

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.52 of 2017

1. The State Of Bihar through the Secretary, Road Construction Department, Vishwesharraiya Bhawan, Bailey Road, Patna
2. The Chief Engineer, N.H. Road Construction Department, Vishwesharraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Road Construction Department, Vishwesharraiya Bhawan, Bailey Road, Patna
4. The Executive Engineer, Road Construction Department, N.H. Division, Gulzarbagh, Patna.

... .. Petitioner/s

Versus

M/s Saran Construction Prop. Sri Triguna Nand Singh, S/o Late Baldeo Singh, R/o Laxmipur, Kakadia, P.S.- Dighwara, Saran. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dinesh Maharaj, Adv
For the Respondent/s : Mr.L.B.Singh, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-03-2019

Heard learned counsel for the parties.

2. This civil revision application is barred by limitation.

The delay is explained in the petition, vide I.A.No.2292 of 2017, filed under Section 5 of the Limitation Act. Hence, the delay is condoned. Accordingly, I.A.No.2292 of 2017 stands disposed of.

3. The State of Bihar through the Secretary, Road Construction Department has filed this application under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 against the award of the Arbitration Tribunal dated 07.04.2016 made in Reference Case No.19 of 2012 M/s Saran Construction Vs.The State of Bihar & Ors. By the said



award, the Tribunal has allowed the claim of the contractor as mentioned in the last paragraph of the award.

4. Challenge is on the ground that the Tribunal has ignored the contract between the parties which provided for cancellation of the contract and recovery of the amount from the contractor in the event of failure to perform the contract or up to mark performance of the work. The dispute went up before the Tribunal under Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act and the Tribunal made the award and the petitioner contested the matter.

5. Learned counsel for the petitioners submits that opposite party failed to complete the work as per the agreement between the parties even after extension of time. Hence, damages was caused to the appellant which has been completely ignored by the Tribunal. Different conditions of the contract between the parties has been referred to.

6. The scope of judicial review of the award of the Tribunal while exercising power to set aside the same has been well discussed in the case of **State of Rajasthan Vs. Puri Construction Co. Ltd. and Another** reported in **(1994) 6 SCC 485**. In para 26 of the judgment the Hon'ble Supreme Court observed as follows:-



“26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v. Govt. of Kerala [(1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. (emphasis supplied) Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the



contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.”

7. Likewise the scope of judicial review under Section 13 of the Act which is pari materia to Section 115 of the Code of Civil Procedure was considered by a Bench of this Court in the case of **State of Bihar through the Chief Secretary and Ors.Vs. M/s Kumar Construction Company, reported in 2013 (4)**



PLJR Page 239, in para 26 of the judgment the Bench observed as follows:

“ 26. Even while the scope of judicial review of an award stands circumscribed to the eventualities set out in Section 13 of Act, there has been extensive arguments by both sides on the merits of the issue. The Supreme Court in paragraphs 9 to 14 of the judgments passed in the case of Rabindra Kumar Gupta (supra) has referred to a catena of judgments on the scope and ambit of judicial review of an arbitration award. The opinion expressed in the judgment so referred makes it manifestly clear that unless there is a jurisdictional infarction by the Arbitral Tribunal in making of the award or the award suffers from manifest illegality or material irregularity, it is not to be interfered with, in a routine manner. In fact merely because there exists a possible second view also cannot be a ground for interference with an Arbitral Award. It is also well settled that the High Court in



exercise of powers of judicial review would not sit as a Court of appeal to reappreciate the evidence led by the parties. Thus unless the finding of the Tribunal is hounded with the perversity or is based on a wrong preposition of law, the High Court would not interfere with the award merely for a different possible view.”

8. In view of the settled principles, this Court cannot look into the error within the jurisdiction committed by the arbitrator. This Court cannot substitute its own evaluation on the conclusion of law and fact to come to the conclusion that the arbitrator has acted contrary to the contract between the parties. This Court cannot sit as an appellate court to reevaluate the evidence and material on the record. Hence, this civil revision application has got no merit.

9. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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