

**Uoi vs.amar Constructions**

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**SooperKanoon Citation :** [sooperkanoon.com/1211556](http://sooperkanoon.com/1211556)

**Court :** Delhi

**Decided On :** Dec-21-2017

**Appellant :** Uoi

**Respondent :** Amar Constructions

**Judgement :**

\$~ \* % IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

12. h December, 2017 Pronounced on:

21. t December, 2017 + O.M.P. 271/2010 UOI Through : Mr.Vivekanand Mishra

.....

... Petitioner

and Mr.Vipul Agrawal, Advocates. versus AMAR CONSTRUCTIONS .....

Respondent and Mr.Varun Through : Mr.K.P.Singh Pandey, Advocates. CORAM:  
HON'BLE MR. JUSTICE YOGESH KHANNA YOGESH KHANNA, J.

1. This petition is under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the Act) for setting aside the arbitral award dated 30.12.2009 passed against the petitioner and in favour of respondent.

2. a) The brief facts leading to this petition are as follows:-

"It is alleged the respondent/claimant was awarded a contract for the construction of ARC Directorate Complex at Palam, New Delhi for providing living accommodation to the officers at tender amount of `60,21,579/-. O.M.P.271/2010 Page 1 of 22 b) The stipulated date of commencement of the contract was 02.02.2002 and the date of completion as stipulated in the contract was 01.12.2002 but the actual date of completion of contract was 31.07.2003. c) d) On 12.08.2003, the final bill was submitted by the claimant. The date up to which the extension was found to be justified was 30.06.2004. The notice dated 21.01.2005 was served upon the petitioner stating the disputes and differences and for referring the matter to arbitration, if no payments were released. e) It is alleged respondent/claimant after the completion of work, started claiming damages on account of losses suffered by the respondent due to unproductive expenditure incurred during the period beyond the stipulated date of completion. However, the petitioners stands was since the work got prolonged due to the inefficiency of the respondent, the respondent cannot be held to be entitled of any of the claims raised by them. Also, the period beyond the stipulated date has been regularized by the petitioner without any levy of compensation and the respondent himself had furnished an undertaking not to claim anything on account of delay. f) On 29.04.2005 the notice was served upon the Chief Engineer for adjudicating the claims of the respondent through an Arbitrator. g) On 03.08.2006 in Arbitration Petition No.146 of 2006 filed by the Respondent, this Court vide its order dated 03.08.2006 O.M.P.271/2010 Page 2 of 22 appointed Shri Prem Kumar as an arbitrator for adjudicating upon the claims of the Respondent.

3. On 30.12.2009, an award was passed in favour of the claimant/respondent for a sum of `29,02,192.36/- with an interest @ of 9%.

4. It is alleged the award was passed without appreciation of evidence and without due application of mind in an arbitrary, unreasonable and whimsical manner.

5. The learned counsel for the petitioner argued at the time of settlement of the final bill dated 12.09.2003, the respondent gave an undertaking that it will not raise any other claim but after 15 months it came up with various claims. It is alleged the respondent had no right to raise such claims after giving such an undertaking. The

counsel for the petitioner argued the arbitrator wrongly relied upon the decision in Chairman and MD, NTPC vs. Reshmi Constructions, Builders and Contractors AIR 2004 SC1330 which had facts different than the one in the present case. The petitioner also relied upon clause 9 of the Construction Contract dated 02.02.2002 and it read as under:-

"Clause No.9 The final bill shall be submitted by the contractor in the same manner as specified in interim bills within three months of physical completion of the work or within one month of the date of the final certificate of completion furnished by the Engineer-in-Charge whichever is earlier. No further O.M.P.271/2010 Page 3 of 22 claims shall be made by the contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payments of those items of the bill in respect of which there is no dispute and of items in dispute, for quantities and rates as approved by Engineer-in-Charge, will, as far as possible be made within the period specified hereinunder, the period being reckoned from the date of receipt of the bill by the Engineer-in-charge or his authorized Asstt. Engineer, complete with account of materials issued by the Department and dismantled materials:-

"I) If the Tendered value of work is upto Rs.5 Lakhs :

3. months If the Tendered value of work exceeds Rs.5 Lakhs : II) 6 months. 6. It is argued as per clause No.9, no further claim could be made by the contractor after submission of the final bill and those shall be deemed to have been waived off and extinguished.

