

Babu Ram Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-24-1992

Reported in : 1992(2)ARBLR172(Delhi); 47(1992)DLT671; 1992(23)DRJ59

Judge : Mohd. Shamim, J.

Acts : [Arbitration Act, 1940](#) - Sections 14

Appeal No. : Suit Nos. 1019 and 8510 of 1990

Appellant : Babu Ram

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : R.L. Pal and; Mala Goel, Advs

Judgement :

Mohd. Shamim, J.

(1) This is a petition under Sections 14 and 17 of the Arbitration Act for issue of a direction to the arbitrator to file the award bearing No. ARB/RKS/88/7 dated March 14,1990 and thereafter to make the same the rule of the Court.

(2) In pursuance of a notice issued to the arbitrator the arbitrator filed the award on August 1,1990 before this Court.

(3) Notices were issued thereafter to both the parties. The respondent alone filed objections against the award. No objection was filed by the petitioner.

(4) On pleadings of the parties the following issues were framed:-

1. Whether the award is liable to be set aside on the objections raised in the objection petition? 2. Relief, if any. Issue No. I. Learned counsel for the objector, Mrs. Mala Goel, has contended that the arbitrator has erred and misconducted himself in not considering the facts and material placed on the record. The arbitrator wrongly allowed the claim of Rs. 10,000.00 to the petitioner which was withheld at the time of the final bill by the respondent. According to the learned counsel the petitioner never objected to the withholding of the said amount. The respondent placed on record a letter dated December 16, 1986. The Petitioner never filed any reply to the said letter placed on record. Hence, the petitioner would be deemed to have acquiesced in and admitted the facts stated therein. The presumption is that the petitioner did not want to refute the allegations made therein. The learned counsel has further contended that the said amounts were withheld on account of the prices of the accessories and sluice valves. The learned counsel for the petitioner has urged to the contrary.

(5) I have heard the learned counsel for the petitioner and the respondent at sufficient length and have carefully examined the facts of the present case and have given my anxious thought thereto.

(6) It is not in dispute that after the completion of the work the respondent granted a completion certificate on February 10, 1986. A close scrutiny of the record reveals that the respondent never objected that certain things such as the accessories, sluices and caps and rods were withheld wrongly by the petitioner and were not delivered to the respondent. Had there been any grain of truth in the contention of the respondent that the said things were wrongly withheld by the petitioner, then, I am of the view, the said facts would have invariably been mentioned in the record at the time of the grant of the completion certificate. Curiously enough for the best reasons known to the respondent no sub objection was raised. Hence, I am of the view that the arbitrator was perfectly justified in granting the said claim.

(7) There is another side of the picture. The arbitrator in accordance with the wishes of the parties visited the site on November 28, 1989.

(8) Surprisingly enough he found the alleged caps & rods 500 mm and valves very much at the site. Furthermore. I feel the above objections raised by the counsel for the respondent relate with regard to the appreciation of the evidence. To my mind, it is beyond the forte of this Court. Court does not sit in judgment on the award given by the arbitrator. There cannot be, I feel, re-appreciation of the evidence which has already been appreciated by the arbitrator. It is well established principle of law that an award can be set aside only in those discerning few cases where the arbitrator has misconducted himself and the proceedings and there is an apparent error on the face of the award. The learned counsel for the respondent during the course of her arguments has miserably failed to show that the arbitrator has misconducted himself or there is an error apparent on the face of the award. In the circumstances stated above I do not set any force in the impugned objections and the same are hereby rejected and set aside.

(9) Relief The petitioner is entitled to succeed. The petition is allowed with costs. Let a decree be passed in favor of the petitioner and against the respondent in terms of the award Ex YZ. The award Ex. Yz is hereby made a rule of the Court and it shall form a part of the accre. The petitioner shall be entitled to interest at the rate of 12 per annum from the date of the award till realisation on the decretal amount.