

**C.M.No.10978-CII-2016 in/and
FAO No.6088 of 2015 (O&M)**

{1}

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

**C.M.No.10978-CII-2016 in/and
FAO No.6088 of 2015 (O&M)
Date of decision:23.05.2016**

The Punjab State Cooperative Supply and
Marketing Federation Limited and another

... Appellants

Vs.

M/s Pioneer Agro Extract Limited and another ... 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. Aseem Rai, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.10978-CII-2016

During the pendency of the appeal, warrants of attachment have been issued in execution of the award dated 08.08.2011, therefore, applications seeking stay and pre-ponement have been filed.

For the reasons stated above, hearing of the appeal is preponed from 11.08.2016 to today and the main appeal is taken on board.

C.M. stands allowed.

C.M.No.19285-CII-2016

For the reasons stated in the application, duly supported by an

affidavit, delay of 27 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

FAO No.6088 of 2015 (O&M)

Mr. Aseem Rai, learned counsel appearing on behalf of the appellants submits that a contract No.21 dated 23.09.2008 was executed between the parties for supplying and manufacturing of Vanaspati. Though the agreement did not contain any time frame for supply of the material but all other contracts show that the material had been supplied within a period of 10 days.

It is a matter of record that during the interregnum, international market of the Vanaspati had increased and the contractor taking advantage of the same, did not supply the material. Having failed to supply the material, the contract was terminated. In these circumstances, the matter was referred to the Arbitrator owing to the resolution of the dispute through Arbitrator. The Arbitrator has erroneously awarded the compensation to the tune of ₹16,74,000/- along with interest @ 9% per annum and further interest @ 18% per annum. Even the objection petition has been dismissed in a most capricious and fallacious manner and therefore, the present appeal. He further submits that the contractor has not adhered to the precedents for supply of the material, thus, cannot take the advantage of the absence of the clause of timeline as on earlier occasion adhered to precedents and supplied material, i.e., in all other contracts, the material had been supplied within a period of 10 days and thus, award is

against the public policy.

I have heard learned counsel for the appellants and appraised the paper book and of the view that there is no force in the submissions of Mr. Aseem Rai, for, the contract did not envisage the supply of material within time frame remitting into termination of agreement for having not supplied the material. There could have been occasion by applying doctrine akin to “delay and latches”. In my view, opinion of the Arbitrator being the expert that contractor was liable to be compensated, is perfectly legal and justified. Precedence will not be binding the party as each and every contract has to be seen and examined individually as the terms and conditions of the contract are sacrosanct.

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. 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 to interfere 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.

In my view the award of the Arbitrator does not suffer from any illegality, inasmuch as, the Arbitrator who is expert has dealt with the matter and decided the respective claim of the parties to the lis.

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

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

Accordingly, the appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

May 23, 2016
savita