



FAO-6204-2017(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHFAO-6204-2017(O&M)
Date of Order:-11.12.2024

Shiv Raj Kumari (since deceased) through LRs

...Appellants

Versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr. Dheeraj Mahajan, Advocate
for the appellants.

None for respondent No.1.

Mr. Ish Puneet Singh, Advocate
for respondent No.2 – NHAI.Mr. Malkiat Singh, DAG, Punjab
for respondent No.3.

SUVIR SEHGAL, J.**CM-20014-CII-2017**

1. This application has been filed under Section 5 of the Limitation Act, 1963 for condoning delay of 56 days in the filing of the appeal.
2. Notice of the application was issued to the respondents on 20.09.2017. However, no response has been filed.
3. Having heard counsel for the parties, this Court is satisfied with the explanation given in the application and is of the view that the appellants have made out a sufficient cause for condoning of delay.
4. Application is allowed.
5. Delay of 56 days in the filing of the appeal is condoned.



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MAIN APPEAL

6. By way of present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”), appellants have approached this Court impugning judgment dated 12.04.2017 passed by the learned Additional District Judge, Jalandhar.

7. Brief facts leading to the filing of the appeal are that the appellants were the owners of 8 marlas of land alongwith super structure situated in village Nalunga, Tehsil & District Pathankot, which has been acquired by virtue of notification dated 05.10.2005 issued under Section 3 (A) of the National Highways Act, 1956 for widening and four-laning of the Jalandhar – Pathankot section of National Highway No.1-A. By award dated 10.08.2009, the Competent Authority assessed the value of the land at Rs.25,000/- per marla. Dissatisfied, appellants filed a reference before the learned Arbitrator – cum – Commissioner, Jalandhar Division, who vide award dated 25.07.2011 enhanced the compensation to Rs.1.50 lakhs per marla for commercial land, Rs.1.25 lakhs per marla for abadi land, Rs.65,000/- per marla for other land, besides granting compensation for severance, super structure, loss of business, interest etc. Respondents No.1 and 2, National Highways Authority of India (NHAI) filed objections under Section 34 of the Arbitration Act, which have been accepted vide judgment assailed herein and impugned award has been set aside. Appellants – landowners are before this Court in the above background.

8. I have heard counsel for the parties and considered their respective submissions.

9. During the course of hearing, counsel for the appellants



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could not bring out any material to show that respondents No.1 and 2 were ever served in the arbitral proceedings. There is nothing on the record to establish that any notice was served by the Arbitrator upon NHAI. Although, Mr. I.S. Bhatia, counsel represented NHAI before the Arbitrator, but he was never authorised nor he had been given any vakalatnama to appear on behalf of NHAI. The proceedings were taken up on numerous occasions, but the Arbitrator did not make any attempt to serve respondents No.1 and 2 nor any response was filed by them. As the said respondents were neither served nor did they have any opportunity to present their case, relying upon the judgment of the Hon'ble Supreme Court in Sachin Gupta and another Versus K.S. Forge Metal Private Limited, 2013 (10) SCC 540, the learned Additional District Judge, Jalandhar accepted the objections under Section 34 of the Arbitration act and set aside the impugned award. This Court does not find any reason to disagree with the findings recorded by the learned Additional District Judge, Jalandhar, which are affirmed.

10. There is no merit in the appeal and it is hereby dismissed.

11. In view the observations of the Hon'ble Supreme Court in Dr. A. Parthasarathy and Others Versus E Springs Avenues Pvt. Ltd. and Others, 2022 SCC OnLine SC 719, liberty is granted to the appellants to seek a fresh reference to the Arbitrator.

(SUVIR SEHGAL)
JUDGE

11.12.2024
Brij

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No