

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

**FAO No.4682 of 2012 (O&M)
Date of decision:05.02.2016**

Executive Engineer, Construction Division No.1, PWD (B&R)
Bathinda

... Appellant

Vs.

M/s Bhullar Construction and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Piyush Bansal, DAG, Punjab
for the appellant.

Mr. N.P.S.Mann, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The appellant-State is aggrieved of the dismissal of the objections by the Additional District Judge, seeking setting aside of the Award date 29.12.2006.

Mr. Piyush Bansal, learned Deputy Advocate General, Punjab appearing on behalf of the appellant-State submits that Arbitrator has awarded interest @ 18% which is not as per the provisions of Section 31(7) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act'). In this regard, he has relied upon the judgment of the Hon'ble Supreme Court in **P. Radhakrishna Murthy**

vs. National Buildings Construction Corporation Limited 2013 (3)

Supreme Court Cases 747. The Arbitrator cannot award commercial rate of interest in the absence of any clause in the agreement.

Mr. N.P.S.Mann, learned counsel appearing on behalf of respondent No.1 submits that Arbitrator has awarded interest after noticing the fact that there was an unnecessarily delay in making the payment and rightly so exercised the jurisdiction as envisaged under Section 31(7) of 1996 Act. Even the objecting Court has also dealt with said aspect, thus, there is no illegality and perversity in the impugned order.

I have heard learned counsel for the parties and appraised the paper book.

In view of the latest judgment rendered by the Hon'ble Supreme Court in **M/s Hyder Consulting (UK) Limited versus Governor, State of Orissa through Chief Engineer 2015(1) RCR (Civil) 165**, wherein, it has been held that the Arbitrator can award interest on interest, in essence, interest as per clause 7 of Section 31 of 1996 Act can be awarded by the Tribunal on the basis of the claims of the parties and the said interest cannot be merged with any interest as imposed for the period from the date of cause of action to the date of the award and further interest from the date of award till payment on awarded amounts. The Arbitrator after having noticed the fact that there was unnecessarily delay in making the payment, the party can always be compensated as per the provisions of Section

31(7) of 1996 Act. The ratio decidendi culled out as per the judgment rendered in **P. Radhakrishna Murthy' case (supra)** cited by the State would not be applicable to the facts and circumstances of the present case. The operative part of the Award rendered by the Arbitrator in granting interest reads thus:-

“Claim No.24 Interest of all claims as admissible under the Arbitration and Conciliation Act, 1996.

The department has delayed the payments unnecessarily and the agency stated that he is entitled for interest on these payments.

The Executive Engineer stated during hearing that there is no clause in the agreement which the agency is entitled for interest. As such the claim of the agency is not justified.

The contractor is entitled interest @ 18% on the due payment from the date of completion of work till the award and further interest from the date of award till payment on the awarded amounts as prescribed under Section 31 of the Arbitration and Conciliation Act, 1996.”

The Arbitrator had given full opportunity to the parties to lead evidence and after considering the evidence, few claims were rejected and on others claims awarded the interest.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question

which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49** and **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698**. In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

In my view the award of the Arbitrator does not suffer from any illegality, in as much as, the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2016
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