

**In the Court of Kewal Krishan,
Addl. District Judge, Ferozepur(UID: PB0182)**

Case type	Arbitration
CIS No.	ARB/47/2022
CNR No.	PBFZ010074892022
Date of Institution	01.11.2022
Date of Registration	01.11.2022
Date of Order	09.10.2024

M/s Jagdish Raj & Bros Contractor Engineers through Shri Jagdish Raj, 7/7A, New Pawan Nagar, Batala Road, Amritsar, now resident of 15, Gurmohar Avenue, Majitha Road, Amritsar.

.....Appellant

Versus

1. Union of India through Executive Engineer, Border Fencing Division No.5 CPWD, Ferozepur Sector Head Quarter BSF Moga Road, Ferozepur.

.....Respondent.

2. Shri Ajay Kumar Sharma Retired District & Sessions Judge cum sole arbitrator, resident of house No.41, Windsor Park, Gulab Devi Road, Near DAV Engg College, Jalandhar.

.....Performa Respondent

Appeal under Section 39 of the Arbitration Act, 1940 against the judgment and decree dated 26.09.2022 passed by Learned Court of Sh. Gurmeet Tiwana, Civil Judge Senior Division, Ferozepur in petition under Section 30 and 33 of the said Act.

Relief Claimed: For modifying the impugned judgment and decree by setting aside against claim No.1, 2, 4, 5 and 7 to 9 and further modifying the rate of interest regarding claims No.10 and 11 from 9% to the rate as awarded by the Arbitrator.

Present:

Sh. Rajiv Sharma Advocate for the appellant with Sh. Jagdish Raj partner of the firm.

Sh. Mukesh Goyal Advocate for respondent No.1

Service of notice upon respondent No.2 dispensed with

And

M/s Jagdish Raj & Bros vs Union of India
And
Union of India vs M/s Jagdish Raj & Bros.

Case type	Arbitration
CIS No.	ARB/194/2024
CNR No.	PBFZ01005998
Date of Institution	18.05.2023
Date of Registration	09.10.2024
Date of Order	09.10.2024

Union of India through Executive Engineer, Border Fencing Division
No.5 CPWD, Ferozepur Sector Head Quarter BSF Moga Road,
Ferozepur.

.....Appellant

Versus

1. M/s Jagdish Raj & Bros Contractor Engineers through Shri Jagdish Raj, 7/7A, New Pawan Nagar, Batala Road, Amritsar.
...Respondent
2. Shri Ajay Kumar Sharma Retired District & Sessions Judge cum sole arbitrator, resident of house No.41, Windsor Park, Gulab Devi Road, Near DAV Engg College, Jalandhar.
.....Performa Respondent

Appeal under Section 39 of the Arbitration Act, 1940 against the order dated 26.09.2022 passed by Learned Court of Sh. Gurmeet Tiwana, Civil Judge Senior Division, Ferozepur in petition under Section 30 and 33 of the said Act seeking setting aside the Arbitration Award dated 27.05.2016 vide Arb. Case No.393 of 2013 bearing institution No.02/2016 regarding agreement No.6/1991 pertaining to BP No.183/12 to 187M.

Relief Claimed: To set aside the impugned order dated 26.09.2022 and the Award dated 27.05.2016

Present:
Sh. Mukesh Goyal Advocate for the appellant (UOI)
Sh. Rajiv Sharma Advocate for the respondent No.1 with Sh. Jagdish Raj partner of the firm.
Service of notice upon respondent No.2 dispensed with

Judgment (Consolidated):

1. An order dated 26.09.2022 was passed by Learned Court of

Sh. Gurmeet Tiwana, Civil Judge Senior Division, Ferozepur against which M/s Jagdish Raj & Bros Contractor Engineers (hereinafter referred as '*Contractor*') and Union of India have filed their separate appeals. Both these appeals are being decided vide this consolidated judgment. Arbitral Record is already received.

