

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

**FAO No. 1289 of 2006 (O&M)
Date of Decision: 04.04.2019**

Improvement Trust, Bathinda

..... Appellant

VERSUS

Shiva Enterprises and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. B.S. Sidhu, Advocate,
for the appellant.

None for the respondents.

JAISHREE THAKUR, J. (ORAL)

1. This is an appeal that has been filed seeking to challenge the award dated 23.10.2003 whereby the claim filed by the respondents has been allowed and the objections filed by the appellant herein stand dismissed.

2. Learned counsel for the appellant herein contends that a tender was floated for construction of 200' wide road within the Improvement Trust Scheme, Bathinda. A dispute arose regarding payment of earth work in the said construction of 200' wide road which led to the respondents herein preferring a claim before the Arbitrator-cum-Superintending Engineer, Construction, Circle, PWD (B&R), Bathinda through a letter dated 12.07.2002 for adjudication of the claim. The said claim was

contested and one of the grounds taken therein was that there was no arbitration agreement between the parties with regard to allotment of work, apart from contesting the liability to make any payment towards the work done. The Arbitrator by an award dated 23.10.2003 allowed claim No.1 to the extent of ₹ 389,122/- while rejecting claim Nos. 2 & 3. He further awarded interest @ 10% on the awarded amount i.e. ₹ 3,89,122/- from the date of announcement till realization. The said award was challenged by the Improvement Trust – appellant herein under Section 34 of the Arbitration & Conciliation Act, 1996, which objections too were dismissed.

3. Learned counsel for the appellant raises solitary question as to whether an award could be passed in the face of the fact that there was no arbitration agreement.

4. It is argued that a specific plea had been taken before the Arbitrator that there was no arbitration agreement, which question was not dealt with by the Arbitrator and even the Court before whom the objections had been filed, did not deal with the issue raised. It is argued that despite noticing that there was no arbitration clause even in the tender document, the objections have been rejected.

5. I have heard learned counsel for the Improvement Trust and have also perused the record of the case.

6. There is no doubt that a tender was floated by the Improvement Trust for the Construction of 200' wide road within the Improvement Trust, Bathinda and pursuant to the tender M/s Shiva Enterprises Bathinda was allotted the said work. Even though there is a decision to allot work to M/s Shiva Enterprises Bathinda which mentions that the parties would be bound

by the tender document. There is no such clause in the tender document which is available on the record as Ex. A-1. Even in the decision taken, there is no specific clause that any dispute arising between the parties would be referred to Arbitrator. An arbitrator is a creature of an agreement entered into between the parties who would be appointed to settle a dispute. Appointment of arbitrator has to be specifically agreed to between the parties. This fact has also been noticed by the District Judge, Bathinda in his impugned order dated 03.12.2005, who however, has erroneously dismissed the objections only on account of the fact that an agreement had been entered into between the parties to execute the work.

7. Therefore, in the face of no arbitration agreement having been made available to the Court or there being one on the record, the appointment of the Arbitrator itself is not justifiable and, therefore, any award passed by him is liable to be set aside leaving it open to the respondents to invoke any other provisions of law for recovery of any dues to him under the said agreement. Ordered accordingly.

Appeal stands allowed accordingly.

04.04.2019

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes

No