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Court : Delhi

Decided On : May-21-1997

Reported in : 1997IVAD(Delhi)101; 1997(2)ARBLR189(Delhi); 67(1997)DLT579; 1997(42)DRJ263

Judge : A.D. Singh, J.

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

Appeal No. : Interim Application No. 1575 of 1988 and Suit No. 2654-A of 1987

Appellant : Mohan Construction Co.

Respondent : Delhi Development Authority

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

Judgement :

Anil Dev Singh, J.

(1) The parties entered into an agreement with regard to construction of 360 dwelling units in pocket C-IA, Pankha Road, New Delhi. The agreement contained arbitration clause. Disputes arose between the parties and the matter was referred to the arbitration of Mr. G.R. Hingorani. The Arbitrator made and published his award on 7th November, 1987. The respondent-DDA not being satisfied with the award has filed the instant application being I.A. 1575/88 under Sections 30 and

33 of the Indian [Arbitration Act, 1940](#).

(2) The main grievance of the respondent is with regard to the award pertaining to Claim No. 10. Under this claim the petitioner claimed a sum of Rs. 79,480.00 on account of providing brass stays and handles in steel windows. The Arbitrator after considering the submissions of the parties made the following award :-

(3) Claim No. 10 for Rs. 79,480/0 on account of providing brass stays and handles in steel windows:

A careful reading of the agreement item of steel windows shows that it does not cover the cost of brass stays and handles. The quantities claimed by the contractor are 3602 stays and 4346 handles. No details in support of these quantities have been furnished by him. He has taken these quantities from the extra items of 'oxidising' brass handles and stays paid to him. The respondent has stated that the quantities of stays and handles does not exceed beyond 3400. He also as stated that the size of fastener (handles actually provided is 75 cm as against 100 cm shown in the standard design. In the absence of any other record, I accept the quantity of 3602 'stays' as correct. The number of 'handles' should be the same as 'stays' since normally one 'handle' and 'stay' would be provided for each steel windows. On this basis the amount payable to contractor will be : i) Stays (300 mm Long) (Item 117(A), Page 87 Dsr 1967) 3602 @Rs. 8.15 each Rs. 29,356.00 ii) Fasteners (75 mm) 75% rate at Item 16, Page 87 of Dsr 1967 3602x..75 x 6/20 Rs. 16,749.00 Rs. 46,105.00 Add 47% enhancement under Clause 12 Rs. 19,319.00 Rs. 60,224.00 The claim is justified for Rs. 60,224.00 .

Learned counsel appearing for the respondent submitted that the Arbitrator ignored the provisions of the Cpwd Specifications, 1967. He particularly invited my attention to clause 10.9.5.2 dealing with the 'windows' and clause 10.9.11 dealing with the 'rate'. Learned counsel, elaborating his submissions, contended that under Item No. 10.9.5.2 brass stay and handle are parts of window of the Cpwd Specifications. According to the learned counsel the petitioner was to provide the brass stays without seeking further payment in regard thereto as the cost of window included the cost of brass stays etc. In the nutshell, learned counsel submitted that the petitioner was not to charge any extra money for providing

brass stays and handles.

I have considered the submissions of learned counsel. My attention was drawn by the learned counsel for the petitioner to the judgment and decree passed by Aggarwal, J., dated 26th July, 1985 in Suit No. 554-A/82. In that case the Court was concerned with the award of the Arbitrator pertaining to claim No. 20 which was on account of brass fittings provided in steel windows. The Arbitrator made his award in the following manner :

'CLAIM No. 20:

The contractor claims a sum of Rs. 4,371.07 on account of brass fittings provided in the steel windows.

AWARD: Item No. 55 gives the full description of the work and does not mention 'stays'. Para 10.9.11 refers to the rates which include material. It is always open for the respondents to accept the work strictly as described in the item. The respondents required brass fittings to be fixed to the steel windows and obviously the description of that item did not include such fittings.

In the circumstances, the claim made for Rs. 4371.70 towards extra payment for brass fittings is found to be justified and the respondents to pay this amount to the claimant.

As would be seen from above, the question which is now being raised by the respondent was directly involved in that case. Aggarwal, J., upholding the award observed as follows:

'I have heard the learned counsel for the Union of India and have also gone through the arbitration record, and, in my opinion, there is no error of law apparent on the face of the award. The objections are without substance and are rejected. The award is made a rule of the Court. A decree shall be drawn in terms of the award. The respondent shall pay the awarded amount within sixty days from today failing which the claimant shall be entitled to interest at the rate of 9% from the date of the decree until the payment is made. The petition is disposed of.

The question having already been decided in the above Suit No. 554-A/82 against the respondent the same cannot be reagitated with any amount of conviction. Besides, it is apparent from the award of the Arbitrator in the instant case that the question now being raised was not specifically argued before him. There is no affidavit of the respondent stating to the contrary. Accordingly, the Award of the Arbitrator in regard to Claim No. 10 is affirmed. @SUBPARA = In so far as the award of the Arbitrator with regard to interest is concerned, I find the Arbitrator was not right in awarding interest from 12th January, 1982. The Arbitrator ought to have awarded interest from 14th March, 1985 when he entered upon reference. Accordingly, the award is modified to this extent. In so far as the award of the arbitrator on other items are concerned, I do not find any error apparent on the face of the award. The award is accordingly, to the extent indicated above, made Rule of the Court and a decree in terms thereof is hereby passed. In case the respondents do not make payment of the decretal amount within eight weeks, the petitioner will be entitled to interest at the rate of 14 per cent per annum from the date of decree till realisation.

The matter is disposed of.

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