

Harinder Singh Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-22-1997

Reported in : 70(1997)DLT30

Judge : C.M. Nayar, J.

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

Appeal No. : Suit No. 4484 of 1992

Appellant : Harinder Singh

Respondent : Delhi Development Authority

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

Judgement :

C.M. Nayar, J.

(1) The present judgment will dispose of the objections filed by the respondent under Sections 30 and 33 of the [Arbitration Act, 1940](#) to the Award dated May 15,1992.

(2) The petitioner was awarded the work for development of urban village Khichripur and for construction of Community Hall/Bart Ghar. An agreement was executed between the parties bearing No. 35/EE/DDX/84-85. The name of the

work was 'Development of Urban Village Khichripur SH: Community Hall/Bart Ghar'. The disputes arose between the parties and it was alleged by the respondent that the petitioner/claimant could not successfully complete work as per the scheduled time and, accordingly, the contract was rescinded on February 2, 1987 by the respondent. The respective claims and counter claim of the parties were referred to Arbitrator Shri Om Prakash who published the Award dated May 15, 1995 and filed the same Along with the proceedings in this Court.

(3) Notice was issued to the parties directing them to file their respective objections, if any, within the statutory period. Objection have been filed by the respondent Delhi Development Authority and no objections ha v' been filed by the petitioner-claimant.

(4) On the pleadings of the parties the following issues were framed on April 26,1995:

(1)Whether the award is liable to be set aside on the objections as taken by the respondent ?

(2)Relief.

The following claims may be referred to as below: Claim No. 1: The petitioner/claimant claimed a sum of Rs. 10,000.00 towards amount wrongfully withheld by the department. The Arbitrator referred to the evidence on record and upheld the claim of the petitioner. Claim No. 2: The petitioner claimed a sum of Rs. 23,665.00 towards refund of security deposit. The counter claim herein may be mentioned which relates to the respondent claim of Rs. 16,165.00 on account of delay in the work by the claimant. The Arbitrator examined this claim in detail on the basis of appreciation of evidence on record and upheld the same. The counter claim of the respondent was rejected, Claim No. 3 : The petitioner claimed a sum of Rs. 22,506.00 towards amount retained in part rate. Claim No. 4: The petitioner chained a sum of Rs. 1,50,000.00 towards balance payment for work executed. The reading of the award indicates that the Arbitrator has taken into consideration the evidence as well as documents filed on record and by giving elaborate reasoning only awarded a sum of Rs. 28,103.93. Claim No. 5 : The claim of the

petitioner claiming a sum of Rs. 50,000.00 on account of damages and infructuous expenditure due to alleged various breaches committed by the respondent was rejected on cogent ground.

(5) THE COUNTERCLAIM OF THE RESPONDENT-AUTHORITY was also rejected. The total award in favor of the petitioner /claimant was given for a sum of Rs. 61,768.93 with simple interest at the rate of 10 per cent per annum from May 23, 1988 till the date of actual payment or till the decree of the Court whichever was earlier.

(6) It is evident from reading of the award that the Arbitrator has considered all specific issues raised by the parties in the arbitration proceedings except for Counter Claim No: 1 and came to his findings after giving cogent reasons. Therefore, the claims of the petitioner as accepted by the Arbitrator having been based on reasons which are supported by evidence on record cannot be interfered with. There is no serious challenge as well. The same are, accordingly, affirmed.

(7) With regard to Counter Claim No. 1 dealing with the respondent's claim for Rs. 16,165.00 on account of delay in the work by the claimant it may be mentioned that it related to a compensation levied by respondent under Clause 2 of the agreement. This clause has been interpreted by the Supreme Court in the judgment as reported in Vishwanath Sood v. Union of India & Anr., : [1989]1SCR288 , which clearly held that the decision of the Superintending Engineer on account of compensation under Clause 2 was final and this plea could not have been referred to arbitration. The Division Bench of this Court in D.D.A. v. Sudhir Brothers, : 57(1995)DLT474 , reiterated the same proposition. Paragraphs 4,5 and 6 of the judgment will read as follows:

'4. Our attention has been drawn to the arbitration clause and also the relevant clause which relates to exclusion of certain matters from the purview of arbitration. The relevant Clause 2 in the arbitration agreement deals with the question of compensation and directs that the concerned Engineer should decide this question and his decision is final. The arbitration clause opens with the words 'Unless otherwise provided'. In view of this language, it is obvious from the decision of the Supreme Court in 33 Vishwanath Sood v. Union of India & Anr., that the Arbitrator

could not have gone into the merits of the levy of compensation by the Engineer. In that view of the matter, the D.D.A. ought not to have requested that Arbitrator to include the said amount in the arbitration award. We are told by the Counsel for the appellant/D.D.A. the Arbitrator was in fact informed that he could not go into the matter on merits. In any event, the D.D.A. committed a blunder in requesting. Arbitrator to formally include the above said amount as part of the award. Taking advantage of the said request, the contractor argued the question of levy on merits and obtained a decision from the Arbitrator in his favour. 5. We, therefore, find that the entire procedure adopted by both the parties was totally unwarranted. If the D.D.A. considered that it was entitled to the recovery of Rs. 5,69,473.00 outside the arbitration, it could have taken such steps as it thought necessary instead of asking the Arbitrator to include the said amount in the award. The contractor was also wrong in taking advantage of the same and asking the Arbitrator to give a finding on the merits of the claim. The Arbitrator acted totally with out jurisdiction ingoing into the said question and deleting the said items of counter claim for Rs. 5,69,473 / - and holding that the contractor not liable for payment of compensation. That was not within the power of the Arbitrator. In view of the said unfortunate events, we have no option but to set aside that part of the award of the Arbitrator wherein he has gone into the merits of the decision of the Superintending Engineer and had come to the conclusion that the sum of Rs. 4,69,743.00 was not payable by the contract. The validity of the levy of compensation is, therefore, taken out from the award. 6. It will, therefore, be for the D.D.A. to seek to recover the said amount of Rs. 5,69,743.00 in whatever manner it is open to it and in case any such proceedings are taken, it will be open to the contractor to raise all defenses that may be open to him in law to contend that the levy is bad. In case, the D.D.A. seeks to recover the said amount of compensation from the contractor it will be open to the contractor to file a suit and raise all such contentions as he may deem fit. We make it clear that question of limitation will not be raised by either of the parties, in view of the above unfortunate procedure adopted by both parties.'

(8) In view of the above, it is held that the validity of levy of compensation under Clause 2 was clearly outside the scope of arbitration and could not have been referred to the Arbitrator for decision. The finding of the arbitration that the

claimant was liable for any penal action under Clause 2 of agreement is not justified and is, accordingly set aside. The counter claim for a sum of Rs. 16,165.00 is, accordingly held to be outside the purview of arbitration. It will be open for the respondent D.D.A. to recover the said amount of Rs. 16,165.00 or for the claimant to raise all defenses that may be open to it in law to contend that the levy is bad. The question of limitation will not be raised by either of the parties in view of the fact that the counter claim which was not liable to be referred to Arbitrator was erroneously so referred.

(9) Except as aforesaid, the award dated May 15, 1992 is made Rule of the Court and the petitioner shall be entitled to interest at the rate of 10 per cent per annum from the date of decree till realisation. Let decree be drawn accordingly. There will be no order as to cost.

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