7. The reliance of the petitioner on clause No.9 is wholly misplaced because even after the submission of final bill on 12.08.2003, the date of work was extended till 30.06.2004 for which separate bills were raised and hence, it cannot be said the respondent could not have raised further claims for such additional work.

8. The another contention of the petitioner viz., the reliance on NTPCs case (supra) by the learned Arbitrator is also misplaced as O.M.P.271/2010 Page 4 of 22 the facts of the present case are different than of the cited case is also incorrect. The NTPC (supra) notes: in their the final bill submitted by 26.The

appellant herein did not raise a question that there has been a novation of contract. The conduct of the parties as evidenced letters, as noticed hereinbefore, clearly go to show that not only the respondent was rejected but another final bill was prepared with a printed format that a "No Demand Certificate" has been executed as other final bill would not be paid. The respondent herein, as noticed hereinbefore, categorically stated in its letter dated 20.12.1990 that as to under what circumstances they were compelled to sign the said printed letter. It appears from the appendix appended to the judgment of the learned Trial Judge that the said letter was filed even before the trial court. It is, therefore, not a the respondent's assertion of "under influence or coercion" can be said to have been taken by way of an afterthought. 27. Even when rights and obligations of the parties are worked out the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in the cases where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various include discharge of his liability towards the banks, reasons which may case whether thus, O.M.P.271/2010 Page 5 of 22 situation, the public financial institutions and other persons. In such a sector undertakings would have an upper hand. They would not ordinarily release the money unless a 'No Demand Certificate' is signed. Each case, therefore, is required to be considered on its own facts.

28. Further, *necessitas non habet legem* is an old age maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of other party to the bargain who is on a stronger position. 9. In aforesaid, the court observed in government contracts with standard conditions, the contractors sometime being financially constrained may succumb to such clauses to realize their dues. In the present case too since after the final bill, the contractor was awarded further work which went on till about one year after the submission of final bill. Moreso the respondent herein had also urged before the arbitrator the alleged no claim certificate was given by it under coercion and under the threat of penalty of 10% and non-payment of final bill and the respondent rather relied upon the following facts a) the stipulated date of completion was over

on 01.12.2002; b) the work was completed on 31.07.2003; c) final bill was submitted on 12.08.2003; d) the extension was granted upto 30.06.2004 and e) payments released on 18.08.2004 (supra), hence the facts quite similar to NTPC (supra).

10. The learned arbitrator in the impugned award dealt with the above issue in para 37 as under:-

"O.M.P.271/2010 Page 6 of 22 the work that is under the completion of 37. In the present case, it cannot be lost sight of the fact that the project had been completed on 31.7.03. The Executive Engineer vide letter dated 3.12.03 had sought extension of time from the superintending engineer on the application of the claimant. It is clear that it was more than 4 months after the respondent had not yet released the payment of the claimant. Infact, the date of final bill is 19.8.04. Obviously after the completion of the work the contractor expects that the payment shall be released at the earliest. Here is the case where the claimant had to wait for more than one year after the completion of work. It these circumstances that the claimant is left with no option but to give an undertaking that he would not claim extra. Such an undertaking obviously cannot be said to be voluntary, but arising out of force of circumstances as the payment is held up. It may be stated that the contractor had served a notice upon, the Executive Engineer on 7.6.04, calling upon him to finalize the bill raised by the contractor. Reminder was sent on 17.7.04. Another reminder was sent on 25.8.04 followed by two more reminders sent on 26.8.04 and 19.9.04. The Executive Engineer did nothing in the matter. After ,writing two more letter on 5.1.05 and 21.1.05 and getting no response from the Executive Engineer, the petitioner sent a notice pertaining to the superintending engineer on 23.2.05 calling upon him to intervene and request was also made to finalize the bills. Even superintending engineer did nothing in the matter. On 28.3.05 letter was addressed to the Chief Engineer calling upon him to settle the final bill. For 30 days chief engineer did nothing. On 29.4.05 the contractor, issued a notice, to the Chief Engineer calling upon him to nominate an arbitrator and also listed the disputes which remained unsettled. All these facts, have O.M.P.271/2010 Page 7 of 22 to act upon the respondent been taken note of by the Hon'ble High Court while appointing me as the arbitrator. The fact remains

