

Mahinder Singh Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Jul-14-1993

Reported in : 1993(2)ARBLR271(Delhi); 51(1993)DLT209; 1993(27)DRJ131

Judge : Sat Pal, J.

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

Appeal No. : Suit Nos. 2238 and 2243 of 1986

Appellant : Mahinder Singh

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : R.L. Pal and; A. Salwan, Advs

Judgement :

Sat Pal, J.

(1) S. No-2238/86 has been filed by Shri Mahinder Singh (hereinafter referred to as the claimant) under Section 14 and Section 17 of the Arbitration Act (hereinafter referred to as the Act) and in this suit it has been prayed that the Arbitrator be directed to file the original award and the award be made rule of the Court after hearing objections of the parties, if any. S.No-2243/86 has been filed by the D.D.A. also under Section 14 and 17 of the Act and in this suit it has been prayed that the Arbitrator be directed to file the award dated 26.2.86 and the same be made a rule

of the Court and decree be passed in terms of the said award. Since the subject matter of both the suits is identical, I am disposing of both the suits by this judgment.

(2) Pursuant to the above mentioned suits, notice was issued to the Arbitrator who filed his award after the receipt of the notice. Objections against the award have been filed by the claimant only which were registered as is 2731/87 in Suit No.2238/86.

(3) Certain disputes arose between the claimant and the D.D.A. concerning the work of development of land at Rohini, Phase-11, S.H. arising out of the agreement No.18/EE/ HDXVn/DDA/82-83. The aforesaid disputes were referred to the arbitration by Shri V.R. Vaish (the Arbitrator) under reference letter dated 9.1.85. The Arbitrator gave his award dated 26th September, 1986.

(4) As stated hereinabove, the claimant has raised objections which are contained in is 2731/87. The D.D.A. has controverted these objections.

(5) The following issues were framed :-

1)Whether the objections are within time?

2)Whether the arbitrator has misconducted himself of the proceedings.

3)Whether the award is liable to be set-aside or modified and not made a rule of the Court on the allegations of the plaintiff.

4)Relief.

(6) As directed by this Court both the parties have filed affidavit in support and opposition to the objections against the award. I have heard learned counsel for the parties.

(7) Issue No.1 Since the learned counsel for the D.D.A. did not press his contention on this issue, the same is decided in favor of the claimant and it is held that the objections are within time.

(8) Issues No.2 and 3 Since issue No.3 can be decided as a result of the decision on issue No.2, both these issues are being decided together. Mr. Lakhanpal, the learned counsel appearing on behalf of the claimant submitted that though the claimant has raised objections in respect of claim No, I and Counter-claim Nos. 1 and 2, he does not press the objections with regard to counter-claim No. 1. Accordingly, the objections raised with regard to counter-claim No. 1 are dismissed.

(9) As regards claim No.1, the Arbitrator has allowed a sum of Rs. 1,08,756.00 in favor of the claimant against his claim of Rs.9,12,401.56 in respect of item No.2. Mr.Lakhanpal submitted there is a clerical error in respect of the amount awarded under item No.2. He drew my attention to page 17ofR-21 of Volume 5 and pointed out that as per calculation the amount in respect of item No. 2 comes to Rs. 1,10,670.00 in stead of Rs.1,08,756.00 , as per details given herein below:-

1)Amount payable as per final bill prepared by D.D.A. (R-2 Jatpage17 Vol.(V).
1,16,162.84

2)Amount payable for 19,237.43 balance quantity of 31,216.72 sqm (39645.81 minus 8429-09) @Rs,40.65perSq.m.+57 1,35,400.27 Less Recovery admitted by (-) 25,233.60 claimant vide page 20 Volume li 1,10,166.67

(10) After hearing the learned counsel for the parties and persual of the records, I find merit in the submissions made by the learned counsel for the claimant. Accordingly, the amount awarded against the claim No. 1 in favor of the claimant is increased from Rs. 1,08,756.00 to Rs. 1,10,670.00 .

(11) As regards counter claim No.2, the learned Arbitrator has awarded a sum of Rs.71,770.00 in favor of D.D.A. against their claim ofRs.2,21,526/75p. The learned counsel for the claimant submitted that the Arbitrator has misconducted himself while awarding this amount in favor of.D.D.A. In this connection he drew my attention to the findings of the arbitrator under counter-claim No.2. Learned counsel submitted that the Arbitrator himself has stated that the submissions of D.D.A. in calculation for shortage of bitumen is wrong as substantial quantity was used up in covering the metal of wearing coat. He further submitted that the

arbitrator has also stated with reference to grit that the shortage is less than 10% and 5% grit is likely to be crushed during the rolling and hence the shortage of grit is negligible. He, therefore, contended that after holding that the shortage was negligible, the arbitrator erred in awarding a sum of Rs.71,770.00 in favor of the D.D.A.

(12) I, however, do not find any merit in the submissions made by the learned counsel for the claimant. From the award I find that the learned Arbitrator has stated that in the calculation for shortage of Bitumen, the D.D.A. has claimed the entire quantity of tack coat as recoverable which is wrong. Similarly, he has held that the shortage in respect of grit is less than 10% and 5% katcha grit and some other grit is likely to be crushed during rolling and hence the shortage of grit is negligible. Meeting in view these facts, the learned Arbitrator awarded a sum of Rs.71,770.00 against the claim of the D.D.A. for Rs.2,21,576.00 In view of these facts it is clear that the arbitrator has given reasons for the amount awarded. Thus there is no error of law on the face of the award. Here it will be relevant to refer to the following observation from a Division Bench judgment of this Court reported in the case of College of Vocational Studies VSS.S. Jaitely Air 1987 Del 134. The relevant portion from this judgment is reproduced hereinbelow:-

'WHERE under an agreement the arbitrator is required to give reasons- for his award, he is not required to give a detailed judgment or detailed reasons. By reasons it means that the award should be speaking one. In the reasoned award what is expected from the arbitrator is that he should indicate his mind whereby it can be ascertained as to how he has arrived at a particular conclusion. In case of reasoned award, the arbitrator is required to indicate the trend of his thought process but not his mental meanderings, the purpose of commercial arbitration, being speedy certainly and a cheaper remedy. When the finding of the arbitrator is based on no evidence, then certainly the Court can go into such finding and set aside such an award as being perverse. The arbitrator is entitled to decide rightly or wrongly but if an error of law appears on the face of the award, then the Court can interfere and set aside the award.'

(13) Accordingly, issue No.2 is decided in the negative. As regards issue No.3, the award is modified in respect of claim No.1 to the extent that the amount awarded in favor of the claimant in respect of claim No. 1 shall be Rs.1,10,760.00 instead of Rs.1,08,756.00 Except the said modification with respect to claim No. 1, the objections against the award are dismissed.

(14) In view of the findings given herein above. I direct that the award modified to the extent mentioned above be made rule of the Court. I further direct that D.D.A. shall be entitled to have interest at the rate of 12% per annum on the amount found due to them from the date of award till realisation. Parties are left to bear their own costs.

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