

**C.M.Nos.3140-41-CII-2018 with
C.M.No.17372-CII-2015 in/and
RA No.180-CII-2015 in
Civil Revision No.2322 of 2003(O&M)**

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

**C.M.Nos.3140-41-CII-2018 with
C.M.No.17372-CII-2015 in/and
RA No.180-CII-2015 in
Civil Revision No.2322 of 2003(O&M)
Date of Order: 08.03.2018**

M/s Surinder Kumar Bansal

..Petitioner

Versus

Union of India and another

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kashish Garg, Advocate,
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate,
Assistant Solicitor General with
Mr. Vipul Aggarwal, Sr. Panel Counsel
for Union of India.

ANIL KSHETARPAL, J(Oral)

C.M.No.17372-CII-2015

Prayer in this application is for condonation of delay of 140 days in filing the review application.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 140 days in filing the review application is condoned.

Application is allowed.

C.M.No.24343-CII-2015

Allowed as prayed for.

**C.M.Nos.3140-41-CII-2018 with
C.M.No.17372-CII-2015 in/and
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The judgment dated 30.04.2001(Annexure R-1) passed by the learned Civil Judge (Sr. Division), Bathinda, is taken on record.

C.M.No.3140-CII-2018

Prayer in this application is for bringing on record the legal representatives of Surendera Kumar Bansal, petitioner.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 4 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

C.M.No.3141-CII-2018

Allowed as prayed for.

Reply filed on behalf of the petitioner to the application for condonation of delay is taken on record.

Review Application No.180-CII-2015

This application for review has been filed seeking review of order dated 04.03.2015, passed by this court while disposing of Civil Revision no.2322 of 2003. This court took a view that since the order by which an award was made rule of court under Arbitration Act, 1940, is not appealable, therefore, appeal before the first appellate court was not maintainable.

Learned counsel for the review applicant-Union of India has pointed out that in fact Civil Judge had passed a consolidated order while

deciding the objections filed by the Union of India and making the award rule of court. He submitted that as per Section 39 of the Arbitration Act, 1940, an order setting aside or refusing to set aside an award is appealable. He has submitted that once there was a consolidated order, this court while allowing the revision petition committed an error in over looking the consolidated judgment passed by the Civil Judge (Sr. Division), Bathinda, on 30.04.2001.

On the other hand learned counsel for the non-applicant-petitioner has contested this position and has stated that while passing consolidated judgment, the Court had framed a decree against which appeal was filed. He submitted that decree is only with respect to making the award rule of court because the decree is not to be framed while rejecting the objection petition.

In the considered opinion of this court, once there is a consolidated judgment passed by the court which was followed by a decree, and the aforesaid consolidated judgment and decree has been challenged, it would not be proper for this court to hold that only order making rule of court has been challenged and not the order rejecting objection petition.

In view thereof, the review application is allowed, the judgment dated 04.03.2015 is re-called and revision is restored to its original number.

MAIN

With the consent of learned counsel for the parties, the main civil revision petition is taken on Board and arguments in details have been heard.

Learned first appellate court has partly allowed the appeal filed

by the Union of India with respect to Claim Nos.1, 3 and 7, which are extracted as under:-

“Claim No.1:- *i.e. loss due to delay in handing over site and prolongation of completion period for six years. It is submitted that arbitrator awarded Rs.1,22,400/- due to prolongation of contract period against claim of Rs.4,97,250/- submitted by the contractor. The extension of time was granted price on the request of the contractor up to 30.6.89. As per general conditions of contract 11(C) of IAFW-2249 forming part of contract, no claims in respect of compensation or otherwise are admissible. The arbitrator ignored the express agreement. The arbitrator ignored the express agreement. The arbitrator rejected the plea raised by the Union of India without any basis. Union of India argued pointed before the arbitrator that work dairy signed by contractors firm mention that no labour was engaged on the work from 16.7.1987 to 21.12.1991. The contractor did not submit document or any evidence in support of his claim. That payment was actually made to supervisors/chowkidar during idle period but despite that fact such huge amount was granted to the contractor.*

Claim No.3:- *The Arbitrator awarded Rs.23,000/- on account of 12% interest of R.A.R not paid on amount of*

Rs.48,000/-. The last R.A.R dated 31.8.1992 to Rs.8400/- was accepted the contractor without any protest. So interest calculated by the arbitrator without any basis.

Claim No.7:- *Loss due to arbitrary recovery against compensation. The contractor was given extension of time up to 30th June, 1989 but work was actually completed on 31.12.1994, approximately 2½ years after extended date of completion. Government had right to recover the compensation under the condition 50 of IAFW-2249 general condition of the agreement and ultimately prayed that award be set aside.”*

Learned counsel for the non-applicant-petitioner has vehemently argued that the loss due to delay in handing over the site and prolongation of completion period for 6 years has been rightly awarded by the Arbitrator and the Court while examining the legality of the award the Court has a very limited jurisdiction.

On the other hand learned counsel for the Union of India has submitted that under Clause 11(C) of the General Conditions of Contract, no claim in respect of compensation or otherwise is admissible on this aspect. He has relied upon a judgment passed by the Hon'ble Supreme Court reported as **Ramnath International Construction (P) Ltd. v. Union of India**, interpreting Clause 11(C) of the General Conditions of Contract and the Hon'ble Supreme Court has held as under:-

“12.Clause (C) provides that where extensions have been granted by reason of the delays enumerated in

Clause (A) which were beyond the control of the contractor, or on account of the delays on the part of the employer specified in Clause (B), the contractor is not entitled to make any claim either for compensation or otherwise, arising in whatsoever manner, as a result of such extensions. After enumerating certain delays, sub-clause (viii) of Clause (A) specifically mentions delay on account of any other cause beyond the control of the contractor. The causes for delays specified in clause A, thus, encompass all delays over which the contractor has no control. This will necessarily include any delays attributable to the employer or any delay for which both the employer and the contractor are responsible. The contract thus provides that if there is any delay, attributable either to the contractor or the employer or to both, and the contractor seeks and obtains extension of time for execution on that account, he will not be entitled to claim compensation of any nature, on the ground of such delay, in addition to the extension of time obtained by him. Therefore, the claims for compensation as a consequence of delays, that is claim 24 of Hangar Contract and claims 13 to 16 of Road Contract are barred by clause 11(C).

In view of the aforesaid binding precedent, this court does not feel that the learned first appellate court has committed any error in refusing to uphold the award with respect to claim no.1.

Claim no.3 is with respect to amount awarded on account of running account receipts.

Learned first appellate court has held that running account receipts are payments made by the employer during the currency of work

and such payments are normally adjusted towards the advances extended to the contractor while commencing the work.

From the reading of the aforesaid judgment, it is clear that no interest can be awarded on delay in clearing the running bills because it has to be treated as advance payments.

As regards claim no.7, it is not in dispute that the contract was awarded in the year 1985 and it was to be completed within a period of 3 months. However, the work was completed after a period of more than 6 years. As per the agreement, the employer was entitled to deduct the amount on account of delayed execution of the work.

In view of the aforesaid facts, this court does not find any good ground to interfere with the judgment passed by the learned first appellate court.

The revision petition is dismissed.

**March 08, 2018
nt**

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No