that there was total insensitivity on the part of the representation, of the claimant and to settle the disputes raised by him. Seen in this light it is obvious that the claimant contractor was helpless and had been forced by circumstances to obtain at least the amount which, in the eyes of the respondent was undoubtedly outstanding., This however, does not mean that ,undertaking given by force of circumstances was voluntary and would bind' the claimant, contractor. The objection of the' respondent, in this regard is without any basis. The reasoning given above by the learned arbitrator is just 11. and equitable. The learned arbitrator had noted how the contractor ran from pillar to post to get his payments released despite the final bill being submitted on 12.08.2003. The respondent was made to work further. It submitted another bill dated 19.08.2004, just a day after the payments were released on 18.08.2004 shows the respondent never agreed with the payments made. The facts rather show a total apathy of the officials of the petitioner in not responding to various communications of the respondent and ultimately the respondent had to go in for arbitration. The circumstances in which the claims were raised subsequent to the final bill have been enumerated by the respondent and are well noted in the award itself, hence, the objection of the petitioner that the contractor had no right to raise further bills after the submission of final bill in view of Clause 9 (supra), is frivolous. O.M.P.271/2010 Page 8 of 22

12. Secondly, the learned counsel for the petitioner argued the arbitrator in his award has relied upon certain letters viz Ex.C31, Ex.C-21, Ex.C-32 and Ex.C-5, which pertain to the claims for some extra work and the claimant was not paid for the same. It is argued that such letters seems to be forged as all other communications between the parties were only through hand, except for these five letters allegedly sent through Under Postal Certificate (UPC). These letters pertain to the work done beyond the contract, such work being unauthorized, hence nothing was payable on such claims.

13. The learned counsel for the petitioner has referred to Section 3 (1)(a) of the Arbitration and Conciliation Act to say the service of the communication was to be complete only when the letter was delivered and there is no scope of deemed service and as the letters were allegedly sent through UPC, those cannot be presumed to have been delivered upon the respondent.

14. Section 3 of the Act read as under:-

"3. Receipt of written communications.- (1)Unless otherwise agreed by the parties - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and (b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, written communication is deemed to have been received if it is sent to the addressee at his last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it. 15. Further Section 27 of the General Clauses Act, 1897 notes as under:-

"27. Meaning of service by post. Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. the contrary 16. There is no dispute the letters aforesaid were sent at the correct address of the petitioner and it being a settled law if the address is correctly shown then U.P.C is considered a deemed service. Admittedly, the respondent when was in the witness box was never cross examined on this aspect, hence, now in these proceedings, the petitioner cannot allege such letters to be forged or were never sent. The learned arbitrator has rightly dealt with this issue in para No.78 of award:-

"78. As regards C-5 C-21, C-23, C-28 and C-31, claimant submits that the said letters were sent O.M.P.271/2010 Page 10 of 22 letters. Moreover through UPC to the respondent and it is totally immaterial that letters were not delivered by hand. When there are different modes of sending a letter, then the claimant can chose any of these modes to despatch the claimant has complied with the provision of section 3 of the Arbitration and Conciliation Act 1996 and under the said provisions this letters will be deemed as served ,upon the respondent. Hence, this claim is

allowed. There is no reasons for me to differ with the view taken by 17. the learned arbitrator on this issue.

18. The third objection raised is of substantial delay. It is argued the petitioner was supposed to submit the programme chart in the beginning of the contract within 15 days and it was delayed by 1 months and consequently everything was delayed and the contract which was to complete on 1/12/2002 could be completed in the year 2004.

19. The learned arbitrator has dealt with this objection in following paras of his award :-

"82. This claim is available at page 25 to 26 of SOF, page 16 of CSF and page 44 to 45 of rejoinder. The annexure related to this claim is available at page 44 of SOF. The claim is as under:-

