

**C.M.No.22698-CII-2016 in/and
FAO No.7513 of 2015 (O&M)**

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

**C.M.No.22698-CII-2016 in/and
FAO No.7513 of 2015 (O&M)
Date of decision:10.11.2016**

The Rupnagar Improvement Trust Rupnagar ... Appellant

Vs.

Sqd.(Ldr.) Gurdial Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.C.Pathela, Advocate
for the applicant/appellant.

AMIT RAWAL J. (Oral)

C.M.No.22698-CII-2016

Prayer in the application is for preponing the hearing of the matter.

For the reasons stated in the application, duly supported by an affidavit, the same is allowed and hearing of the appeal is preponed from 17.03.2017 to today. The main appeal is taken on Board today itself.

C.M.No.23575-CII-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 188 days in re-filing the appeal is condoned.

C.M.stands disposed of.

FAO No.7513 of 2015 (O&M)

The present appeal is accompanied by an application seeking

condonation of delay of 228 days in filing the appeal against the order dated 28.02.2014, whereby, the objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”) seeking setting aside of the award dated 28.07.2010, have been dismissed.

Mr. S.C.Pathela, learned counsel appearing on behalf of the appellant-Improvement Trust submits that the Improvement Trust came out with the publication of auction of 5 Shop-Cum-Flat sites in Development Scheme No.1 (Giani Zail Singh Nagar), Ropar held on 14.11.1981. On the basis of the advertisement, the respondent-claimants had participated in the said auction and gave the highest bid for Shop-Cum-Flat Site No.8 of Scheme No.1 of Rs.81,700/- and consequently, allotment letter Ex.C8 dated 12.01.1982 was issued in favour of the claimants.

He further submits that the claimants did not raise the construction. Accordingly, site was resumed. Since agreement/allotment letter contained the resolution of dispute through arbitration, accordingly, the matter was referred to the Arbitrator. One of the reasons assigned for not raising the construction was that the Improvement Trust was denying the construction of the basement. He also submits that at earlier point of time, as per the resolution No.42 dated 9.12.1988, there was no provision of basement in the Shop-Cum-Flat, however, the same was withdrawn, vide Resolution No.59 dated 02.11.1989 (Ex.R-1). The Arbitrator has allowed Claim No.1 on this point and restored the site by granting two years time for raising the construction.

He further submits that the Improvement Trust had also claimed charges on account of non-construction but that had not been awarded by the Arbitrator, rather have been waived, thus, the award is suffering from 'Patent Illegality', much less against the public policy. It is in this aspect of the matter, the objection petition was filed before the Objecting Court. The same was dismissed holding them to be within the parameters of Section 34 of 1996 Act. He also submits that even the claimants had asked for refund of Rs.7,945/- as non-construction charges but the same has not been accepted, therefore, the interest was liable to be paid on account of non-construction charges.

I have heard learned counsel for the appellant and appraised the paper book.

The reason for causing delay had been that the decision rendered by the objecting Court is dated 28.02.2014. However, the application for obtaining the certified copy was filed on 02.01.2015 and prepared by the registry on 03.01.2015 and delivered on 05.01.2015. The appeal was filed before this Court on 12.01.2015, therefore, delay of 228 days in filing the appeal has occurred.

I am of the view that no explanation has come forth in not applying for obtaining the certified copy of the order under challenge immediately after decision, therefore, the application is lacking reasons of aforementioned delay. The delay cannot be said to be unintentional.

As regards the merits of the case, I am of the view that in the

advertisement dated 14.11.1981, there was clear cut mentioning of provision of basement, but the same was withdrawn vide Resolution No.59 dated 2.11.1989 (Ex.R-1). The unilateral withdrawal of the aforesaid Resolution would after/change the terms and conditions of the agreement without seeking permission as per the provisions of Section 43 of the Punjab Town Improvement Act, 1922. As per the aforementioned provisions, the Improvement Trust is required to obtain prior approval of the Government before changing the texture of the Scheme. Once the aforementioned provision was in vague and the basement was permitted, the Improvement Trust cannot withdraw the aforementioned Scheme without obtaining the prior permission of the Government, this aspect has been examined by the Arbitrator.

I am of the view that even no second opinion is being formed from the facts noticed above enabling this Court in interfering the well reasoned award.

Accordingly, the appeal is dismissed on account of delay as well as on merits.

November 10, 2016
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No