Grounds of appeal of appeal of the Contractor

2. The grounds of appeal are that in respect to the work 'Providing Security Fencing alongwith the Indo Pak Border in Punjab under the New Punjab Action Plan in Ferozepur Sector from BPO No.183/12 to 187M including barbed wire, concrete coil and gates having agreement No.06/EE/MFD/FZR 1990-91 dated 01.02.1991, certain legal and valid claim arose and accordingly the appellant filed petition for appointment of the Arbitrator for deciding the dispute. The petition was allowed by Learned Court of Sh. Hira Singh Gill, the then Civil Judge Senior Division, Ferozepur confirmed upto Hon'ble High Court, thereby appointing Sh. Ajay Kumar Sharma, District and Sessions Judge (Retired) as sole Arbitrator under the relevant provisions of Arbitration Act, 1940. The Arbitrator after giving equal and fair opportunity to both the parties, passed the Award on 27.05.2016. Thereafter, for making the said award Rule of Court, the appellant filed petition under Section 14 and 17 of the Act 1940 before the Court of Civil Judge Senior Division, Ferozepur on 02.07.2016. Notice was issued to Union of India through concerned

Executive Engineer, which was received as per record on 04.08.2016 and reply was filed on 08.11.2016. The objections against the award, if any party wants to file, can file within a period of 30 days from the date of receiving the notice from the Court. Case law *Union of India vs Neelam Engineering Construction Co.* in civil appeal No.1283/2010 decided on 10.03.2010 by Hon'ble Supreme Court, *Punjab Mandi Board vs Gurbax Singh* 2003(3) ALR 630, *Palta Singh Gulab Rai vs MP Steel Industries Corporation* 1988 CCC 75 were referred. Further grounds are that since in the present case, the said petition under Section 30 and 33 of the Act 1940 as filed by Union of India was not objection in the eyes of law being pre mature as the same was filed on 26.08.2016, whereas the Arbitration file was submitted by the Arbitrator on 25.09.2016. The Civil Court neither discussed nor appreciated the legal proposition. There is no observation of the Court in that respect and even the application which was earlier filed by the appellant for rejection of objection on 10.01.2017 was not considered/decided by the Court. The findings of the Court of going into the merits of the award and thereby rejecting/disallowing certain claims are not legally sustainable. The impugned order is required to be modified. The arguments were advanced on 26.09.2022, which remained continue from 3:30 pm to 4:30 pm and during the course of arguments, more than 30 case laws were cited. The Court pronounced the order thereafter within few minutes, which was uploaded on the Court server within 15-20 minutes after conclusion of arguments. The Court did

not discuss or appreciate the cited case laws causing grave injustice. Legal issue regarding limitation remained untouched as the respondent Union of India in para No.10 of the petition under Section 30 and 33 has taken plea of time barred by 29 days and accordingly filed application for condonation of delay, which remained undecided. It is well settled proposition of law that while deciding the objection, the Court is not to sit in appeal against the award. It is not legally permissible to re-appreciate and re-evaluate the facts on merit. If there are two views, then the view taken by the Arbitrator is to be considered as final. Even otherwise, in this case, all the claims as raised and further allowed were legally maintainable on merits. There was no clause in the agreement, which prohibits those claims. The Arbitrator rightly had awarded the same. The Award was passed in well reasoned/speaking form. The claims were rightly raised by the appellant. It is an admitted fact that appellant provided/fixed 114 struts. There is no dispute regarding number and rates of executed struts and the site plan was for reference only. The Court has given wrong interpretation. Claim No.2 was rightly raised as there was no approach to the work site. The arbitrator has rightly appreciated this claim. Claims No.4, 5, 7, 8, 9 were rightly awarded by the Arbitrator in the light of judgment 2014(3) ALR 226, AIR 2015 SC 620, 2006(11) SCC 181. Reducing the rate of interest by the Court is not legally sustainable. Case laws 2011(2) LH Punjab and Haryana 1513, 2012(3) LH Punjab and Haryana 2273, 2010(4) LH 2814, 2014(1) LH Punjab and Haryana 222,

2015(2) PLR 252, 2018(3) LH 2206, 2004(1) C&R Judicial Reports 590, 2005(1) CCC 540, 2018(1) ALR 239, 1999(1) SLJ 338, AIR 1989 SC 777, AIR 1981 SC 81, AIR 1997 Delhi 74, AIR 1987 SC 81, AIR 1988 SC 2054, AIR 1990 SC 2273, AIR 1987 SC 89, AIR 2015 SC 620, 2015(3) ALR 427, 2015(5) LH Punjab and Haryana 4303, 2012(3) LH P&H 2280, 2012(2) LH P&H 1859, 2009(4) ALR 457 SC were also referred. A prayer for modification in the order was made.

