

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 4791 of 2015(O&M)
Date of decision : May 3, 2016

M/s Jaswant Rai Verma

..... Appellant

Versus

Union of India and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mukand Gupta, Advocate
for the appellant.

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. 14844-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 20 days in refiling the appeal is condoned.

The application stands disposed of.

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The appellant-contractor is aggrieved of the delayed payment of the amount, non-refund of the earnest money as well as granting interest lesser than what is prescribed under Section 31(7)

of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

Learned counsel for the appellant submits that indisputably the work was completed and the tribunal also arrived at a finding that the payment was outstanding but the same was not released, therefore the interest @ 12% per annum is too meager and less as it was commercial land and the interest should have been @ 18% per annum.

He further submits that the arbitral tribunal should have issued directions with regard to refund of security deposited of ₹20.60 lacs. The respondent-Union of India deducted the security in respect of other contract and now vide letter dated 1.1.2015 ordered to release ₹13,71,109.25 which is not permissible in law, thus, urges this Court to interfere with the finding rendered by the arbitrator, much less the order under challenge vide which objections under Section 34 of the Act have been dismissed.

I have heard learned counsel for the appellant and appraised the paper book and of the view that the terms and conditions of the contract are sacrosanct between the parties to the *lis* which envisages refund of security without any interest, therefore the claim of the contractor seeking interest on the refund of security money was not sustainable, in case, the respondent has deducted the part of security amount in respect of payment, the appellant shall be entitled to challenge the same in a competent court of law but not in appeal. Viz-a-viz rate of interest, I am of the view that 12% interest is reasonable and just. The interest has been awarded in view of the

finding rendered by the arbitrator qua non-release of payment of outstanding bills.

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 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. 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. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against

the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

May 3, 2016
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