

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

FAO-2832-2003 (O&M)

Date of Decision: May 02,2019.

Union of India

...Appellant

Versus

Vipin Kumar Lethi and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sandeep Vermani, Advocate
for the appellant.

Mr. Rajesh Goyal, Advocate
for the respondents.

JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed by the appellant-Union of India under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to challenge the impugned judgment dated 13.02.2003 passed by Additional District Judge, Ambala and the award dated 09.03.2001 passed by the Arbitrator.

2. Briefly the facts of the case as stated are that the appellant-Union of India had invited tenders for the work of improvement of sub-standard type-I staff quarters in UBG and LBG colony at Kalka. Respondent

No.1 participated in the tenders and being the successful bidder, was awarded the contract. The total value of the contract was ₹23,04,000/-. The time period to complete the said was up to 31.10.1997 but as the respondent No.1 failed to complete the assigned job within the stipulated period, he was allowed four extensions and the last extension was granted upto 30.09.1998. Even upto the last extended period, respondent No.1 did not complete the work nor did he seek any extension. Eventually a notice under Clause 62 of the contract was issued giving him seven days time to complete the work, failing which the contract would be rescinded. As he could not complete the work within seven days, a request for closure of the contract was made which was not accepted by the appellant. Respondent No.1 did not complete the work and the appellant finally rescinded the contract on 31.03.1999. Being aggrieved, respondent No.1 made a request for arbitration under Clause 64 of the Contract Agreement and respondent No.2 was appointed as Arbitrator. Since, the contract was rescinded at the risk and cost of respondent No.1, so as per terms and conditions of the contract, liquidated damages @10% of tender amount were imposed upon respondent No.1 vide letter dated 22.02.2001 amounting to ₹2,31,582/- by a counter claim along with other claims by respondent No.1.

3. The Arbitrator after considering the pleadings of the parties and appreciating the evidence led by the parties, passed the award dated 09.03.2001 allowing following reliefs:-

<i>Claim No.</i>	<i>Description of Claim</i>	<i>Amount Claimed</i>	<i>Awarded</i>
		<i>By Vipin Kumar Lethi (Respondent No.1 herein)</i>	

<i>Claim No.</i>	<i>Description of Claim</i>	<i>Amount Claimed</i>	<i>Awarded</i>
<i>1</i>	<i>Claim towards earnest money</i>	<i>₹20,000/-</i>	<i>₹20,000/-</i>
<i>2</i>	<i>Claim towards final bill and security</i>	<i>₹3,60,000/-</i>	<i>₹3,24,800/-</i>
<i>3</i>	<i>Claim towards interest @24% p.a.</i>	<i>@ 24%</i>	<i>@12%</i>
<i>4</i>	<i>Claim towards litigation charges</i>	<i>₹21000/-</i>	<i>Nil</i>
		<i>By Union of India (appellant herein)</i>	
<i>1</i>	<i>Counter claim towards penalty</i>	<i>₹2,31,582/-</i>	<i>Nil</i>
<i>2</i>	<i>Counter claim towards losses and depreciation</i>	<i>₹1,00,000/-</i>	<i>Nil</i>
<i>3</i>	<i>Counter claim towards department charges</i>	<i>₹2,50,000/-</i>	<i>Nil</i>
<i>4</i>	<i>Counter claim towards litigation/arbitration charges</i>	<i>₹10,000/-</i>	<i>Nil</i>

4. Aggrieved against the said award, the appellant herein filed the objection petition under Section 34 of the Arbitration and conciliation Act 1996 before the Additional District Judge, Ambala which were dismissed by order dated 13.02.2003,against which the instant appeal has been preferred.

5. Learned counsel appearing on behalf of Union of India submits that the award of the Arbitrator being a non-reasoned award is liable to be set aside. It is submitted that the reference order dated 02.11.2000 (exhibit A 15 before the ADJ) mandated the arbitrator to pass an award in terms of clause 64(3)(iv) of the General Conditions Of Contract, 1989 indicating reasoning of sums awarded if any, on each individual item, which has not been complied with. The request for arbitration was beyond the period for limitation since the contract was rescinded on 31.3. 1999 and the demand

for arbitration was made beyond a period of 180 days. It is also argued the award is bad, per se, since the arbitrator was not vested with the jurisdiction of deciding an issue whether the contract could have been rescinded or not. It is also argued that the Arbitrator has erred in awarding compensation/damages for a sum of ₹50,000/- without assigning any reason for the same and payment of any such compensation is prohibited in view of clause 62 (2) (a) of the General Conditions of the Contract.

6. Per contra, learned counsel appearing on behalf of the respondent-claimant would urge that the award being legal and binding cannot be interfered with by this Court in the appeal. Learned counsel appearing on behalf of the respondent relies upon judgment rendered in ***“Harsh Chandra and Company Versus State of UP 2016(4) RCR (Civil) 863”*** to argue that the High Court cannot act like an Appellate Court.

7. I have heard learned counsel for the parties and perused the record with their assistance.

8. Admittedly, a dispute arose between the parties which on the asking of respondent No.1 was referred to the Arbitrator by the appellant herein. The Arbitrator while deciding the claim of the respondent allowed claim No. 1 for refund a sum of ₹20,000/-towards the claim of earnest money, on the ground that the termination of the contract was not justified; as regards claim No. 2 which was towards final bill, the arbitrator allowed the claim of ₹1,70, 800/- as was due on the final bill and **admitted** by the appellant and also allowed the refund of two FDRs for ₹54,000/- and ₹50,000/- by holding that the termination of the contract at the advanced

stage of completion of 85% to 90% of work was not justified. This refund was allowed by taking into account that the Appellant-contractor had given extension of time to complete work without penalty, and therefore it could be adduced that the delay was also partly due to failure on the part of the appellant. Furthermore, the Arbitrator allowed a sum of ₹50,000/- as compensation against the claim of ₹84,865/-. This amount was awarded on the ground that the Arbitrator had taken note that some of the items executed by the claimant were not included while preparing the final bill and there was no satisfactory reason for doing so. On this basis, the arbitrator deems it appropriate to allow a sum of ₹50,000/- as compensation as against the claim of rupees of ₹84,865/-. As per the claim No.3 which was towards interest at the rate of 24% per annum, the Arbitrator allowed 12% interest on the amount of ₹2,20,800/- (₹1,70,800/- plus ₹50,000) due to the claimant from the date of termination of the contract.