"1. Idling of labour etc. due not allowing to use the water for RCC work : From 2.2.2 (date of start) to 8.2.02 Delay = 7 days 2. Idling of labour etc. due non issue of Drawing of Ground Floor etc. O.M.P.271/2010 Page 11 of 22 From 2.2.2 (date of start) to 19.2.02 i) Drawing issued on 12.2.02 ii) Revised drawing issued on 19.2.02 Delay = 18 days (Note: The delay' of 7 days of S N1is overlapping with the above delay 7 hence net delay= 18 days) Details' of labour/staff for one day: Skilled labour=4 nos. @ Rs. 160.00 = 640.00 Unskilled labour=16 nos. @ Rs. 110.00 = 1760.00 Supervisor = 1 No.@ Rs. 200.00 = 200.00 Engineer = 1 No.@ Rs. 300.00 = 300.00 Total = 2900.00 Total loss due idling = 18x 2900.00 = Rs. 52,200.00 104. The claim is as under:-

"xxx xxx Interest for the payment w.e.f 30.7.03 to 12.2.04 on Rs.59328.00 (withheld amount) @ 18% pa 227 days = Rs.66196.33 Interest@ 18%p.a. due delay in release of security deposit. 105: According the respondent has miserably failed to make, regular interim payment to the claimant. An issue has been raised by the respondent as regard clause 7 of the agreement whereby respondent submits that to get regular the claimant to O.M.P.271/2010 Page 12 of 22 the target on most of interim payment the claimant had to execute work to the tune of Rs.7 lacs. It is also alleged by respondent that the claimant never achieved this

target and hence the interim payment to the claimant is delayed.

106. From Annexure -A as well from the respondent exhibit R10 it is clear from the gross amount column that the claimant has achieved the occasions. Even the claimant had achieved double the target as claimant has executed work for more than 13 lacs and 15 lacs. If this annexure and exhibit is interpreted logically it will be found that claimant has achieved the target on all occasions. It is a common sense that if the target is achieved by double then the next target will be less as in the present case because the more of the first target will be reconciled the less on the 2nd. Thus, the stand of the respondent as regard delay/ non payment of interim bill to the claimant is unfounded, baseless and devoid of merits and requires to be rejected.

107. The claimant relies on Ex. C -38, dated 12.8.03, C-39 dated 16.8.03, C-40 dated 18.8.03, C-43 dated 17.7.04 and C-42 A dated 7.6.04 and submits that 7th R/A bill was paid on 10.4.03 and 8th R/A final bill was paid on 19.8.04 i.e. after a period of about 16 months from the date of 7th R/A bill. It is also to be mentioned here that the claimant has submitted the final bill on 12.8.03 exhibited as C-38. As per the agreement the R/A bill has to be paid month wise and the final bill shall be paid within 6 months after submission of final bill. But the respondent has miserably failed to perform O.M.P.271/2010 Page 13 of 22 these obligations as emphasized by the agreement and has caused suffering and losses to the claimant. Even respondent exhibit R-10 reflects this point and hence it is of no help to the respondent rather it helps the claimant.

108. In the case of M/s Anant Raj Agencies Vs. DDA1997(1) Arb LR385(Del) the claimant had claimed interest @ 20% per annum with quarterly rests. The arbitrator had awarded interest @ 18% per annum. The DDA took objection that the award of interest against the provisions of act 1978. The Hon'ble High Court refused to accept the contention of the DDA and confirmed the interest awarded by the arbitrator. 20. The facts do show the claimant has achieved the target on most of the occasions and it was rather the petitioner who was responsible for the delay. The respondents men were kept idle for days as stated above. Even there was huge delay in releasing the payments on bills. Rather all bills, be it 7th/8th R/A

bill or the final Bill, all were delayed to the frustration of the respondent and putting him to loss, hence interest on the same was allowed. The petitioner though raised a hue or cry for delay on the part of the respondent but never asked a single question in cross examination of respondent and hence now cannot allege the arbitrator failed to consider the delay on the part of the respondent.

21. A bare perusal of the award would reveal the effort put forth by the learned arbitrator to prepare a chart considering the aspect of delay item wise and then awarded the compensation. The O.M.P.271/2010 Page 14 of 22 learned arbitrator noted the petitioner having failed to take timely decisions viz, did not provide the drawings, lay out plans for the execution of the work in time; failed to provide materials like cement/steel etc; even the payments were not released in time. The bare fact the petitioner granted extensions to the respondent without a levy of compensation in itself is an admission on its part that the petitioner was at default and hence cannot blame the respondent for the delay in execution of the work, hence no intervention of this court is required.

