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Court : Delhi

Decided On : Aug-27-1996

Reported in : 64(1996)DLT553; 2003(39)DRJ467

Judge : A.D. Singh, J.

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

Appeal No. : Suit No. 4156 of 1992 and Interim Application No. 7871 of 1994

Appellant : Kumar Construction Co.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : S.K. Mittal,; Tarun Sharma,; Khatana and;

Judgement :

Anil Dev Singh, J.

(1) The arbitrator Shri K.D. Bali, Engineer Member, Dda, rendered his award on September 25, 1982 in regard to which an application has been made by the petitioner under sections 14, 17 and 29 of the Arbitration Act for making it a rule of the court, and objections have been filed by the first respondent for setting aside the same. Briefly stated the facts are as follows :-

(2) The petitioner and the first respondent entered into an agreement dated February 6, 1988 by virtue of which the petitioner was to execute the work of construction, namely 'Convenient Shopping Centre' near multi-storeyed flats at East of Kailash, Pocket II. The stipulated dates of commencement of the work and the completion thereof were February 16, 1988 & August 15, 1988 respectively. It is not disputed by both the parties that the work was actually completed on November 2, 1989. The payment of the final bill was made to the petitioner on March 21, 1991. After the payment of the final bill, the petitioner raised certain disputes which were referred to the abovementioned arbitrator on September 6, 1991. The arbitrator after giving opportunity to both the sides to file documentary evidence and after hearing the parties rendered the award on September 25, 1992. The first respondent not being satisfied with the award filed objections on May 20, 1994.

(3) The learned counsel appearing for the first respondent submits that the award in respect of claims No. 2,3,4,7 and 11 suffer from legal infirmities in as much as the arbitrator has not properly appreciated the evidence on record, misconstrued the agreement and consequently travelled beyond the terms thereof. The main attack of the learned counsel for the respondent is directed against the award of claims No. 8 and 9 of the award. He vehemently contends that the award on these claims suffers from error apparent on the face of the record. He also urges that award on the said items does not disclose any reasons. On the other hand, learned, counsel for the petitioner submits that the award does not suffer from any illegality much less any error apparent on the face of the award. He also contends that the Arbitrator has not travelled beyond the agreement.

(4) I have considered the submissions of learned counsel for the parties. It is well settled that the arbitrator is the best judge of both the quantity and quality of the evidence produced before him. It is also well settled that the court in considering the legality of the award is not concerned with the merits of the case and cannot appreciate evidence in order to arrive at a conclusion different than the one arrived at by the arbitrator. Rather appreciation of evidence by the Arbitrator is never a matter which the court can question. Learned counsel for the first respondent has not been able to point out any error apparent on the face of the award in so far as

claims No. 2,3,4,7 and 11 are concerned. The learned counsel is also not able to show as to how the Arbitrator travelled outside the agreement while dealing with claims 2,3,4,7 and 11 of the petitioner. Basically his argument concerns the merits of the award. This is one area in which the court cannot interfere. Accordingly, the contention of the learned counsel for the first respondent in regard to the challenge to the award in respect of claims No. 2,3,4,7 and 11 is rejected.

(5) In so far as award in respect of claims No. 8 and 9 is concerned, learned counsel for the first respondent vehemently contends that the arbitrator was not justified in clubbing both the claims together, and passing a lumpsum consolidated award. He also submits that the arbitrator has not given any reasons for awarding an amount of Rs.50,000.00 in favor of the petitioner in respect of the said claims. Before commenting upon the submission of the learned counsel for the first respondent it may be convenient, at this stage, to refer to the objections of the first respondent in regard to these two claims. The objections simply state that 'the arbitrator erred in awarding a compensation of Rs.50,000.00 beyond the terms of the agreement' and the contractor failed to prove any damage under any of these two heads. As is clear from the objections raised by the first respondent it is not pleaded that the arbitrator failed to give any reasons for adjudging a sum of Rs.50,000.00 in favor of the petitioner in regard to the aforesaid two claims. It is only for the first time that the learned counsel for the first respondent has urged before me that the award was not a reasoned award in so far as claims No. 8 and 9 are concerned. Learned counsel for the petitioner has taken me through the award pertaining to claims No. 8 and 9. While dealing with these claims the arbitrator has recorded the contention of both the parties in detail. The arbitrator has also mentioned the judgments relied upon by the claimant in support of his claims. Basically, claim No.8 is for the work executed by the petitioner beyond the stipulated date of completion and claim No.9 is based on expenses incurred for maintenance of establishment by it beyond that date. One of the arguments of the claimant recorded by the arbitrator is that the delay in the execution of the work was due to the reasons attributable to the respondent. If this contention is to prevail then in that event the claimant is certainly entitled to damages. This is precisely the reason for which the Arbitrator has awarded a sum of Rs.50,000.00 in favor of the claimant. It is not disputed that the work was completed on

November 2, 1989 while the stipulated date of completion was August 15, 1988. The very fact that the first respondent has not claimed any damages from the claimant for not completing the work by the stipulated date shows that the delay in executing the work was not attributable to the claimant. The Arbitrator noting the arguments advanced on behalf to the petitioner concluded that there was force in them. This shows that the Arbitrator upheld the contention of the claimant. He did not however, award a sum of Rs.1,60,000.00 as claimed by the claimant but awarded only a sum of Rs.50,000.00 which it is not disputed works to be less than 20% of the work executed beyond the stipulated date of completion.

(6) Learned counsel for the claimant relied upon the decisions of the Supreme Court in P.M. Paul v. Union of India, : [1989]1SCR115 ; Hyderabad Municipal Corporation v. M. Mudaliar and another, : AIR 1985 SC607 , and a judgment of this Court in Uttam Singh Duggal and Company v. Union of India and others, : 35(1988)DLT372 , and contended that once the arbitrator finds that the work was delayed beyond the date of completion and the delay was not due to the fault of the contractor he would be justified in awarding damages or compensation to the extent of 20% of the work executed beyond the stipulated date of completion.

(7) The aforesaid legal position as adumbrated in the above said authorities cannot be questioned and has not been questioned by the learned counsel for the first respondent. It is also well settled that the arbitrator is- not expected to write elaborate judgment while coming to a particular conclusion. In view of the fact that the arbitrator in the award has noticed in detail the contentions of the learned counsel for the claimant including his argument based on extension proforma Part I and Part li to show that the delay was beyond the control of the claimant and due to the reasons attributable to the respondent it cannot be said that the Arbitrator failed in his duty in giving reasons for the award. In this regard the arbitrator stated as follows:-

'THE claimant also relied on extension proforma Part I and li wherein it is established that delay was beyond the control of the claimant and due to reasons attributable to the respondent.'

(8) Thus the reasons given by the Arbitrator are discernible and cannot be found fault with.

(9) Accordingly, the objections of the first respondent are rejected and the award is made a rule of the court and a decree in terms thereof is hereby passed. The petitioner will be entitled to interest at the rate of 12% per annum on the amount adjudged by the Arbitrator in its favor from the date of decree till realisation.

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