9. As per the terms and conditions of the contract entered into and the reference order dated 02.11.2000, the Arbitrator was mandated to pass a reasoned award, which would also be in consonance with section 31(3)(a) of the Arbitration and Conciliation Act 1996 ('the Act of 1996' for short). The Arbitrator allowed the claim towards the final bill along with interest without taking into account Condition 64.5 of General Conditions of the Contract which specifies *'where the arbitral award is for the payment of money ,no interest shall be payable on whole or any part for of the money for any period till the date on which the award is made'* and Clause 16.3 of the contract which reads as *'no interest in will be payable upon the earnest*

money and security deposit amounts payable to the contractor under contract, common security deposit the same terms of sub clause (1) of this clause will be payable with interest accrued thereon.' The Arbitrator having being appointed under the contract and thus being a creator of the statute could not have gone beyond the terms and conditions as specified in the reference order and the contract. Clause 16(2) of GCC, the Governing Contract between parties, which is para material with Clause 16(3) in the instant case pertaining to payment of interest was a subject matter of dispute in a judgment rendered by the Supreme Court in ***Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat 2010 (8) SCC 767*** . In the case referred to as ***Sree Kamatchi Amman Constructions (supra)*** the Arbitral Tribunal declined to allow interest on the payments claimed by the contractor on the ground that the terms of contract did permit any such payment. The contractor preferred an appeal which was dismissed leading to the matter being agitated before the Supreme Court. The Supreme Court held "*Section 37(1) of the new Act by using the words "unless otherwise agreed by the parties" categorically clarifies that the arbitrator is bound by the terms of the contract insofar as the award of interest from the date of cause of action to date of award. Therefore where the parties had agreed that no interest shall be payable, Arbitral Tribunal cannot award interest between the date when the cause of action arose to date of award.*" On an interpretation of the clause 16.2 of GGC read with Section 31(7) of the Act of 1996 , the award of the Tribunal non qua the payment of interest was upheld. In the case in hand, the

Arbitrator has allowed interest to be paid from the date when the contract was terminated , which payment is beyond the terms and conditions of the contract and thus would not be sustainable.

10. An argument has also been raised to the effect that the award is a non speaking one as far as no reason has been stated for awarding compensation of ₹50,000/- to the respondent. The respondent raised a claim of ₹3,600,00/- in claim no 2 without giving the break up. It was stated that even though final bill had been presented, many of the works done had not been included in the final bill. Thereafter, the respondent gave further details of work done amounting to ₹84,865/- which claim was not supported by proof of the entire claim. On going through the claims, the arbitrator allowed compensation as stated, without discussing the details of the work done and the entitlement of the respondent. It was held as under '*However during the course of hearing it came to the notice that some of the items executed by the claimant, and for which even the payments were made in the running bills have been deleted, while preparing the final bill. Respondents also admitted for the same, but could not give any satisfactory reason for doing so. After hearing the arguments produced before me, an amount of ₹50,000 is considered adequate compensation and therefore ₹50,000/- is awarded.*' In the opinion of this court, the payment of ₹50,000 as compensation is not justified. The arbitrator had been mandated to pass an award in terms of clause 64 (3) (iv) of the General Conditions Of Contract, 1989 indicating reasoning of sums awarded if any, on each individual item, which reasoning is lacking.

11. Ld. counsel appearing for the appellant has also argued that the arbitrator erred in dismissing the counter claim filed by the Union of India in toto . A perusal of the award would reflect that other than the bald statement there was no evidence forthcoming to substantiate the claim as to the loss suffered by the appellant. The arbitrator did not allow the counter claim of ₹2,31,582/- towards penalty on account of non-fulfillment of contractual obligation by holding that the appellant had failed to award any contract on risk and cost of the respondent. The other claims were also rejected primarily on the ground that there was no document in support of their claim. This court finds no infirmity in the award of the arbitrator qua rejection of counter claim, since there is no evidence in support of the claim raised. Mere bald statement would not be sufficient to have allowed the counter claim.

Therefore, on going through the award and the record made available, this court is of the firm opinion that the award of the arbitrator is liable to be set-aside on the ground of awarding interest at the rate of 12% per annum from the date the contract was terminated as the same not in consonance with condition 64.5 and clause 16.3 of the contract. The amount of ₹50,000 awarded as compensation is also liable to be set-aside as there is no discussion as to which of the work done by the respondent contractor has not been paid in the final bill. It is also held that the Arbitrator had exceeded his jurisdiction in opining that the delay in completion of work was on account of the appellant herein since that was not a part of the reference or the claim petition.

12. Learned counsel for the appellant urges that the claim for arbitration was made beyond the period of 180 days and this fact was ignored by the Arbitrator. However, this argument would not be sustainable as the appellant did not raise any such plea before the Arbitrator nor took a stand in the reply filed. In fact while participating in the proceedings before the Arbitrator the appellant also filed a counter claim, therefore, having failed to exercise the option of contesting the claim on the ground of limitation and in fact raising a counter claim in the said proceedings, it is deemed that the appellant lost his right to raise the question of limitation.

Appeal stands partly allowed.

May 02, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No