22. Fourthly, the learned counsel for the petitioner argued various claims were beyond the scope of the contract, but yet were allowed. He referred to the claims No.VI, VII, IX, and XV. The the learned arbitrator allowed these claims as under :-

"6/46 PROVIDING CEMENT BEFORE VI) PRIMER ON WALL APPLYING WALL PUTTY. Claimant has claimed Rs.351

for 3573.40 sq. meter wall @ Rs.42/- per sq. meter for providing cement primer.

48. Claimant submits that the said item has been duly executed at site. The work required smooth finish and for such smooth finish item was essential. Moreover, the execution of the said item was essential for receiving the wall putty for good finish. The plea of the respondent is required before applying oil bound distemper does not require providing cement primer for smooth finish. Hence, this claim is allowed. the execution of this that the item of primer O.M.P.271/2010 Page 15 of 22 VII)

PROVIDING TWO COATS OF WALL PUTTY. Claimant has claimed Rs.1,48,8 under this sub head for putting two coats of wall putty on 3543.70 sq meter of wall @ Rs. 42/- per sq. meter.

49. Claimant has submitted that two coats of wall putty were applied on the wall as per the instruction of the respondent for good finish and to make the smooth surface. It is also submitted that the cement primer was also applied before painting and the claimant has executed the said work as per BOQ. The respondent on the other hand has paid the item for oil bound painting being item no.

but failed to pay the extra amount spent by the claimant in providing two coats of wall putty as coat of wall putty is very much essential to give complete finishing to the wall. Claimant also relies on C-31, which categorically justifies its claim. Respondent has denied this claim on the ground that para 13.30.2.1 of CPWD specification vol. IV clearly speaks that - surface prepared by in plaster will be smooth and even. That however, does not mean that for a smooth finish if the contractor has to apply extra coats of wall putty, he can be denied his labour and cost of material. There is no reason to disbelieve that the claimant has not applied such coats of wall putty. In fact, respondent does not specifically denied. Claimant is allowed this claim. IX)

PROVIDING WAX POLISHING ON FLOOR the contractor O.M.P.271/2010 Page 16 of 22 Claimant has claimed Rs. 35641.87 under this sub head for wax polishing on 1640.97 sq. meters of floor @ Rs.21.72 per sq. meter.

51. It is submitted that the claimant has done the work of wax polishing on floor items. In the BOQ the reference of polishing of the floor was included though wax polishing was not specifically mentioned. The claimant has executed wax polishing on the instruction of the respondent. Had there been no instruction from the respondent, the claimant would have used different material for polishing the floor. To justify its claim the claimant relies on C-31 which clearly explains the item executed by the claimant along with the rate for the same. Mere denial by respondent is of no avail in this regard. Respondent has denied this claim on the ground that as per para 11.8.3.2 of the CPWD specifications(R-14) is complete and no further polishing was required at all. The fact remains that wax polishing was done on the instruction of the respondent and hence claimant cannot be denied this claim. The same is allowed. XV)

MAKING OPENING IN BRICK MASONRY FOR FIXING CHOWKHAT. for Claimant has claimed Rs.42

making 20 opening @ Rs.214.33 per opening in brick masonry wall.

58. Claimant submits that the operation of toilet door was changed as per the decision of Chief Engineer and due to such change in location opening was made in brick masonry. Though this item is not included in BOQ but the claimant is entitled to the same. The claim is allowed. item the O.M.P.271/2010 Page 17 of 22 It is argued such claims were wrongly allowed as were not included in the contract. Now if such work was not included in the contract then why the contractor was compelled to do the same. As the facts goes the contractors payments were stalled and in such circumstances if was asked to do some extra work, even beyond the scope of contract, in a hope to get his payments released the contractor did the job and now the petitioner cannot take benefit of terms of contract to deny such claims. No contractor would like to spend his time, energy and money for such work for which he is to get nothing.

23. Needless to add in total 13 claims were submitted by the petitioner and only 11 were decided by the learned arbitrator. The claim No.1 contain 22 claims, out of which 12 were allowed; claim No.2 was disallowed; claim No.3 was allowed; claim No.4 was allowed to some extent; claim No.5 was allowed; claim No.6 -50% was allowed; claim No.7 was allowed, claim No.8 was partly allowed, claim No.9 partially allowed; claim No.10 was allowed; claim No.11 was disallowed; claim No.12 was allowed at interest rate of 9% pa only. The counter claim for cost of the petition was also disallowed.

