

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

FAO No.2340 of 2019 (O&M)

Date of Decision: December 11, 2019

Haryana Urban Development Authority (HUDA)

...Appellant

Versus

M/s Mehta Construction Company and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Deepak Sabherwal, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

CM-7562-CII-2019

1. There is delay of 249 days in filing the appeal.
2. The application is supported by affidavit.
3. For the reasons mentioned in the application, the same is allowed and delay of 249 days in filing the appeal is condoned.

FAO-2340-2019

1. This is an appeal that has been filed seeking to challenge the order dated 08.01.2018 passed by the Addl. District Judge, Karnal whereby, the objection filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting the award dated 20.12.2013, has been dismissed.
2. In brief, the facts of the case are that respondent No.1-

Construction Company entered into a contract with the appellant vide memo No.12676-78 dated 06.07.1998 for the work of development of Town Park in Sector 8 and 9 (Phase II) Karnal – Construction of water body, water body fall, pedestrian bridge, backwall of Deck, Pump Chamber partly above and partly below G.L. Laying of C.I. Pipe and RCC Pipe complete in all respects and other works contingent thereto. The contract value was ₹ 32,14,326/- and the work was to be completed within three months. As the work was not completed within the stipulated period, therefore, on the request of contractor, the time was extended upto 31.12.1998. During the execution of the work, the contract value was enhanced from ₹ 32,14,326/- to ₹ 40,23,692/- which was approved vide letter No.9458 dated 02.11.1999 , which was further enhanced from ₹ 40,23,692/- to ₹ 45,87,626/-. A dispute arose. It was stated that payment of the amount of ₹ 40,23,692/- was made to the contractor, however, on account of non-approval of the second enhancement from ₹ 40,23,692/- to ₹ 45,87,626/- by the competent authority, the final bill of the contractor could not be issued, which resulted in approaching the High Court by the contractor for appointment of an Arbitrator. The High Court, vide order dated 19.10.2012, gave direction to the contractor to approach the Superintending Engineer, HUDA being an Arbitrator, as per the terms and conditions contained in Clause 25-A of the Contract Agreement. The Arbitrator gave his award dated 20.12.2013, which was challenged by the appellant before the Addl. District Judge, Karnal by filing objections under Section 34 of the Act. The Addl. District Judge, Karnal dismissed the objections by an order dated 08.01.2018, which has been assailed by the appellant in the instant appeal.

3. Learned counsel appearing on behalf of the appellant would contend that the Arbitrator as well as the court below failed to take into consideration the fact that the prime factor to allow compensation under the HUDSON formula is proof of breach of contract, but the contractor has failed to prove on record that the appellant had breached the contract. It is contended that as the final bills were not submitted by respondent No.1, delay was attributed to respondent No.1 and not to the appellant. It is also submitted that since respondent No.1 on his own accord and without necessity indulged into unnecessary litigation, the appellant cannot be burdened with the costs of the same.

4.. I have heard counsel for the appellant and with his assistance, have gone through the case file.

5. The Addl. District Judge, Karnal, while dismissing the objections filed by the appellant under Section 34 of the Act has observed that the arbitration award dated 20.12.2013 passed by the arbitrator is perfect and legal one and there is no ground proved on the file at the instance of the objector that the award suffers from any infirmities at all. It was further observed that the objections filed by the objector are barred by limitation as the same were not filed within the prescribed period. No plausible explanation could be given by the objector, for filing the objections at a belated stage. The Addl. District Judge, Karnal came to hold that the objections filed by the objector are not maintainable and the objections are also barred by limitation. Counsel for the appellant fails to point out any perversity in the findings returned by the court below. Counsel for the appellant miserably failed to point out as to how the

objections filed the appellant were within limitation.

6. In view of the above, finding no illegality in the impugned order, the appeal is hereby dismissed.

December 11, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No