

**Unity Engineers Vs. I.T.P.O.**

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**SooperKanoon Citation :** [sooperkanoon.com/690697](http://sooperkanoon.com/690697)

**Court :** Delhi

**Decided On :** Mar-21-2001

**Reported in :** 2001IVAD(Delhi)528; 91(2001)DLT350; 2001(59)DRJ173;  
2001(3)RAJ304

**Judge :** J.D. Kapoor, JJ.

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

**Appeal No. :** IA 3341/99 & Suit No. 420-A/99

**Appellant :** Unity Engineers

**Respondent :** i.T.P.O.

**Advocate for Def. :** Mr. C.S. Prashar, Adv.

**Advocate for Pet/Ap. :** Mr. Rishikesh, Adv

**Judgement :**

ORDER

**J.D. Kapoor, J.**

1. The solitary legal objection to the award dated 28th January, 1999 is that the arbitration proceedings were not maintainable as these were wholly barred by limitation by virtue of clause 25 of the contract which provides for referring the

disputes within 90 days from the intimation that the final bill is ready for payment. Remaining objections are as to the findings of facts given by the Arbitrator which are not entertainable as reappraisal of evidence or revaluation or the assessment of the material of evidence on the record does not come within the purview of the Court.

2. Recently the Supreme Court in *Arosan Enterprises Ltd. Vs . Union of India A& Anr. : AIR 1999 SC3804* made the following observations as to the role of the Court the Hon'ble Supreme Court as to such findings of the Arbitrator:-

'Reappraisal of evidence by the Court is not permissible and as a matter of fact exercise of power by the Court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the Court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court, unless of course, there exists a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the Court would not be justified in interfering with the award. The common phraseology 'error apparent on the face of the record' does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The Court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.

3. Though the objection raised by the respondent is partly of legal and partly of factual nature yet the fact remains that the respondent had been groping in the dark as to the final bill. The last 6th bill was passed on 21st December, 1990 still the 6th Running Bill was received by the petitioner on 18th March, 1991 subject to final settlement. This itself shows that the limitation was to run when the entire accounts were settled or the respondent gave the notice that the bill was ready for final settlement. Though a letter dated 22nd October, 1990 was sent by the respondent wherein the respondent admitted that they have to pay balance payment after successful running of the plant but the respondent for the purpose

of limitation considers the signatures of the claimant in the measurement Book made on 18th December, 1990 as an intimation to the petitioner/claimant that the final bill is ready.

4. According to the learned counsel for the respondent this was sufficient intimation in the eyes of law about the fact that the final bill was ready for collection. However there is no gainsaying the fact that the limitation as per clause 25 of the contract was to run from the date of intimation that the final bill is ready but the question that arises for determination is whether the signatures of the petitioner obtained on the measurement Book on 18th December, 1990 tantamount to intimation by the respondent to the petitioner that the final bill was ready for collection.

5. In support of this contention the learned counsel for the respondent has relied upon *Shri Ram Singh vs. DDA* 1996 (1) ALR 163 wherein a view was taken that if the contractor does not prefer the objection within 90 days of receiving the information the final bill is ready for payment it is an error apparent on the face of the award and the entire award is liable to be set aside. The learned counsel has also relied upon *Wild Life Institute of India Vs . Vijay Kumar Garg* : (1997)10SCC528 wherein it was held that in view of the provision in the arbitration clause the liability of the appellants ceases if no claim of the contractor is received within 90 days for payment. This clause relates to discharge of the liability of the appellants on expiry of 90 days as set out therein and is nt merely a clause providing a period of limitation.

6. However in the instant case the facts are prominently distinguishable. The signatures of the petitioner obtained on the measurement Book cannot by any stretch of imagination be deemed as an intimation as provided in the agreement to the effect that the final bill was ready. The title 'Measurement Book' itself suggests and shows that it pertains to details of the work done by the contractor and nothing more. The first and foremost obligation of the respondent was to sent intimation in writing to the petitioner that the final bill was ready. this obligation has not been discharged by the respondent. On the contrary the respondent has till date not settled that final accounts and is not sure as to which is the final bill. One bill which

is so called final bill was passed on 21st December, 1990, another bill which too is called a final bill was passed on 18th March, 1991. The last bill was accepted by the petitioner subject to final settlement. This meant that the final accounts were yet to be settled. If the signatures of the petitioner on the Measurement Book are deemed as intimation given by the respondent to the petitioner as to the fact that the final bill is ready the question of passing of 6th RA Bill as on 18th march, 1991 and non-finalisation of the final bill till date would not have arisen.

7. Almost in a similarly placed situation the Supreme Court in Jayesh Engineering Works v. New India Assurance Company Limited (10)SCC 178 took a view that whether the contract has been fully worked out and whether the payments have been made in full and final settlement are questions to be considered by the Arbitrator when there is a dispute regarding the same. The right to get the money arises on settlement of final bill and the right to get further payment gets weakened but whether the claim subsists or not is a matter which is arbitrable.

8. In the aforesaid case though several claims were made by the contractor but ultimately the respondents intimated the contractor on 6th February, 1989 to receive a cheque for a sum of Rs. 2,79,600/- in full and final settlement of the works. The contractor acknowledged the same by endorsing on the said letter stating that he had received the said amount as full and final settlement and he had no further claim in this regard. Thereafter he wrote a letter dated 24th February, 1989 stating that his statement that payment had been accepted by him on 6th February, 1989 in full and final settlement is not correct and still there are outstanding dues which need to be paid, otherwise the matter will have to be referred for arbitration in terms of clause 37 of the agreement. Pursuant to the said notice each of the parties nominated their respective arbitrators. It was at this stage that an application was filed under Section 33 of the Arbitration Act seeking a declaration that the agreement dated 7th April, 1981 between the parties no longer subsists as the work has already been completed and the payment was received by the respondent in full and final settlement.

9. The instant case is rather on stronger footing. Not only the respondent never intimated the petitioner in writing that the final bill was ready but it continued for

months together in settling the full and final payment and till date the bills are not settled. In this situation the obligation by the respondent as to intimation regarding the final bill cannot be deemed to have been discharged, even as per its understanding, as according to it the final bill has still not been settled.

10. The objections are palpably untenable and are hereby dismissed. The relief claimed by the petitioner as to the award of the interest in respect of item 1(a), 1(b) and 4(a) cannot be allowed as the Arbitrator also did not deem it fit to award the interest whereas in respect of remaining items the Arbitrator has awarded interest. However the counsel does not press this relief any more. The award is made a rule of the court. The suit is decreed with pendente lite and future interest @ 15% per annum till realisation of the awarded amount.

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