

Thomas and Co. Pvt. Ltd. Vs. Bell Poly Moulders Pvt. Ltd. and anr.

Thomas and Co. Pvt. Ltd. Vs. Bell Poly Moulders Pvt. Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/695613

Court : Delhi

Decided On : Mar-19-2008

Reported in : 2008(2)ARBLR98(Delhi)

Judge : Hima Kohli, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11

Appeal No. : AA No. 73/2007

Appellant : Thomas and Co. Pvt. Ltd.

Respondent : Bell Poly Moulders Pvt. Ltd. and anr.

Advocate for Def. : S.P. Gautam, Adv.

Advocate for Pet/Ap. : J.P. Gupta, Adv

Judgement :

Hima Kohli, J.

1. The present petition is filed by the petitioner under Section 11 of the [Arbitration and Conciliation Act, 1996](#), praying inter alias for appointment of an Arbitrator in terms of Clause 42 of the agreement governing the parties. It is stated that the petitioner undertook the construction of the factory and office building for respondent No. 1 under agreement dated 3.7.2002. After the work was completed,

the petitioner raised a bill on the respondents which was duly passed by the Architect and accordingly in terms of the agreement, the payment was to be made on the certificate of the Architect. The Architect gave a completion certificate for the aforesaid work on 25.7.2003. A final bill was submitted by the petitioner on 12.3.2004, which was certified by the Architect for a sum of Rs.19,48,590/- vide his letter dated 22.6.2004.

2. Counsel for the petitioner submits that certain cheques paid by the respondents to the petitioner for clearing the outstanding payments were dishonoured on account of insufficient funds, thus compelling the petitioner to issue a legal notice dated 7.3.2006 to the respondents, claiming the amount due of Rs.25,42,000/-. The respondent replied to the aforesaid notice vide letter dated 21.6.2006, pointing out certain defects in the work and raising a counter claim of Rs.40,59,998/- on account of the alleged defects. Finally, the petitioner issued a notice dated 25.9.2006, to the respondents as also to the Architect, calling upon the Architect to adjudicate the disputes between the parties, but the said Architect did not take any action in this regard. The respondent instead informed the petitioner that it proposed to appoint an Arbitrator of its own choice as a Sole Arbitrator.

3. The petitioner on its part, proposed the name of an Architect for being appointed as an Arbitrator to which the respondent did not respond. Aggrieved by the aforesaid action of the respondent the petitioner has instituted the present petition praying inter alias for appointment of an independent Arbitrator to adjudicate the disputes raised between the parties.

4. Notice was issued to the respondent on 2.3.2007, returnable on 8.5.2007. Reply to the petition was filed by the respondent. However, counsel for the respondent states that in the meantime, he has obtained instructions from his client to the effect that a sole Arbitrator be appointed to adjudicate the disputes between the parties, instead of appointing two Arbitrators and one Umpire in terms of Clause 42 containing the Arbitration Clause and considering the nature of disputes raised, he submits that the matter may be referred for arbitration to a retired Judge. Counsel for the petitioner has no objection to the aforesaid proposal.

5. Accordingly, with the consent of the parties, Justice J.P. Singh (Retired Judge) is appointed as the sole Arbitrator to adjudicate all the disputes arising between the parties. The parties shall share the fee of the sole Arbitrator equally, which shall be fixed by the Arbitrator. The parties shall appear before the Arbitrator on 28.4.2008 at 5.00 P.M.

6. In the meantime, pleadings shall be completed by both the parties by filing their respective claims, counter claims and relevant documents within four weeks, while exchanging copies thereof with each other, before the date fixed for appearance before the Arbitrator. The respective pleadings and documents may be presented before the Arbitrator on the date fixed. Matter may be taken further there from by the learned Arbitrator.

7. The Registry is directed to forward a copy of the order to the learned Arbitrator forthwith. The parties are also directed to intimate the Arbitrator of the order.

8. The petition is disposed of.

dusty.