

Suresh Kumar Jain Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Feb-06-2002

Reported in : 2002VAD(Delhi)473; 2003(1)ARBLR159(Delhi); 97(2002)DLT596

Judge : D.K. Jain, J.

Acts : [Arbitration Act, 1940](#) - Sections 14, 30 and 33

Appeal No. : Suit 4121/92 and is 344/94

Appellant : Suresh Kumar Jain

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Anusuya Salman, Adv.

Advocate for Pet/Ap. : Sandeep Sharma, Adv

Judgement :

D.K. Jain, J.

1. These are objections by respondent No. 1-the Delhi Development Authority (for short, the DDA) under Sections 30 and 33 of the Arbitration Act against the award made and published by Shri A.L. Garg, the sole arbitrator, on 18 September 1992.

2. A contract for construction of 276 Janta Flats at Pocket F, Pitampura was awarded to the petitioner by the DDA. However, during the course of execution of

the contract, certain disputes arose between the parties. On the petitioner invoking the arbitration clause, contained in the agreement, the Engineer Member, DDA the persona designata, appointed the above named arbitrator as the sole arbitrator to determine the disputes/claims raised by the petitioner/contractor. After hearing the parties, the learned arbitrator made and published the award on 18 September 1992.

3. On contractor's filing petition under Section 14 of the [Arbitration Act, 1940](#), the arbitrator filed the award and notice of filing of award was issued to the parties, pursuant where to the DDA has filed the objections (IA No. 344/94).

4. On the pleadings of the parties, the following issues were framed:

1. Whether the Award dated 18-9-1992 made and published by Shri A.L. Garg, the sole Arbitrator is liable to be set aside on the grounds set out in the objections?

2. Relief.

6. Keeping in view the nature of the objections, parties had agreed that further evidence in the case was not necessary and the record of the Arbitration was to be read in evidence while disposing of the objections.

7. The award is mainly challenged on the ground that some of the amounts have been awarded either without giving any reasons or basis therefor or reliance has been placed on a wrong clause of the agreement. Insofar as claim No. 1(a), pertaining to short measurements is concerned, it is stated that no reasons for the award of a sum of Rs. 2,700/- have been given. The amount awarded on account of difference in rates of extra items is challenged on the ground that the rates had to be applied in terms of Clause 12(2) and not in terms of Clause 12(3) of the agreement, which provides for application of daily schedule of rates. It is also alleged that certain amounts have been awarded despite arbitrator's own finding that no supporting evidence had been adduced by the claimant with regard to the rates claimed.

8. In its reply, the contractor has denied the allegations and it is stated that all claims made by the contractor were supported by evidence, which has been duly

considered by the Arbitrator and the objections are untenable.

9. I have heard learned counsel for the parties, who have taken me through the award and the arbitration proceedings.

10. It is well settled by now that the jurisdiction of the court in these proceedings is very limited and an award can be set aside only if it is apparent from the face of the award that there is no evidence to support the conclusion or if the award is based on any legal proposition, which is erroneous. In these proceedings, the court does not sit in appeal over the award and review the reasons given by the arbitrator.

11. Having carefully perused the arbitrator's record and the award in the light of the above broad principles, I am of the view that the objections raised by the DDA are without any substance. The learned arbitrator has given cogent reasons while awarding amounts against each of the claims. The major part of the award is with regard to either the short measurements or difference in rates of substituted items. Clause 12 of the agreement provides the procedure for fixation of rates for extra/substituted items. As observed by the arbitrator, rates for similar items were not available in the agreement and, therefore, the rates had to be determined in terms of Clause 12(iii). It was a matter of details and merits, to be decided by the arbitrator, which he has done. It cannot be said that the rates applied by the arbitrator are without any basis. I do not find either any error on the face of the award or perversity therein, warranting interference by this court insofar the amounts awarded against various claims are concerned.

12. The learned arbitrator has awarded simple interest @ 15% p.a. with effect from 25 June 1990, when his predecessor had entered upon the reference till the date of payment or decree, whichever is earlier. I am of the view that the interest awarded is on the higher side. This part of the award is severable. Accordingly, the award to that extent is modified and it is directed that the claimant shall be entitled to interest @ 12% p.a. instead of 15% p.a. as directed by the arbitrator.

13. With the said modification, the award is made rule of the court and a decree is passed in terms thereof. Suit and the application are disposed of accordingly, with

no order as to costs. The amount awarded shall be paid by the DDA within eight weeks, failing which the petitioner shall be entitled to further interest @ 12% from the date of decree till the date of actual payment.

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