Grounds of appeal of appeal of Union of India

3. The grounds of appeal are that the matter pertains to two separate awards. The impugned order like the award impugned is not in consistency of the law and facts. The work vide agreement No.06/EE/BFD/FZR/1990-91 with start date 20.01.1991 was required to be completed by 20.03.1991. The agency executed the work slowly and did not deploy sufficient manpower and resources, as a result of which the work got delayed by 32 days and was completed on 21.4.1991. Agency vide time barred letter dated 15.07.1995 wrote to the Chief Engineer, Border Fencing Zone, New Delhi for appointment of arbitrator. As the claim was time barred, the request was declined. The agency malafidely filed petition in Civil Court Amritsar on 12.4.1996 to keep the unfound dispute alive. Said case was later on transferred to Civil Court Ferozepur vide order dated 05.08.2005. Ld. Court of Sh. Lachhman Singh Civil Judge Sr. Division, Ferozepur vide order dated 31.5.2011 directed the

department to appoint Arbitrator. Sh. Rajiv Kumar was appointed as sole Arbitrator vide order dated 21.07.2011, who resigned on 5.12.2011. Thereafter, Sh. V.S. Malik was appointed as sole Arbitrator vide order dated 24.05.2012 of the Chief Engineer, who also resigned on 29.10.2012 being statutory period had lapsed. Thereafter, the contractor again filed petition before before Civil Court. Ld. Court of Sh. Hira Singh Gill, the then Civil Judge Senior Division, Ferozepur apponited Sh. Ajay Kumar Sharma, the District and Sessions Judge (Retired) as Arbitrator vide order dated 27.5.2015. The Award was published on 27.5.2016, which is not sustainable. The Trial Court has rightly accepted the arguments of the department for the claims No.1, 2 and 4. As far as claim No.3 is concerned, the labout details submitted by the contractor had been not only forged, but fictitious and baseless as lot of persons were shown repeated in the list of two projects. The Arbitrator passed the award unilaterally in gross ignorance of the terms of agreement. The calculations on Ex.P176/06 about shuttering are also false and vague. The claims are wrong. The department joined the Civil Court proceedings upon notice dated 26.7.2016 and they got filed their reply on 26.8.2016 as per stautory period. The appeal is being filed with an application to condone the delay. A prayer to allow the appeal was made.

4. Arguments are heard. This Court has gone through the entire record.

5. Union of India had filed petition under Section 30 and 33 of the Arbitration Act 1940 on 26.08.2016 for setting aside the award dated 27.05.2016 in arbitration case No.393/2013 alongwith an application for condonation of delay. It was mentioned in the application that the petition qua Section 30 of the Act 1940 is time barred by 29 days and a prayer was made to condone the delay. M/s Jagdish Raj & Bros had taken plea in the grounds of their appeal that the legal issue regarding limitation remained untouched and the application in this regard remained undecided.

6. The Trial Court decided the petition of Union of India on merits, filed under Section 30 and 33 of the Arbitration Act vide impugned detailed order dated 26.09.2022. The application for condonation of delay was pending on 26.09.2022, which remained undecided on merits. The order deciding the petition under Section 30 and 33 of the Act 1940 on merits without deciding the application for condonation of delay on merits is illegal. In view of **Gagandeep Pratishthan Pvt. Ltd. v. M/s Mechano** (Civil Appeal Nos. 7912-7913 of 2001 decided on 20.11.2001) of Hon'ble Supreme Court, the application for condonation of delay was required to be considered first and then proceed with same.

7. Keeping in view above detailed discussion, this Court deems it appropriate to set-aside the impugned order dated 26.09.2022 by giving directions to the Trial Court to decide the application for condonation of delay first and then decide the petition of Union of India filed under

Section 30 and 33 of the Act of 1940. Therefore, without going into merits, both appeals are disposed of and the impugned order is set-aside. The case is remanded to the trial court/successor Court for 16.10.2024 with direction to decide the application for condonation of delay first and if the application is allowed, then to decide the petition of Union of India filed under Section 30 and 33 of the Act of 1940, afresh on merits, under provisions of law. Any other application pending as on 26.09.2022, which remained undecided on merits, be also decided on merits.

8. Copy of this judgment be placed on record of appeal titled as *Union of India vs M/s Jagdish Raj & Bros.* File be compiled and consigned to the Judicial Record Room.

Pronounced in open Court,
On 09.10.2024
Typed by: Anil Kumar
Stenographer Gr.I

Sd/-
(Kewal Krishan)
Addl. District Judge, Ferozepur
UID-PB0182