

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

FAO No.6698 of 2017 (O&M)
Date of decision: July 25, 2018

Rajesh Kumar

... Appellant

Versus

Executive Engineer & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Shalender Mohan, Advocate for the appellant.

Rajan Gupta, J.

Present appeal is directed against the judgment dated 12.01.2017, passed by Additional District Judge, Rohtak, whereby application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 for setting-aside award dated 10.09.2012, passed by respondent No.2- Arbitrator, has been dismissed.

Brief factual matrix of the case are that appellant was awarded a contract by respondent No.1 on 17.4.2006 for development of augmentation of water supply scheme, Rohtak Town Construction of Boundary wall around the site of 3rd Water Works, Rohtak, on the terms and conditions mentioned in the said agreement, containing 10% above ceiling rates (premium as on 1.3.2006). Said agreement was signed by both the parties. It was alleged that while payments were being made, appellant was paid the ceiling premium available as on 1.8.2003 instead

of 1.3.2006. Objections raised by the appellant in this regard were not adhered to by the respondents and therefore, appellant invoked arbitration clause i.e. Section 25A of the contract agreement. Consequently, Superintending Engineer, Public Health Engineering Circle, Bhiwani was appointed as Arbitrator for settlement of the dispute. Vide award dated 10.9.2012, the Arbitrator rejected all the claim statements of the appellant by observing that there is no provision for payment of interest in the contract agreement. Aggrieved, appellant filed an application under Section 34 of the Arbitration and Conciliation Act, 1996. The Additional District Judge, Rohtak, vide judgment dated 12.01.2017, dismissed the said application of the appellant.

I find no infirmity with the orders passed by the Arbitrator as well as the court below. It appears, appellant was allotted work by respondent No.1 to complete it within a period of three months. Appellant had duly participated in the arbitration proceedings. Respondents took stand that rates were approved by Engineer-in-Chief as per NIT, as per which the rates payable were based on premium applicable w.e.f. 1.8.2003, but inadvertently the premium applicable w.e.f. 1.3.2006 was written, regarding which a corrigendum was issued vide letter No.10370-75 dated 26.6.2006. It is settled law that award of the Arbitrator cannot be set-aside without having proved grave misconduct by the Arbitrator. There is nothing on record to show that finding arrived at by the Arbitrator as well as the court below is not in consonance with the evidence on record. Thus, appeal is without any merit and is hereby dismissed.

CM-21748-CII-2017:

Since the main appeal has been dismissed on merits, this application for condonation of delay does not survive and the same is also dismissed.

(RAJAN GUPTA)
JUDGE

July 25, 2018
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No