24. Since the learned arbitrator has taken up each and every claim separately and had allowed/disallowed those giving reasons, the award cannot be set aside merely on the ground he should have probably taken a different view. O.M.P.271/2010 Page 18 of 22 25. Lastly, the learned counsel for the petitioner argued the claim was filed through an attorney holder and per settled law, an attorney can depose only of his personal knowledge and is never a competent witness. The learned arbitrator dealt with this issue in para No.28 as follows:-

"28. The first objection of the respondent is that Mr. Mohan Lal Wadhwa is holding power of attorney on behalf of the claimant and is not competent to swear and file affidavit by way of evidence. Reliance has placed reliance on the case of Janki

Vashdeo Bhojwani and another vs. Indusind Bank Ltd., and others, AIR 2005 SUPREME COURT 439 In this case it is held that Order, 3 Rr. 1 and 2 CPC empowers the holder of power of attorney to 'act' on behalf of the principal. The word 'acts' employed in O. 3, Rr. 1 and 2 CPC confines only in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in, place and' . . . . instead of the principal. If the power of attorney holder has in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled cross-examined". This judgment does not bar a power of attorney holder to give statement or file affidavit by way of evidence. The power of attorney rendered to be some 'acts' O.M.P.271/2010 Page 19 of 22 holder can submit and depose before court or arbitrator in, respect of acts 'done by attorney, himself. In the present case; all the acts starting from submission of tender till realization of dues from the department have been undertaken by Sh. Mohan Lal Wadhwa in pursuance of power of attorney executed by claimant in his favour. Mr. Mohan Lal Wadhwa has inter-alia been authorized to commence, institute, prosecute, defend, compromise or refer to arbitration all suits, actions at law as the said attorney deems fit or proper under law and to do every and all incidental acts necessary for execution of the contract. Hence, Mr. Mohan Lal Wadhwa has locus standi to proceed with the case on behalf of the Claimant. In fact, the respondent all along entertained Mr. Mohan Lal Wadhwa as attorney of the claimant and never raised any objection during tender or during execution of the work or in receiving payment of the bills. Hence, is a complete afterthought and has no legs to stand upon. The in no way restricts the attorney to depose before the court. All the communications with the department as well as other concerned persons relating to this work have been done by Mr. Mohan Lal Wadhwa and thus, the claim filed through him and the affidavit by way of evidence filed by him is in order."

the objection now taken judgment 26. Thus as the attorney holder was instrumental in seeking of contract, its execution, completion and raising demands etc., so was rightly held capable to file and pursue the claim since he had

O.M.P.271/2010 Page 20 of 22 acted and interacted with the petitioner since beginning, on behalf of the respondent.

27. The role of the Court in scrutiny of the award is minimal. As per settled law the award cannot be said to be vitiated by non- reception of material or non consideration of relevant aspects of the matter. The appraisalment of the findings by the learned arbitrator is ordinarily never be a matter which the Court questions and considers. The arbitrator is the sole judge of the quality as well as quantities of the evidence and it will not be for this Court to interfere in it. The plea the arbitrator could have arrived at a different conclusion than the one arrived at by itself is not a good ground for setting aside the award of the arbitrator. The intervention of the Court is envisaged in that view circumstances only, like in the case of fraud or bias by the arbitrator, violation of the natural justice etc. The Court cannot correct the error of the arbitrator. In McDermott International Inc vs. Burn Standard Co. Limited (2006) 11 SCC181 the Supreme Court held as under:-

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the supervisory role of the court at minimum the provision aims at keeping O.M.P.271/2010 Page 21 of 22 level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it. 28. It is equally settled the reasonableness of the reasons given by the arbitrator is not open to scrutiny by the Courts unless they are such as no person of ordinary prudence can ever approve of them or if the reasons are so outrageous in their defiance of logic that shock the conscious of the Court. A court does not sit in appeal over the arbitral award by reassessing and re-appreciating the evidence, hence in the facts and circumstances stated above there is no scope for interference in the reasoned arbitral award and accordingly objections under Section 34 of the Act are dismissed. No order as to costs. YOGESH KHANNA, J  
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