

M/S Shannon and Shannon Vs. Delhi Development Authority

M/S Shannon and Shannon Vs. Delhi Development Authority

SooperKanoon Citation : sooperkanoon.com/694483

Court : Delhi

Decided On : Apr-19-2001

Reported in : 2001VAD(Delhi)974; 2001(60)DRJ251; 2002(1)RAJ582

Judge : Mr. J.D. Kapoor, J.

Acts : Arbitration Act, 1940 - Sections 30

Appeal No. : Suit No. 883 / 93

Appellant : M/S Shannon and Shannon

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Ansuyya Salwan, Adv.

Advocate for Pet/Ap. : Mr. Ravi Sikri, Adv

Judgement :

ORDER

J.D. Kapoor, J. (Oral)

1. Award dated 12th March, 1999 was filed on 21st April, 1993 for making it a rule of the Court.

2. For the sake of brevity I deem it needless to refer to catena of authorities having unvarying unanimous current of opinion as to the role of the Court in dealing with

the award.

3. Recently the Supreme Court in *Arosan Enterprises Ltd. Vs . Union of India & Anr. : AIR 1999 SC3804* has laid down the following guidelines as to the rule of the Court in accepting, remitting or rejecting the award.

'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.

4. The respondent has raised objections almost in respect of each and every claim that has been awarded by the Arbitrator though quite a number of claims of the petitioner did not find favor with the Arbitrator and were declined.

Claim No. 1

ITEM NO. 4.5.(ii)

5. Item No. 4.5.(ii) claim No.1 is on account of short measurement of RCC pipes of 300 mm dia provided in the agreement. Ms. Ansuyya Salwan, the learned counsel for the respondent has assailed the observation of the Arbitrator that 'the measurement of the work executed at site, as per the site drawings filed by the petitioner/claimant vide its letter dated 4th July, 1991 was not specifically controverted by the respondent', being incorrect as the respondent had specifically

controverted the said letter by way of reply. However the perusal of the aforesaid reply shows that it pointed out the deficiencies or the contradictions with regard to the work executed by the petitioner and also in respect of fact whether the drawings were issued or not. Even if it is assumed that the claim of the petitioner with regard to the measurement of the work was specifically controverted, the finding of the Arbitrator in this regard is purely finding of fact and based upon the measurements of the work as per the drawings supplied by the respondents.

6. Such a finding does not warrant interference. Objection of the respondent in this regard is not acceptable.

7. Same is the position as to the objections with regard to items 4.5(iv) and 4.18. Item 4.5(iv) pertains to the short measurement of RCC pipes of 600 mm dia. Item 4.18 is with regard to the supply of lead for lead caulked joints of 150 mm dia CI pipe.

8. The petitioner/claimant has used lead to the tune of 13.16 quintals whereas the respondents contended that the actual quantity of lead brought to the site had already been delivered to the claimant. The exact quantity of lead brought to the site by the claimant/petitioner could not be verified due to non-production of lead register by the respondents. However, no material was produced before the Arbitrator to show that the work executed was below specifications.

9. The task of the Court is not to scan or scrutinise such discrepancies in the work as it would frustrate the very object and foundation of the Arbitration Act. Unless and until the finding is perverse on the fact of it or is contrary to the terms of the agreement or is beyond the jurisdiction of the Arbitrator the Court should always be reluctant to interfere. As a result the award in respect of these items is affirmed.

ITEM NO. 4.24 & 4.6

10. Findings in respect of these items are based upon records and submission made by both the parties. The work under these items pertains to the excavation of Trenches for laying RCC pipes. Since there was no need for providing detailed reasons it was sufficient for the Arbitrator to return the findings on the basis of the

record and submissions made by both parties. These are findings of fact and unchallengeable. Award in this regard is affirmed.

CLAIM NO.3

11. In this regard the challenge by the learned counsel for the respondent is that the rates derived by the Arbitrator under clause 12(ii) were on erroneous presumption as the rates were to be actually derived under clause 12(iii) on the basis of DSR. According to the counsel, this award is against the terms and conditions of the agreement and is without reasons.

12. After perusing the award I find that the Arbitrator found that the rates with regard to some of the extra items were not correctly worked out on the basis of similar items under the agreement. Even if we assume for a moment that the interpretation or the observation of the Arbitrator vis-a-vis aforesaid two clauses was erroneous, still it is not open to the court to go into the thinly veiled distinction between two clauses and has to rest on the wisdom of the Arbitrator before whom the entire record in the form of as many as more than 100 documents was there. The objection appears to be highly untenable and is difficult to accept. Award is accepted in respect of this claim also.

CLAIM NO.5.

13. Again this objection is with regard to the finding of facts made on the basis of the records and submissions made by both the parties. The contention of both the parties were well considered and taken into account by the Arbitrator. Claimant's claim of Rs. 34,000/- was on account of refund of amount recovered on penal rates for material issued by the Department. Penal rate recovery of Rs. 34,000/- was affected by the respondent/objector in the pre-final bill under clause 42 of the agreement on various items such as cement, GI pipes, SCI pipes and CI pipes where the actual consumption is found to be more than the theoretical consumption plus permissible variation.

14. The finding of the Arbitrator that all the materials issued to the claimants were consumed on work and there was no allegation of pilferage, wastage or theft from

the site was based upon the available records. No. proof was advanced by the respondent regarding the actual loss suffered by the respondent regarding the over consumption of material.

15. To pick such holes in the findings of the Arbitrator is not permissible. The objection is frivolous and not sustainable. Award is affirmed.

CLAIM NO.7.

16. Though the petitioner claimed Rs. 4,42,601.70 but the Arbitrator has only allowed Rs. 24,646/-. This difference in the amount itself shows that the Arbitrator has applied his mind while considering the contention of both the parties. This claim is on account of payment of statutory increase in prices of labour and material under clause 10 of the agreement. According to the respondent the petitioner failed to produce the records showing the payment of increased wages. The Arbitrator found that the claimant was entitled for the payment of escalation for labour and material. The claim of the claimant by taking 25% of the value of the work as the labour component was not accepted and rightly so as no such condition exists in the agreement. In his wisdom the Arbitrator awarded amount of Rs. 24,646/- only and it was not necessary to produce any document as to the actual payment made by the petitioner/claimant with regard to increased wages. The finding is based upon the material before the Arbitrator and thereforee calls for no interference.

17. Similar is the case with regards to the remaining claims a the learned counsel for the respondent has failed to point out error, legal or otherwise, apparent on the fact of the record which was either beyond the terms of the agreement. The learned counsel has also failed to point out as to where did the Arbitrator travel beyond the parameters of the agreement or ignored the material or the documents produced by both the parties.

18. The objections are completely devoid of merit and are hereby dismissed. The award is made rule of the Court. the suit is decreed in terms of the award with future and pendente lite interest @ 15% per annum till realisation.