession was not handed over. As per the agreement, 25% of the amount i.e. ₹6,28,000/- had to be paid but by that time, the respondent had already paid ₹11,48,000/- and installments of ₹1,70,000/- along with interest at the rate of 17.5% p.a. was required to be paid. It is also conceded position on record that entire payment was made and thereafter in 2002, HSIDC had issued "No Dues Certificate". However, for the reasons stated that "No Dues Certificate", aforesaid, was withdrawn on account of fact that an entry of ₹3,76,800/- has already been credited twice. In fact that amount was never paid and the aforementioned amount after including the interest has burgeoned to ₹8,40,000/-. The respondent-claimant having no other option but to pay the aforementioned amount and sale deed had been executed. It is also conceded position on record that the possession was handed over in 2002. It is in these circumstances, the respondent-claimant invoked the jurisdiction of the Arbitrator as agreement aforementioned contained the resolution of the dispute through intervention of the Arbitration. Former Judge of this court had been appointed as Arbitrator who after calling upon the parties and examination of the documentary evidence allowed the claim and ordered for refund of ₹8,40,453/- along with interest at the rate of 17.5% w.e.f. 29.08.2006 till the actual payment. The Arbitrator has further ordered an amount of ₹6,53,614/- towards delayed possession. It is aforementioned amount of compensation which has been challenged by HSIIDC by holding that claimant had defaulted in making the payment and had not even taken of the possession despite numerous letters, therefore, award is against the public policy and objections thus falling within the parameters of Section 34 of the Act.

He further submits that "No Dues Certificate" was withdrawn having noticed the double entry of ₹3,76,800/- thus urges this Court for setting aside the impugned award and as well as order under challenge.

Mr. Rana, learned counsel appearing on behalf of respondent Nos.1 to 3 submits that no show cause notice before withdrawal of "No Dues Certificate" was served and possession has been handed over after four years thus it is in this respect compensation to the tune of ₹6,53,614/-, has been awarded. Documentary evidence produced before the Arbitrator reveals that entire amount had been paid and there was no double entry, therefore alleged demand of ₹8,40,453/- has been held to be recoverable and urges this Court for upholding of the award and order under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that it is the case where auction purchaser had been unnecessarily made to run from pillar to post. The impugned action of the HSIIDC for recalling the "No Dues Certificate" is without complying with the principles of natural justice. The Arbitrator on the examination of the evidence found that the alleged entry of ₹3,76,800/- was not a double entry and the payment including the element of cost and interest of ₹8,40,453/- as highly erroneous. It is matter of record that plot in auction was residential and the claimant was prevented to utilize the plot and of having not handed over the possession for almost four years and rightly so, been awarded the compensation in terms of money. Such an act of the HSIIDC in my view is deplorable, much less, deprecated. The recovery authority should not act as an shylock and approach should be pragmatic and reasonable. While sitting in the office, they could not certainly withdraw "No Dues Certificate" without adhering to the principles of justice.

In my view the Arbitrator has already taken into consideration the element of interest. I am of the view that cost awarded by the Arbitrator is required to be recovered from the officer concerned who is responsible in withdrawing the “No Dues Certificate” without issuing any show cause notice.

This Court while in appeal cannot act as an expert and re-examine and re-appreciate the evidence.

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 or for want of reasons 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 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. 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 award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

Keeping in view the aforementioned fact, award of the Arbitrator is modified to the extent that cost imposed by the Arbitrator is ordered to be recovered from the Officer who was responsible for "No Dues Certificate" without compliance of principles of natural justice, in accordance with law.

Appeal is dismissed.

It is matter of record that instead of 25%, excess amount of ₹11,48,000/- had been paid and the claimant had not even claimed interest thereon, thus prayer for awarding interest which has to be for the alleged demand at this stage is sustainable.

02.06.2016 **(AMIT RAWAL)**
pawan **JUDGE**