

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

CR No.4249 of 2013 (O&M)
Date of decision : 11.05.2018

M/s Construction Rasa Pvt. Ltd.

...Petitioner

Versus

Union of India through Garrison Engineer

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Anand Chhibbar, Sr. Advocate with
Mr. Amit Jhanji, Advocate for the petitioner.

Mr. Pankaj Jain, Advocate for the respondent.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

This revision petition has been filed against the orders passed by the trial Court affirmed by the First Appellate Court while dismissing the application filed under Sections 30 & 33 read with Section 15 of the Arbitration Act, 1940.

As per the finding of the Court, the award passed by the Arbitrator resulted into a judgment and consequently decree of the Court on 18.07.2001. After a period of 4 years, an application under Sections 30

& 33 read with Section 15 of the Arbitration Act, 1940 was filed pointing out certain arithmetical mistakes. The award was sought to be set aside/modified.

Both the Courts dismissed the application. Learned trial Court held that the application is not maintainable as the award has been made the Rule of the Court and, therefore, the application under Section 15 of the Arbitration Act, 1940 would not be maintainable. Section 15 of the Arbitration Act, 1940 only enables the Court to modify the award. It nowhere provides that the award which has been made the Rule of the Court, can be modified.

In the considered opinion of this Court, three following issues arise for consideration:-

1. Whether an application for correction of the alleged arithmetical mistakes is maintainable after the award has been made the Rule of the Court or not in terms of Section 15 of the Arbitration Act, 1940?
2. What is the limitation for filing an application under Section 15 of the Arbitration Act, 1940?
3. Whether there is any arithmetical error in the arbitration award as is sought to be projected?

Now let us discuss the first issue.

As per the scheme of the Arbitration Act, 1940, award given by the Arbitrator/Arbitrators is to be signed and filed before the Court. Section 15 enables the Court to modify the award passed by the Arbitrator/Arbitrators on various grounds. In the present case, counsel for

the petitioner has relied upon Section 15 (c) of the Act of 1940. Section 16 of the Act of 1940 deals with the power of the Court to remit the award to the Arbitrator. Section 17 of the Act of 1940 provides that the Court after examining that no cause is to remit the award or set aside the award is made out, the Court shall pronounce the judgment according to the award and upon the judgment so pronounced, a decree shall follow. Section 30 of the Arbitration Act, 1940 further gives reasons on which the award passed by the Arbitrator can be set aside. On careful reading of Section 15, it is apparent that the Court has been empowered to order modification of award under various situations spelled out in the aforesaid provision. Section 15 does not deal with the modification of judgment and decree passed thereupon, which is commonly known as the Rule of the Court. Once an award passed by the Arbitrator has resulted into a judgment and thereupon a decree as provided under Section 17 of the Act of 1940, no application under Section 15 can be filed. Hence, first issue is decided against the petitioner.

Second Issue:-

Learned counsel for the petitioner further sought to equate the provisions of Section 15 of the Arbitration Act, 1940 with the provision of Sections 152 and 153 of the Code of Civil Procedure and submitted that the Court would always have a power to modify the award. The language and scope of Sections 152 and 153 of the Code of Civil Procedure and that of Section 15 of the Arbitration Act, 1940 cannot be equated. Still further, application under Section 15 of the Act of 1940 can be filed before the

award has not merged into the judgment of the Court and consequently into decree. Once an award has merged into a judgment and consequently into decree, the same can only be challenged under Section 39 of the Act of 1940. Hence, the application under Section 15 can be filed only before the award has merged into a judgment of the Court and consequently resulted into a decree.

Hence, issue No.2 is also decided against the petitioner.

Third Issue:-

Learned counsel for the petitioner has very passionately submitted that there was certain arithmetical mistakes error in the award passed by the Arbitrator. A careful reading of the orders passed by both the Courts below proves that the learned Courts have examined this issue and found that the alleged calculus error or arithmetical mistakes in the award does not exist. Reference in this regard can be made to para Nos.14 and 15 of the judgment passed by the learned First Appellate Court, which is extracted as under:-

“14. Learned counsel for appellant/objector had pointed out a calculation error in para no.62 page 17 of Arbitration award stating that Arbitrator had deducted from the amount due to respondent a sum of Rs.69,000/- and Rs.31,000/- per month which would work out to Rs.12,00,000/- for one year which the Arbitrator had awarded the respondent under claim No.1 and the balance amount of Rs.4,56,000/- had been awarded under claim 3 of the respondent where as the amount under claim 3 should have been Rs.12,84,000/-.

15. I have carefully considered the award passed by

learned Arbitrator regarding claim No.3. In fact, it had been observed by learned Arbitrator that an award of Rs.3,72,000/- had already been passed in favour of appellant/objector under claim 1 and even if the cost of establishment as given by contractor i.e. Rs.69,000/- per month is taken to be correct and Rs.31,000/- per month is reduced towards amount already awarded under claim-1 balance over head due to be compensated would be Rs.38000/- per month i.e. a total of Rs.4,56,000/- for one year. There is absolutely no calculation error in the award passed by learned Arbitrator under this claim. Learned Arbitrator had directed deduction of Rs.31,000/- from the amount claimed by contractor i.e. Rs.69000/- on the ground that some of the amount had already been allowed under claim 1 of appellant. While filing objections, appellant/objector had wrongly claimed that a sum of Rs.69000/- and Rs.31,000/- should have been added whereas in fact it had been observed by the arbitrator that amount of Rs.31,000/- is to be deducted from the amount of Rs.69000/- as same has already been awarded under claim No.1. So, there is no calculation error in the award in that regard and it seems that appellant/objector had either wrongly interpreted the award or had set up wrong calculation to mislead the court.”

Similarly, on other aspects also, learned First Appellate Court has considered the alleged arithmetical mistakes but have found no error in it. Reference in this regard can be made to para 16 and 17 of the judgment passed by the First Appellate Court. Learned counsel for the petitioner could not point out any error in the judgment passed by the First Appellate Court while explaining the alleged errors in the calculations in the award

passed by the learned Arbitrator.

Hence, this Court does not find any good ground to interfere with the award passed by the Arbitrator.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No