

Vikas Engineering Co. Vs. D.D.A.

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Court : Delhi

Decided On : Mar-28-2001

Reported in : 2001VAD(Delhi)1026; 2002(1)RAJ585

Judge : Mr. A.K. Sikri, J.

Acts : [Arbitration Act, 1940](#) - Sections 30 and 33; Indian Constract Act, 1872 - Sections 73

Appeal No. : IA No. 148/97 in Suit No. 2360-A/95

Appellant : Vikas Engineering Co.

Respondent : D.D.A.

Advocate for Def. : Ms. Inderjit Sidhu for ; Ms. Anusuya Salwan, Adv.

Advocate for Pet/Ap. : Mr. S.K. Mittal, Adv

Judgement :

ORDER

A.K. Sikri. J.

1. An Agreement No. 59/HD XI/A/82-83 was entered into between the parties as per which the petitioner was awarded work relating to the construction of 20 cat III (duplex type) 40 cat II flats under SFS at Kalkaji, New Delhi, Opp. Hr. Sec. School. Certain disputes having arisen between the parties in relation to execution of the

aforesaid work, Mr. S. Nagarajan was appointed as the sole Arbitrator to decide the said disputes and make his award. The learned Arbitrator adjudicated upon the disputes referred to him and made and published his award dated 20th June, 1995. It is a speaking award running into twenty three pages. The said award along with the proceedings was filed in this court. When the DDA was served with the notice of filing of the award, it filed this is which contains objections to the award. Reply to the objections are filed and following issues were framed on 9th January, 1998:

1. Whether the award dated June 28, 1995 is liable to be set aside in respect of claim No. 1 Claim No. 2.3.3 (a), 2.3.3.(b), 2.3.3. (c)(i), (c) (ii), (c) (iii), 2.3.3.(d), 2.3.3. (f), Claim No. 3, Claim No. 4 & counter claim No. 1 on the grounds noted in the objection petition (I.A. No. 148/97)?

2. Whether the objections are beyond the scope of Sections 30 and 33 of the Arbitration Act as alleged in para No. 1 of the preliminary objections to the reply.

3. Relief.

2. Both the parties made the statement that record of the arbitration proceedings be read in the evidence and they do not wish to file any affidavit/counter affidavit. The matter was accordingly heard with reference to the arbitration proceedings.

3. Claim No. 1 preferred by the petitioner was for refund of the security of Rs. 1 lac deposited by the petitioner with the DDA. Admittedly even as per the respondent the work was declared complete on 28th August, 1986. therefore, the Arbitrator rightly held that the petitioner became entitled to the refund of this security by 27th February, 1987 after the lapse of six months time from the date of completion of the work. Counsel for the respondent could not point out as to how such as to how an award on claim No. 1 was improper. In the objections it is alleged that certain defects remained in the work which were not rectified by the petitioner despite notice and Arbitrator ignored this aspect. However, this is factually incorrect as para 1.3.5 of the award would show that couple of items got done belatedly by the DDA through their agents were not defect rectification work but the minor original items allegedly not done by the claimants. For such items no payments were

made to the petitioner by the DDA. The learned counsel for the petitioner could not dispute the correctness of the aforesaid reasoning. This objection is therefore without any merit.

4. As far as claim No.2 is concerned, there are various sub-heads under which amounts are awarded to the petitioner. The objections to the award of these amounts touch the merits of the case. The tenor of the objections is that the decision of the Arbitrator is erroneous and he should not have awarded the amounts in question. The learned counsel for the DDA has admitted that such types of objections would not fall within the scope of Sections 33 & 33 of the Arbitrator Act. Thus the objections to the awarded of claim No. 2 also stand rejected.

