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

**FAO-8964-2014 (O&M)
Date of decision : 16.02.2016**

M/s Rajdhani Advertisers

...Appellant

Versus

Municipal Corporation and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. I.D. Singla, Advocate
for the appellant.

Mr. Sanjeev Soni, Advocate
for respondent No.1.

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)

The appellant-contractor is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside the Award dated 12.07.2012 have been dismissed.

Mr. I.D. Singla, learned counsel appearing on behalf of the appellant-Contractor submits that on 30.11.2007, an agreement was entered between M/s Rajdhani Advertisers and the Municipal

Corporation, Patiala for erection of 9 gantries on BOT basis within the limits of Municipal Corporation, Patiala. The appellant-contractor had erected five gantries, but when he was in the process of erection of 6th gantry, PWD raised the objections and the same was demolished in view of the interim orders granted by this Court and the Hon'ble Supreme Court. As per the terms and conditions of the Agreement, the Contractor was liable to pay royalty, viz-a-viz the income earned from the gantries by leasing out to the various persons for the purpose of advertisements. Since, there was a loss of business, the dispute arose, which was referred to the Arbitrator and the Arbitrator did not adjudicate the counter claim, viz-a-viz the loss of business, refund of earnest money of ₹ 19.5 Lacs, much less, the loss of profit and depreciation. However, entertained the claim of the Municipal Corporation by awarding a sum of ₹ 36,11,111/- towards the payment of royalty. Since, the contract envisaged was against the public policy also and rightly so, the objections were filed under Section 34 of the 1996 Act, but the same were declined without assigning any reason and prays for setting aside the same.

Mr. Sanjeev Soni, learned counsel appearing on behalf of respondent No.1-Municipal Corporation submits that the stay was with regard to display of the hoarding, there is a stark difference between the hoarding and the gantries. Once, the Contractor had erected five gantries and earned the income from the same, royalty was required to be paid. In the absence of non-deposit of the payment, the dispute arose and referred to the Arbitrator, which

had rightly been assessed and the counter claim in the absence of any evidence led in support of the same, had been rejected.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the appeal for the reasons that it is matter of record that out of 9 gantries, 5 gantries have been erected and the appellant-contractor earned business profit and was required to pay the royalty and on account of non-payment of it, the Arbitrator awarded the compensation, but the counter claim with regard to the non-uses of the gantries, much less, assigning of work or otherwise, in my view, was ill-founded and rightly so, the same has been rejected.

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 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.

In my view the award of the Arbitrator does not suffer from any illegality, in as much as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants 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 before him and decide on the basis of the available evidence.

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.

The appeal is accordingly dismissed.

16.02.2016
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(AMIT RAWAL)
JUDGE