

Sethi Engineering Corporation Vs. Delhi Development Authority

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Court : Delhi

Decided On : Dec-01-1995

Reported in : 61(1996)DLT269; 1995(35)DRJ656

Judge : S.K. Mahajan, J.

Acts : [Arbitration Act, 1940](#) - Sections 33; [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rule 2

Appeal No. : Suit No. 2220 of 1993

Appellant : Sethi Engineering Corporation

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Kirti Uppal and; Ashish Mann, Advs

Judgement :

S.K. Mahajan, J.

(1) Under an agreement entered into between the parties for construction of 400 Ews houses including internal development in Group Vi at Kondli Gharoli Complex, there arose certain disputes between the parties which were referred for adjudication to the arbitration of Mr.J.K.Varshneya, Sole arbitrator vide letter dated 10th December, 1991. The said disputes, I have been informed are still pending before the arbitrator and award has not yet been made. By letter dated 18th

February, 1992 the petitioner requested for the revision of his claims and also filed a copy of the additional/revised list of disputes/claims for decision of the arbitrator. The respondents, however, did not refer the said additional disputes to the arbitrator for adjudication which has resulted in the petitioner filing the present petition under Section 20 of the Arbitration Act for reference of these additional disputes to the arbitrator.

(2) The only objection taken in the written statement is that the petitioner is not entitled to raise additional claims as the same were barred by the provisions of Order 2 Rule 2 of Code of Civil Procedure 1908.

(3) Under the provisions of Order 2 Rule 2 Cpc, where a party has omitted to sue in respect of, or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. The contention of learned counsel for the respondent therefore, is that as the petitioner had in the first instance omitted to sue in respect of the claims which are now sought to be raised by him, the claims cannot be referred as the same are hit by the provisions of Order 2 Rule 2 CPC. Reliance has been placed upon judgments reported as K.V.George Vs . Secretary to Government, Water and Power Department, : AIR 1990 SC53 ; People Cooperative Labour and Construction Society Vs . Union of India, : 48(1992)DLT654 .

(4) In K.V.George v. Secretary to Government, Water and Power Department (Supra), it was held that after the termination of the contract all the parties are aware of the disputes which arise out of the termination of the contract and such disputes could have been raised in the first claim petition filed before the arbitrator and the same having not been done, the second claim petition before the arbitrator raising the remaining disputes, was barred by the provisions of Order 2 Rule 2 CPC.

(5) In People Cooperative Labour and Construction Society v. Union of India (Supra), again it was held that

'SECTION 41 of the Arbitration Act provides that the provisions of Code of Civil Procedure shall apply to all proceedings before the Court under the Arbitration Act.

The petitioner should have included this dispute also in the previous suit i.e. Suit No.369/83. This was not done. It necessarily follows that this dispute/claim shall be deemed to have been abandoned. As such, the present suit is clearly barred under Order 2 Rule 2 CPC. The petitioner cannot now ask for second reference in respect of dispute which was available to him and was not included in the previous suit'.

(6) There can be a situation where the subsequent disputes which are now sought to be referred to the arbitrator had not arisen at the time when the earlier reference was made to the arbitrator and in that case the party may be in a position to have subsequent disputes referred to arbitration. However, it is not the case of the petitioner in the present case that the disputes which are now sought to be referred had not arisen when earlier reference was made to the arbitrator. A perusal of the claims shows that all the additional claims are such which could have been raised by the petitioner at the time when the first reference was made to the arbitrator.

(7) I am, therefore, of the considered opinion that the present petition is clearly barred by the provisions of Order 2 Rule 2 Civil Procedure Code and no such claims, as mentioned in the petition, can be referred to the arbitrator.

(8) The petitioner is, accordingly, dismissed leaving the parties to bear their own costs.

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