

Chander Kant and Co. Vs. Delhi Development Authority and Another

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Court : Delhi

Decided On : Jan-28-1994

Reported in : 1994(1)ARBLR250(Delhi); 53(1994)DLT415

Judge : P.N. Nag, J.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : Suit No. 1018 of 1992

Appellant : Chander Kant and Co.

Respondent : Delhi Development Authority and Another

Advocate for Def. : B.K. Sharma, Adv.

Advocate for Pet/Ap. : P.C. Markanday, Adv

Judgement :

Mr. P. N. Nag, J.

1. Disputes and differences having been arisen between the parties regarding construction of Shopping Centre II, Mayapuri, Phase 1, S.H., construction of 3 storeyed shops/office building on Plot No. 2 to 5 Mayapuri by Agreement No. 4/EE/CPDI/83-84/DDA, the same were referred to the sole arbitration of Shri J. K. Varshneya. Ex-Engineer, D.D.A. who was appointed as the sole arbitrator by the

Engineer Member of the D.D.A. The arbitrator after having entered upon the reference gave his award dated 24.2.1992, which has been filed into this Court.

2. The petitioner has not filed objections to the award whereas the respondents have filed objections, being is No. 10178/92.

3. One of the objections taken by the respondents is that the arbitrator has erred in disallowing the recovery of Rs. 7,455/- under Clause 2 of the Agreement. Learned Counsel for the respondents has drawn my attention to clause 2 of the Agreement whereby in the case of delay in completion of the work the Superintending Engineer of the D.D.A. can levy compensation and his decision in this regard shall be final. According to learned Counsel, under the terms of the Agreement, this is an excepted matter and, therefore, the arbitrator could not award the aforementioned amount of Rs. 7,455/- as it was exclusively within the jurisdiction of the Superintending Engineer. Moreover, this part of the award is severable. Learned Counsel for the petitioner does not dispute his position and has agreed that the award may be modified accordingly.

4. The next objection taken by the respondents is that in the facts and circumstances of this case the arbitrator should not have allowed pendente lite interest w.e.f. 10th May, 1989 till the period the petitioner filed statement of claim before the arbitrator as the petitioner himself has contributed delay in the arbitration proceedings by filing statement of claim belatedly. My attention has been drawn to the averments made at the bottom of page 5 of the objections of which no Explanationn has been given by the petitioner in reply. After perusing the record, I am of the opinion that the arbitrator has erred in allowing the pendente lite interest on the awarded amount for the whole period and, therefore, the award needs modification so far as awarding of pendente lite interest is concerned. Now, the question arises for what period the petitioner has contributed to the delay. In my opinion, interest of justice will be met in case the pendente lite interest awarded by the arbitrator is reduced by a period of 1 year and 6 months keeping in view belated filing of the statement of the claim by the petitioner and in facts and circumstances of the case.

5. I have also gone through the other objections raised by the respondents. In my opinion, there is no error apparent on the face of the record qua them.

6. In the light of what is discussed above, I hereby disallow the sum of Rs. 7,455/- awarded by the arbitrator to the petitioner so far as claim No. 2 is concerned and reduce the period of pendente lite interest awarded by the arbitrator by a period of 1 year and 6 months as regards claim No. 7. The award (Ext. C-1) is, therefore, accordingly modified and the modified award is made a rule of the court. The petitioner shall also be entitled to future interest at the rate of 12% p.a. from the date of the decree till realisation.

Suit stands disposed of.

7. Award modified.

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