

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

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FAO No.6592 of 2016(O & M)

Date of Decision:10.03.2017

Union of India th.Garrison Engineer (South), Tarapur and another

....appellants

Versus

M/s Singla Construction Company, Patiala

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Pankaj Jain, Advocate
for the appellants

Mr.Amit Jhanji, Advocate
for the respondent

ARUN PALLI, J. (ORAL):

CM-22621-CII-2016

Application is allowed as prayed for.

CM-25296-CII-2016

Application is allowed as prayed for. Application for vacation
of stay along with Annexures R/1 to R/7 are taken on record.

CM stands disposed of.

CM-4172-CII-2017

Application is allowed as prayed for. Application for pre-
ponement along with Annexures R/8 to R/10 are taken on record.

CM stands disposed of.

CM-5537-CII-2017

Application is allowed as prayed for. Reply to the application
for vacation of stay is taken on record.

CM stands disposed of.

**CM-22622-CII-2016
CM-25297-CII-2016
CM-4173-CII-2017 and
FAO No.6592 of 2016**

Vide arbitral award dated 27.02.2015, the arbitrator partially granted the claim of the respondent, whereas, the counter claim filed by the appellants was accepted, qua claim No.4 and 7. Being aggrieved by the award rendered by the arbitrator, the appellants preferred objections under Section 34 of the Arbitration and Conciliation Act, 1996(for short, 'the Act'). However, vide impugned judgment dated 07.09.2016, the Additional District Judge, Patiala, dismissed the said objections. That is how, the appellants are before this Court.

The order dated November 07, 2016, passed by this Court, while issuing notice, reveals that learned counsel for the appellant had confined the prayer in the appeal only to an extent; for, immediately on cancellation of contract by the appellants, the respondent had filed a suit on 12.12.1995, assailing the cancellation, which was dismissed on 23.11.2004, the arbitrator ought not to have awarded interest to the respondent for the said period i.e. 12.12.1995 to 23.11.2004.

Per contra, learned counsel for the respondent submits that no doubt, the suit filed by the respondent was dismissed on 23.11.2004, but owing to an understanding/settlement that was arrived at between the parties; that dispute shall be referred to the arbitrator for adjudication, the appellate Court, not only permitted the respondent to withdraw the appeal, but the suit itself. Further, he submits that on a comprehensive analysis of the matter, the arbitrator granted the claim of the respondent, and also awarded interest for the period admissible in law. Even otherwise, he asserts that the appellants cannot be permitted to raise any such argument,

for, this was never their case, either before the arbitrator or even in its objections under Section 34 of the Act.

I have heard learned counsel for the parties and perused the records.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the appeal is devoid of merit and, is, thus, liable to be dismissed, for the reasons that are being recorded, hereinafter.

Undoubtedly, the respondent had filed a declaratory suit assailing the cancellation of his contract by the appellant on 23.05.1995, which was dismissed vide judgement and decree dated 23.11.2004. But, it is equally true that during the pendency of the appeal, preferred by the respondent, parties to the lis had reached a consensus that in the event, respondent would withdraw its appeal, as also the complaint, the dispute shall be referred to the arbitrator for adjudication. Statements of the learned counsel for the respective parties were separately recorded, in this regard, and are on record as Annexures R4 and R5. And, vide order Ex.PX, the appellants indeed appointed the arbitrator. That being so, learned District Judge, vide order dated 20.09.2007, not only permitted the respondent to withdraw its appeal, but also the suit. Thus, even the decree dated 23.11.2004 passed against the respondent, lost its significance. An analysis of the order dated 20.09.2007 as also the statements made by counsel for the parties, does not even remotely indicate that there was ever any understanding between the parties that in the event, the claim of the respondent is granted by the arbitrator, he shall not be entitled to interest for the period between 12.12.1995 to 23.11.2004. The matter can be viewed from yet another perspective, that respondent withdrew its appeal, for,

appellants were willing to refer the dispute to the arbitrator, otherwise, there was always a possibility that it would have succeeded in appeal, and granted the relief prayed for. Be that as it may, ex facie, the matter in issue was examined by the arbitrator at length and both the parties were awarded interest qua their respective claims, as admissible in law. Further, this was never the case of the appellants before the arbitrator that the respondent be not awarded interest for the period its suit remained pending. Not just that, this was not the case of the appellants, even in its objections filed Section 34 of the Act, and, so is the case in the matter in hand, for, no such ground is set out in the memorandum of appeal.

In conspectus of the position as sketched out above, the only and the inevitable conclusion one could reach is; that the appeal is bereft of merit and, thus, liable to dismissed.

The appeal is dismissed accordingly.

March 10, 2017
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(ARUN PALLI)
JUDGE

Whether speaking/reasoned Yes/No.

Whether reportable- Yes/No