

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

EFA-2-2021(O&M)

Date of decision:-28.9.2021

Punjab Water Supply & Sewerage Board and another

...Appellants/Judgment Debtor

Versus

M/s Shree Balaji Construction Company

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vijay Kumar Kaushal, Advocate
for appellants.

Mr.P.S. Rana, Advocate
for the respondent.

H.S. MADAAN, J.

Case taken up through video conferencing.

Briefly stated, the facts of the case are that M/s Shree Balaji Construction Company, Kothi No.317, Model Town, Phase-1, Bhatinda through its sole Proprietor Sh.Pawan Kumar Dikshit was allotted the project of integrated development of urban infrastructure at Bhatinda at the cost of Rs.218.25 crores vide memo No.4769 dated 8.6.2007 by Punjab Water Supply & Sewerage Board, Chandigarh. An agreement in that regard was signed between the parties. In addition to that work

relating to removal of extra earth lying above the ground level at the site of construction was also allotted to the said contractor. The contractor firm accordingly executed the work of removal of extra earth above the ground level from the site of construction receiving all the payments but did not complete the project assigned to it in respect of integrated development of urban infrastructure at Bhatinda for the construction of storage and sedimentation tank and inlet channel etc.. The matter went into the litigation. The contractor firm had approached this Court by way of filing a writ petition, which was decided on 12.5.2010 vide which it was observed that the contractor cannot be compelled to enter into fresh agreement for enhanced amount. Review petition filed was dismissed vide order dated 9.5.2011. The parties had gone into arbitration. An award was given by the Arbitrator.

The department is aggrieved by that award for various reasons contending that the award has been given by falling the corrupt practices without considering the evidence on record. The department had challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 in the Principal Court at Bhatinda. The matter is said to be pending.

The grouse of the appellants was that application for stay of the execution of award has not been heard/disposed of so far. In the petition, the award has been challenged on various grounds with respect to each claim. By way of filing the present appeal, the appellants have prayed that execution of award Annexure A-4 be stayed till final disposal of objection petition under Section 34 of the Arbitration and Conciliation

Act, 1996 pending before Principal Court at Bhatinda, where the award has been challenged on the ground of fraud. Secondly, an inquiry regarding fraud be adjudicated by the Executing Court.

Notice of the appeal was given to respondent, which has put in appearance contesting the appeal.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the respondent has contended that the stay application has since been decided by the Court on 27.8.2021, therefore the appeal has become infructuous. Whereas learned counsel for the appellant although admitting this fact and stating that in the objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the present appellants, the case is fixed for 22.10.2021 for evidence of objector, has submitted that the award given by the Arbitrator is result of fraud and an inquiry in that regard be got conducted.

After hearing learned counsel for the parties and going through the record, I find that since the stay application is said to have been decided by the Court below, the grievance of the appellants in that regard stands addressed. As far as the Arbitrator having misconducted himself or indulged in any malpractice etc., the objections filed by the appellants in that regard are admittedly pending and legality and validity of the award would be adjudicated in those proceedings. The fact as to whether any fraud etc. has been committed as alleged would also come up for adjudication in those proceedings. Therefore, no cause of action survives tot he appellants in the present.

The appeal is dismissed accordingly.

28.9.2021

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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No