

E.M. and E.M. Associates Vs. Delhi Development Authority

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Court : Delhi

Decided On : Mar-08-1985

Reported in : 27(1985)DLT330; 1985(9)DRJ43

Judge : M.K. Chawla, J.

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

Appeal No. : Suit No. 353A of 1984

Appellant : E.M. and E.M. Associates

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : D.K. Sayal,; G.L. Sanghvi and; M.L. Jain, Advs

Judgement :

M.K. Chawla, J.

(1) Shri C. Banerjee, Superintending Engineer, Circle Iii Delhi Development Authority was appointed the sole arbitrator by the Engineer Member, D.D.A. vide his letter dated 10th August, 1983 under the terms and conditions agreed to by the parties, with reference to the agreement for the construction of Asian Games Village Complex at Siri Fort Area, Hauz Khas, New Delhi. The learned arbitrator entered upon the reference, called upon the parties to file the statement of claim, the counter-claim and after affording them the opportunity of leading evidence

made and published his award of 30th day of March, 1984. The learned arbitrator filed the award and the proceedings in this court on 19-4-1984. On the same day Shri A.P. Aggarwal Advocate accepted the notice of the filing of the award on behalf of the petitioner M/s. Em and Em Associates. The respondents were duly served with the filing of the award and within the stipulated period filed the objections under sections 30 and 33 of the Arbitration Act (IA 2968 of 1984). After the petitioner claimant filed the reply the following issues were framed:

'1. Whether the award dated 30th March, 1984 is liable to be set aside on the grounds mentioned in the objection petition 2. Relief.'

(2) Learned counsel for the parties agree that the evidence in this case can be led by way of filing affidavits. The objector preferred to file the affidavit of Shri J.N. Goel, Executive Engineer, A G.V. No. li while the petitioner relied upon the affidavit of Shri Manmohan Singh Bhnilar, one of the partners of the petitioner firm. By way of rejoinder, the objectors filed the affidavit of Shri J.N. Goel with a view to clarify certain matters raised by the claimant in their counter-affidavit.

(3) I have heard the arguments of the learned counsel for the parties and with their help gone through the record carefully. The respondent Delhi Development Authority has call

1.that the award of the learned arbitrator is liable to be set aside as the same is not based on the evidence but has been based on conjectures; 2. that the award of the learned arbitrator ought to have been a speaking award giving reasons in regard to each claim as stipulated in the agreement since the award is for an amount exceeding Rs. 50.000.00 ; 3. that the learned arbitrator has misconducted himself and also the proceedings; 4. that the learned arbitrator has exceeded his jurisdiction in not having acted within the limits of the provisions of the agreement; 5. that the arbitrator has not followed the principles of natural justice during the proceedings which has resulted in grave miscarriage of justice to the respondent objector; 6. that the purported reasons given by the learned arbitrator are sufficient to show that he has not applied his mind at all to the merits of the claim and the contention of both the parties in terms of the agreement; 7. that the learned arbitrator has erred in law in entering into arbitration and awarding a claim which

was clearly time barred; 8 that the learned arbitrator has erred in awarding interest on a hypothetical amount when the matter was pending arbitration and disputes had not been settled.

(4) On the basis of these objections the objector submitted that the award of the learned arbitrator be set aside.

(5) The claimants in their reply have controverted each and every ground made as the basis for setting aside of the award. As per the averments the award is based on the pure question of fact and this court will not sit in appeal to re-appraise the evidence which was considered by the learned arbitrator in arriving at his conclusion. It is also alleged that the learned arbitrator technical man and was not supposed to write a judgment like a court of law. He has given the reasons for allowing each claim to the best of his ability. The claimant also contravened the grounds urged for setting aside each and every claim by the objector.

(6) At the outset it may be mentioned that the bare reading of the objections goes to show that they all related to the question of fact. For each claim the learned arbitrator has not only referred to the evidence but has also taken into consideration the extra work which the claimant was required to perform in completing the job. Ordinarily the award is not to be set aside on the ground that it is erroneous on fact or in law. Normally the court is bound by the arbitrator's finding of fact and cannot review them unless they are un-supported by evidence or it appears from the award itself that there was no evidence to support the finding. The only exception to the rule are the cases where the award is the result of misconduct or fraud and one other which though it is to be recorded is now firmly established, viz, whether the question of law necessarily arises on the basis of the award or upon some paper accompanying and forming part of the award. The error of law on the basis of the award means that you can find in the award or a document actually in regard thereto. As far expenses the note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous.