5. Claim no. 3 as preferred by the petitioner was with respect to infructuous expenditure and damages due to the alleged breaches of the DDA. The stipulated date of completion of the work as per the Agreement was dated 19th August, 1983. The DDA declared the work as complete on 28th August, 1986. The learned Arbitrator recorded the finding that the work could not be completed as there were hold-ups in the work due to various defaults of the DDA from time to time. The claim preferred was for Rs. 5 lacs. The Arbitrator awarded a sum of Rs. 1,00,800/- in settlement of this claim. It was argued by learned counsel for the DDA that the perusal of award on this claim would show that on the one hand the claim for increase in the cost of material and labour for executing the work in the prolonged period was rejected and on the other hand, the claim for alleged infructuous expenditure for maintaining site establishment was granted which was self-contradictory. This contention is misconceived. It is very categorically stated in the impugned award that the claim for increase in cost of material and labour for executing the work was rejected as the petitioner had not given notice for such claim. On the other hand, as far as maintenance of site establishment and incurring of expenditure thereon namely idle labour, watch and ward etc. is concerned, the petitioner had specifically intimated about the same. It is for this reason that this claim was entertained on merits and found tenable to the tune of Rs. 1,00,800/-.

6. It was next contended that the Arbitrator did not act in accordance with provisions of the Contract while entertaining the claim inasmuch as per the terms and conditions contained in the contract., if there was delay due to reasons attributable to the DDA, the petitioner was only entitled to suitable extension without any damages and by awarding this amount contrary to the aforesaid stipulation the learned Arbitrator had committed legal misconduct. Reference was made to the judgment of the Supreme Court in the case of Steel Authority of India Limited v. J. C. Budhiraja, Government and Mining Contractor reported as 1999 (3) ALR 335. There is no force in this contention either. If the work is delayed and the delay is attributable to the respondent/DDA, the petitioner due to such delay. Such a claim has its genesis in Section 73 in the Contract Act and is therefore admissible. This is so held by series of judgments of the Supreme Court as well as the High Courts including this court and is now an established principle of law. (Refer: 1) M/s A. T. Brij Paul Singh and Bros. Vs. State of Gujarat : AIR 1984 SC1703 Hyderabad Municipal Corporation Vs, M. Krishnaswami Mudaliar and Anr. : AIR 1985 SC607 DDA v. S. S. Jetley reported as 2000 8 AD DELHI 743.

7. therefore I do not find any force in the objection relating to award of claim No. 3 and reject the same.

8. Claim No. 4 relates to award of interest. It was not seriously challenged by the counsel for respondent/DDA that interest could not be awarded. The Arbitrator had jurisdiction to award the interest. The petitioner had claimed interest at the rate of 18 per cent per annum. The Arbitrator has allowed interest only at the rate of 12 per cent per annum for the period from 1st March, 1987 to 4th November, 1988 (pre-reference/suit period) and from 1st December, 1988 to 1st June, 1995 (pendente lite interest). This objection also stands rejected.

9. In so far as counter-claim No.1 for Rs. 4,50,764.56 paise is concerned, this was claimed as per Clause No. 2 of Agreement. It is conceded by the learned counsel for the petitioner that this claim did not fall within the scope of the Arbitration Clause being 'excepted matter' and, therefore, learned Arbitrator had no jurisdiction to adjudicate upon this claim. (Refer: Delhi Development Authority Vs.M/s Sudhir Brothers 1995 (2) Arbitration Law Reporter 306). Award to this

extent is modified i.e. the Award of the learned Arbitrator on claim No. 3 is taken out from the Award. It would be for the respondent to recover this amount in whatever manner it is open to it and in case any such proceedings are taken it would be open to the plaintiff to raise all defenses that may be available to him in law to contend that the levy of compensation is bad.

10. This is accordingly disposed of.

11. Suit No. 2360-A/95

12. The Award as modified is made a rule of the Court. Decree shall follow. Petitioner shall also be entitled to interest at the rate of 12% P.A. from the date of decree till payment is made. Decree-sheet be prepared accordingly.

13. The suit stands disposed of.

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