

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No.3697 of 2016 (O&M)

Date of Decision.27.09.2016

The Punjab State Federation of Cooperative House Building Societies
Limited
Appellant

.....

Vs

M/s Sharma and Associates and another

.....Respondents

Present: Mr. Dharam Vir Sharma, Senior Advocate with
Mr. Harit Sharma, Advocate
for the appellant.

Mr. Amit Gupta, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Notice of motion.

Mr. Amit Gupta, Advocate accepts notice for the respondents.

The appellant is aggrieved of the impugned order whereby the
objection against the Award dated 30.04.2015 has been dismissed.

Mr. Dharam Vir Sharma, learned Senior Counsel assisted by
Mr. Harit Sharma, Advocate appearing for the appellant submits that the
Objecting Court has failed to appreciate the fact that the Award of the
Arbitrator was not in consonance with the terms and conditions of the
contract as the allotment of work specifically mentioned "subject to the
outcome of the writ petition" filed at the instance of the erstwhile contractor
and the respondent-contractor shall not be entitled to any compensation
with regard to delay in handing over the site, much less, idling the
machinery and staff.

He further submits that award of the Arbitrator is totally against

the public policy and therefore, falls under the realm of provisions of Section 34 of the 1996 Act. As regards the claim No.4, the contractor has not been able to place on record any evidence with regard to number of staff employed to support the aforementioned plea. All these factors have not been noticed by the Arbitrator, much less, the Objecting Court, thus, urges this Court for setting aside the impugned Award and the order under challenge passed by the Objecting Court.

Per contra, Mr. Amit Gupta, learned counsel appearing for the respondents submits that as per the ratio decidendi culled out in the judgment of the Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49** the objections were not maintainable as the appellant had failed to bring the case within the expression "patent illegality". The Arbitrator examined the matter on the preponderance of the whole documentary evidence and the same cannot be re-appreciated /re-examined to form a different opinion unless there is patent illegality. He also relies upon the ratio decidendi culled out in the judgment of the Hon'ble Supreme Court in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698**, thus, urges this Court for confirming the order passed by the Objecting Court by dismissing the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Dharam Vir Sharma, learned Senior Counsel. As regards the claim Nos.1 and 2, the appellant has already accepted the same. Claims Nos.3, 4, 6, 7 and 8 are of consequential effect on account of delay in handing over the site as the machinery/staff remained idle on that count. The

compensation in respect of the aforementioned claims has been sought on that account. I am of the view that Arbitrator noticed all these factors and awarded the amount. There was no stay by this Court in respect of litigation initiated by the erstwhile contractor and therefore, no explanation has come forward for not handing over the site. The public undertakings or the companies incorporated under the Companies Act particularly run by the Government are indulging into unnecessary litigation entailing into incurring of interest. In fact, it causes big hole in the State exchequer or their own kitty. Such kind of approach is deprecated. If at all, prima facie, there is some fault, they should not litigate rather settle these matters instead of indulging into prolonged litigation through arbitration and as well as filing the objections.

For the foregoing reasons, neither this Court nor the objecting court can sit in the arm chair of the Arbitrator to re-appreciate and re-examine the evidence. I do not find any reason to differ with the order under challenge passed by the Objecting Court, much less, the award of the Arbitrator. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 27, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No