(7) Applying the above-said principles to the facts of the present case it can safely be concluded that the learned arbitrator has not touched any question of law nor

has based his conclusion on any proposition of law. All the claims and counter claims are decided on the basis of the documentary evidence placed and proved before him. It may be that as per clause 25 of the agreement and the letter of reference, the learned arbitrator was required to give reasons for the award, if the claim in dispute is of Rs. 50,000.00 and above. If he does not it will be a case of mis-conduct. But the question is as to what are the limits of judicial review ability once the court has reasons before it. All that it means is that the award is a speaking award. But the law remains unchanged The arbitrator's award on both fact and law is final and there is no appeal from his verdict.

(8) Our own High Court in a case reported as Delhi Development Authority v. M/s.AIKarma, 22 (1982) Del. L.T 113 the Division Bench on this aspect of the matter observed as under :

'THAT the arbitrator by terms of the arbitration clause is required to give reasons for the award. He is not to write a detailed judgment as we judges do in courts. The requirement of reasons meets the elementary demand of the parties to be told 'the reason why' for a particular conclusion arrived at by the arbitrator. For the arbitrator it is an act of self-discipline. But to say that the court will be entitled to examine the reasonableness of the reasons' is to allow the concept of reasons to run wild. The theory is a disguised attempt to turn questions of fact into questions of law with a view to having them retired by the court, with the result that all the objects sought to be attained by means of arbitration-decision by the tribunal chosen by the parties, and finality and quickness and cheapness would be defeated by protracted proceedings in the courts, as has happened in this case before the single Judge and before us. There is a danger of attempts being made to reopen issues of fact which are concluded by the arbitrator's findings. Held further that reasons are not insufficient merely because they fail to deal with every point raised before the arbitrator at the hearing. No universal generalisation can be made. Everything depends on the subject matter. In deciding a controversy the arbitrator works in an environment which is quite different from that of the Judge. He is not bound by the technical rules of evidence. The ropes and pulleys' that he uses in the arbitral process are different from the foot rules and set squares that we use in the judicial process. From the arbitrator what is wanted is 'a practical

decision on the disputed issues.'

(9) With this background let us examine the reasons which the learned arbitrator has given while allowing each claim which according to the learned counsel for the objector are not sufficient. Against claim Nos.1 and 2 the learned arbitrator kept in mind the questions submitted by the claimant of the finished product even though at site there was some reduction in overall sizes. According to the learned arbitrator this would not have reduced the cost of over-all product as envisaged. In this case the claimant had mentioned the quantities up to 20 decimal and on that basis quoted the rates. The actual quantities existing at the site were found less. The petitioner was, however, compelled to incur the same expenses and overhead charges which he was required to incur in respect of the quantities shown in the schedule to this tender. That fact weighed with the learned arbitrator in allowing its claim, under claim No. 1. Furthermore, the claimant provided and in fact fixed the shutters of cupboard as required by the Delhi Development Authority. The same were duly accepted by the respondent. In fact the system of shutters was changed from slide to hinge shutters at the instructions of the respondent Delhi Development Authority. There was no occasion for the Delhi Development Authority now to contend that no amount towards claim was due to the claimant. Similarly the learned arbitrator examined the analysis of rates submitted by both the parties and found claim of Rs. 4140.07 justified under claim No. 3. In fact, the officer of the respondent has almost conceded the claims of the petitioner under item Nos. 4 and 5 and on that basis coupled with the evidence placed and proved by the parties before the learned arbitrator, the claims were allowed. Rather the claim No. 5 was reduced to a considerable extent which by itself go to show that the learned arbitrator has applied his mind to the evidence. In their claims also, in my opinion, the learned arbitrator has given sufficient reasons. In fact he had inspected the site and being a technical man was fully aware of the technicalities involved in the building contracts. He is the Superintending Engineer of the Delhi Development Authority, an officer still in the service of the respondent. After having obtained adverse decision the respondent cannot be allowed to get his award set aside on this sole ground.

(10) Even otherwise it will not be fair to the respondent Delhi Development Authority to charge the arbitrator with misconduct in this case. It is not disputed that he heard the parties, held number of sittings day after day and kept the detailed minutes of the discussions held at those meetings. It is also not denied that full opportunity was allowed to both the parties to represent their cases. It is not misconduct to make a mistake of fact. It is also not mis-conduct to go wrong in law so long as any mistake of law does not appear on the face of the award. Inspire of the repeated attempts of the learned counsel for the objector he has not been able to make out a case for charging the arbitrator with mis-conduct or the award being bad on the face of the award. It is not a case where the learned arbitrator has ignored any document or has relied upon any evidence outside his record proceedings. The questions specifically referred to him have been decided on their merits. No legal or factual mistake appears to have been committed by the learned arbitrator.

(11) As a result of the above discussion I do not find any substance in the objections of the respondent. The same are hereby dismissed. The award of the learned arbitrator dated 30-3-1984 is hereby made the rule of the court. A decree in terms of the award be prepared. The claimant shall also be entitled to interest @ 12% per annum from the date of the decree till realisation in case the amount is not paid within two months from today. (Objections dismissed)

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