

Modern Construction Co. Vs. Union of India and ors.

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SooperKanoon Citation : sooperkanoon.com/687467

Court : Delhi

Decided On : Nov-19-1993

Reported in : 1994(28)DRJ296

Judge : Sat Pal, J.

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

Appeal No. : I.A.'s Nos. 689 and 11699 of 1991 and Suit No. 35-A of 1991

Appellant : Modern Construction Co.

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Amrita Sanghi and; B.S. Mathur, Advs

Judgement :

Sat Pal, J.

(1) This suit has been filed on behalf of M/s. Modern Construction Company (hereinafter referred to as the claimant) under Sections 14 and 17 of the [Arbitration Act, 1940](#) (hereinafter referred to as the Act) and in this suit it has been prayed that the Arbitrator who is defendant No.3, be directed to file the original award dated 7.12.90 and the said award be made rule of the Court.

(2) Notice was issued by this Court to the Arbitrator to file his award dated 7.12.90. On receipt of the award, notice was issued to the parties. Objections against the award have been filed by the respondent-UOI vide objection' petition bearing is No.6891/91. The claimant has controverted these objections. The following issues were framed on 31.3.1992 :-

(1) Whether the award is liable to be set-aside on the ground as alleged in the objection petition. (2) Relief.

(3) By order dated 31.3.1992, the parties were directed to file affidavits by way of evidence within eight weeks. Affidavit by way of evidence was filed by the plaintiff on 15th May, 1992. The respondent-UOI, however, have not filed any affidavit by way of evidence nor they have filed any counter-affidavit. Arguments in this case were heard on 29th October, 1993.

(4) Mr. Mathur, learned counsel appearing on behalf of the UOI submitted that the objections on behalf of the respondent-UOI have been filed only with regard to claims No.2 and 4. He, therefore, confined his arguments in respect of the aforesaid two claims. Vide claim No.2, the contractor had claimed a sum of Rs.14.08 lacs plus declaratory award on account of site and Head Office overheads. Against this claim, the learned Arbitrator has awarded a sum of Rs.1,85,000.00. Learned counsel for UOI submitted that the amount claimed under claim No.2 is fully covered under claim No. 1 and as such there is an error apparent on the face of the award in awarding the said sum of Rs.1,85,000.00 under claim No.2.

(5) From the award I find that under claim No.1, the contractor had claimed a sum of Rs.3.20 lacs plus declaratory award on account of rise in price of labour and materials for the work done beyond stipulated date of completion. Against the said claim, the learned arbitrator has awarded a sum of Rs.1,21,263.00 to the claimant and it has also been stated in the award that the amount in terms of clause 10 (CC) is to be paid in addition to the aforesaid amount to the claimants. This claim has been allowed on the ground that the respondent-UOI did not fulfill their contractual obligations and as such were in breach of the contract. It has also been stated that the execution of the work got delayed beyond the stipulated date

of completion of 12th June, 1989 due to non-fulfilment of the contractual obligations and breach of the contract by the respondent. Besides the said amount, learned Arbitrator has also held that Uoi shall pay further sum of Rs.3,99,744.00 on the net value of work of Rs.22,20,801.00 from 16th Ra bill From 27th October, 1989 to 24th Ra bill dated 15th October, 1990. There is, however, no mention of any amount in respect of site and head office overheads under claim No.1.

(6) Mr. Mathur, learned counsel for Uoi submitted that the amount on account of site and head office overheads is included in the amount awarded under clause 10 (CC). From the objection petition. I, however, find that there is no averment that the amount claimed in respect of site and head office overheads is included in the amount awarded under clause 10 (CC). In the absence of any averments, learned counsel for the Uoi cannot be permitted to urge this contention. Besides, no affidavit by way of evidence has been filed by the Uoi in support of the contention urged by the learned counsel. Even otherwise I find that the learned Arbitrator while awarding the amount of Rs.1,85,000.00 under claim No.2 has given cogent reasons that execution of work was delayed due to breach of contract committed by the respondents and the claimant had to maintain establishment for a period much longer than contemplated at the time of the contract. It cannot be said that the reasons given by the learned arbitrator are perverse. Here I may refer to a judgment of the Supreme Court reported in the case of Indian Oil Corporation Ltd. Vs Indian Carbon Ltd., : [1988]3SCR426 . In this case, it was held that the court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon any legal proposition which is erroneous. Accordingly, the objections raised in respect of claim No.2, being without any merit, are dismissed.

(7) Under claim No.4 contractor had claimed a sum of Rs.58,000.00 on account of non-supply of steel, grills, railing et cetra. The learned Arbitrator has awarded a sum of Rs.57,930.00 against this claim. While awarding this amount the learned arbitrator has held that there was no prohibition in the agreement for non-issue of M.C. bars for the execution of agreement items pertaining to the railing/grills. From the reasons given by the arbitrator it cannot be said that the reasons are not

germane or not intelligible. Accordingly, the objections in respect of claim No.4 are also without any merit. In view of above discussion, I find no substance in the objections filed against the award vide is 6891/91 and the same are dismissed.

(8) Objections against the award having been dismissed, the award dated 7.12.1990 is made a rule of the Court. Let a decree be drawn in terms of the award. The award will form part of the decree. The parties are left to bear their own costs.

(9) It may be pointed out here that during the pendency of the case, the respondent-UOI had filed an application bearing is 7434/91 seeking permission of the Court to deposit a sum of Rs.5,26,007.00 being the amount awarded in respect of claims for which no objections were filed by the UOI. This application was allowed vide order dated 31st May, 1991 and vide order dated 10th September, 1991 the said amount was released in favor of the claimant. Thereafter an application bearing is No.11699/91 under Section 151 Civil Procedure Code was filed on behalf of the claimant and in this application it was stated that the Uoi had deposited a sum of Rs.5,67,972.00 vide cheque No.041901 dated 3.7.1991 on 5th July, 1991 but a sum of Rs.5,26,007.00 has been released in favor of the claimant and it was prayed in this application that the balance amount of Rs. 41,965.00 be also paid to the claimant. Since the said amount of Rs.41,965.00 remains deposited with the Registrar of this Court, I direct that this amount may also be released in favor of the claimant. It is, however, made clear that the respondent-UOI will be entitled to adjust the amount of Rs.5,67,972.00 already deposited' vide cheque dated 3.7.1991 while making payment of the amount of the award which has been made a rule of the Court.