

C. Lal Gupta Vs. Delhi Development Authority and Another

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Court : Delhi

Decided On : Jul-26-1999

Reported in : 1999VAD(Delhi)657; 81(1999)DLT315

Judge : Manmohan Sarin, J.

Acts : [Arbitration Act, 1940](#) - Sections 14,17 and 29

Appeal No. : Suit No. 2751A/95

Appellant : C. Lal Gupta

Respondent : Delhi Development Authority and Another

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

Advocate for Pet/Ap. : Mr. D. Moitra, Adv

Judgement :

ORDER

Manmohan Sarin, J.

S. NO. 2751A/95 & is No. 11520/96

1. Petitioner filed this petition under Section 14, 17 and 29 of the [Arbitration Act, 1940](#) Notices were issued to the Arbitrator, who filed the original award together with the arbitral record. Upon receipt of notice of filing of the award, the

respondent/DDA preferred its objections vide is No. 11520/96. Reply to the objections has been filed.

2. Counsel for the parties agreed that the arbitral record and the objections and reply filed thereto be read in evidence and they did not wish to file separate affidavits by way of evidence. With the consent of the parties, the objections are taken up for consideration today.

3. petitioner had been allotted the work titled construction of 1008 SFS House at Sarita Vihar, New Delhi, providing Conventional bored cast-in-situ under reamed pile foundation including pile caps and grade beam in pocket 'A'. The contract entered into between the parties, had an arbitration agreement in Clause-25, which required the arbitrator to give a reasoned award. Disputes and differences had arisen between the parties, which were referred to the arbitration of Sh. S. C. Kaushal, the sole arbitrator, vide letter bearing No. EM-2(350)FO/SEZ/Arb/DDA dated 9.10.1994. In the event, arbitrator made and published his award on 19.10.1995. The objections vide is No. 11520/96 pertain to claim Nos 1, 3 and 4. The last relates to the award of interest on withheld amounts and pre-suit interest.

4. The main grievance of the petitioner is with regard to the award in respect of claim No. 1. The petitioner had claimed a sum of Rs 2, 32, 500/- on account of professional loss due to prolongation of work. The learned counsel for the petitioner submits that this loss is on account of increased expenditure on account of idle establishment, overheads etc. The date of start of the work was 8.9.1989 and the stipulated date of completion was 7.1.1990. The actual date of completion has been recorded as 28.3.1991. The hindrance register shows that the respondents were responsible for major delay. The Arbitrator in fact has found that the petitioner had completed the work within four months after the major hindrances were removed. He held respondents responsible for delay and prolongation of the work. The arbitrator in the award has set out the reasons for delay and the causes which prevented the petitioner from carrying out the work. He found that the respondents were responsible for the delay and prolongation of the work on account of their breaches in fulfilling the contractual obligations. Learned counsel for the respondent/objector has urged that the arbitrator has

ignored important documents and has given only conclusions and has not given the reasons which led him to the findings. Besides it is urged that the award is contrary to the agreement terms. A reading of the award shows that the arbitrator has given cogent reasons and has indicated his thought process. This cannot be termed as giving of conclusions alone.

5. Learned counsel for the respondent next sought to draw support from a judgment of the learned single Judge in M/s R. B. Chy Ruchi Ram Khattar & Sons v. Delhi Development Authority 1997 (1) Arb. LR. 372. She urged that in the cited case damages awarded by the arbitrator for loss and damage were set aside by the court because the petitioner had failed to lead any evidence of not being able to earn profits elsewhere as his staff having been kept engaged on the site in question. Reliance on the said authority in my view is completely misplaced and does not help the respondent. In the cited case the contractor had claimed loss of profitability on the ground that it had to remain at site of work for a longer period incurring additional expenditure at every stage. The arbitrator in his award carved out a new case for the contractor holding inter-alia as under;

'Claimant/contractor had to remain at site of work for longer period than the original anticipated in the contract. This resulted in additional expenditure at every stage and loss of profitability due to longer stay at one site Because of longer stay on the site the claimants were prevented from taking work elsewhere and earn profits.

6. The learned Judge in these circumstances set aside the award holding that what the arbitrator has awarded was not on account of direct losses which the petitioner may have suffered on account of delay and breach on the part of the respondent but has awarded the amount on account of a possible indirect damage. It would be seen that the present situation is totally different. In the instant case the claim, though labeled as professional loss due to prolongation of work, was confined to the losses suffered on account of prolongation, raising operational and overhead costs to the petitioner of the work in question. The claim was not of any loss of profits for being prevented from executing another work.

7. Learned counsel for DDA lastly contends that the pendentelite interest has awarded at a high rate of 18% and the rate should not have been more than 12%. The interest awarded by the Arbitrator is reasonable in the facts and circumstances of the case and does not call for any interference by this court.

8. In my view the learned Arbitrator has given cogent reasons for making the award. It is not for this court to go into the reasonableness of these reasons in exercise of jurisdiction under Sections 30 & 33 of Arbitration Act. The objections are without any merit and are dismissed.

10. The award filed by the Arbitrator is made rule of the Court. Decree be drawn up in term thereof. The award shall form part of the decree.

11. The suit and is stand disposed of.

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