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Court : Mumbai

Decided On : Jun-09-2016

Judge : Anoop V. Mohta & G.S. Kulkarni

Appeal No. : Appeal No. 1148 of 2005 in Arbitration Petition No. 281 of 2003

Appellant : Kamal Constructions

Respondent : Union of India and Another

Judgement :

Oral Judgment: (Anoop V. Mohta, J.)

1. The Appellant/original Claimant has challenged the order dated 19th July, 2005 passed by the learned single Judge whereby claim Nos.3 and 4 awarded by the learned Arbitrator have been set aside. The appellant is not pressing other claims.

2. Admittedly, the Appellant/original claimant has not led any oral and/or supporting evidence in support of the claims in question. Claim No.3 is for underutilization of resources. The contesting respondents resisted the same by a specific reply :

"In fact no resources have been mobilized so there is no question of under utilization of resources."

The learned Arbitrator based upon the documents placed on record though restricted the amount and granted the claim of Rs.2,43,750.00 but, no finding whatsoever is given and/or dealt with about the actual proof of such supporting documents. This is in the background when the respondents specifically resisted and denied the claim so prayed.

3. Claim No.4 was for extra expenses on overheads during the prolonged period. For this claim also there was no specific evidence led. The respondents resisted the claim. The documentary evidence so placed on record admittedly not proved as required. There was no admission and/or acceptance of these documents by the respondents at any point of time. The learned Judge therefore, considering both these claims and above position on record, has observed as under :

"However, so far as amounts awarded against claim nos.3 and 4 are concerned, it appears that there is no material considered by the learned arbitrator for recording the finding. Though the learned arbitrator has awarded Rs.1,00,000/- for underutilization of the resources. Perusal of the award does not show as to what were the resources mobilized by the claimant for performing the contract. The award also does not show that the claimant had produced any material before the learned arbitrator, which was considered by the learned to show that the resources were mobilized by the respondent for carrying out the work and those resources remained unutilised. As the finding recorded by the arbitrator in this regard is a finding without considering the evidence on record, finding against claim no.3 in my opinion is liable to be set aside. So far as the finding recorded in relation to claim no.4 is concerned against the award does not show that the respondent had produced any evidence on record that he has actually incurred any expenses on overheads. I do not see any consideration of any document by the learned arbitrator in arriving at the amount of Rs.42,000/- which is awarded against this claim. Therefore the amount awarded against claim no.4 could not have been awarded and therefore the award made against claim Nos.3 and 4 is liable to be set aside. It is accordingly set aside."

4. Even after hearing learned counsel for the parties and after perusal of the claims, reply, reasons given by the learned Judge so recorded above and even

after going through the documents, unproved documents on record, we see there is no case made out to interfere with the reasoned order passed by the learned Judge as the same is within the framework of law and the record. There is no perversity in the order passed by the learned Judge. On the contrary, the learned Arbitrator ought not to have granted Claim nos.3 and 4 in view of the above admitted position on record.

5. The Apex Court in *M/s Chelarolu Enterprises vs Andhra Pradesh Backward Class Cooperative Finance Corporation Ltd.*, 2015 (12) Scale 207, has held that :

"20.... This Court or even the Appellate court would not look into the finding of facts unless they are perverse".

6. Therefore, taking an over all view of the matter, appeal dismissed. No costs.

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