

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.3303/2000

(From the judgement and order dated 26/05/1999 in CR 1679/97  
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

PUNJAB HOUSING DEVELOPMENT BOARD & ANR.

Petitioner (s)

VERSUS

LUDHIANA BUILDERS & ENGINEERS(P) LTD.

Respondent (s)

(With prayer for interim relief)  
( With Appln(s). for c/delay in filing SLP )  
( For Final Disposal )

Date : 23/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s)

Mrs.Rachana Joshi Issar,Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.J  
.SP2

Leave granted.  
This appeal is disposed of interim of the signed  
order. No costs.

.SP1

(Suman Wadhwa)  
PA to Addl.Regr..

(S.Malkani)  
Court Master

.PA  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. OF 2001  
(Arising out of SLP@ No.3303 of 2000)

Punjab Housing Development  
Board & another

& Appellants

Vs.

O R D E R

Leave granted.

Heard Ms. Rachna Joshi Issar, learned counsel for the appellants.

There is no appearance on behalf of the respondent despite service of notice.

This appeal is directed against the order dated 26th May, 1999 of the Punjab and Haryana High Court in C. R. No. 1679 of 1997 dismissing the revision petition filed by the appellants. In the revision petition, the appellants had assailed the order of the trial court rejecting the objections raised by the appellants against the award and making the Award a rule of the Court. On certain disputes relating to the work having arisen between the parties the matter was referred to the then Superintending Engineer, Punjab Housing Development Board for adjudication. The respondent filed his claim before the Arbitrator and the appellants while disputing the claims raised by the respondents raised certain counter claims against them. The Arbitrator passed the Award dated 5.1.1989 holding that a sum of Rs.1,18,887/- was due to be paid by the appellants to the respondent. Though it is stated in the Award that the Arbitrator has considered the pleadings of both the parties and also the oral and documentary evidence produced by them the Award does not show that the counter claims filed by the appellants were considered by the Arbitrator. In paragraph 4 of the objection filed by the appellants to the Award the appellants raised the question of non-consideration of their counter claims amounting to Rs.2,03,951/-. This position was reiterated in paragraph 5. The trial court confirmed the Award ignoring the aforementioned objections taken by the appellants. The order passed by the trial court was confirmed by the Appellate Court. In paragraph 5 of the revision petition filed before the High Court the appellants specifically took the ground that the misconduct of the Arbitrator is quite apparent from the record because the Arbitrator did not decide the counter claims raised by the appellants while deciding the claims raised by the respondent. The revision petition was dismissed. Hence this appeal.

From the arbitration clause incorporated in clause 25-A of the Agreement it is clear that all disputes in any way arising in connection or out of the instrument are to be referred for arbitration to the named Arbitrator i.e. Superintending Engineer of the Board. The parties appeared before the Arbitrator and filed their respective claims/ counter claims. In the circumstances the Arbitrator was duty bound to adjudicate on the claims made by the respondent-contractor as well as the counter claims raised by the appellant-Board. The Award is totally silent about the fate of the counter claims raised by the appellants. Indeed, there is no mention of the counter claim at all in the Award. The appellate court and the High Court also failed to take note of the objections raised by the appellants in this regard.

This Court in the case of Indian Oil Corporation Ltd. vs. Amritsar Gas Service and Ors. 1991(1) SCC 533 held that refusal to consider the counter claim for the only reason stated in the Award that they were not placed before the Court when the reference was made is not supportable.

However, in that case as the counter claim was not being pressed by the appellant this Court did not examine the matter further. In the case in hand, the Arbitrator should have adjudicated on the counter claims filed by the appellants. Thus the Award suffers from a manifest error due to non-consideration of the counter claims raised by the appellants against the respondents.

Determination of the amount due to be paid by the appellants to the respondent is also inter-linked with determination of the counter claims made by them. Therefore, the Award passed by the Arbitrator and the orders of the courts below confirming the same are liable to be set aside and the matter remitted to the Arbitrator for adjudication of the counter claims filed by the appellants. It is made clear that the Arbitrator will not reopen the adjudication of the claims made by the respondent on merits, but will only consider the merits of the counter claims raised by the appellants and then decide the amount which is to be paid by one party to the other. This appeal is disposed of in the manner aforementioned. No costs.

& & & & & & & & ..J.  
(D.P. Mohapatra)

& & & & & & & ..J.  
(Shivaraj V. Patil)

New Delhi  
March 23, 2001  
1