

Subhash and Company Vs. Dda

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Court : Delhi

Decided On : Jul-14-2000

Reported in : AIR2000Delhi423; 2000(56)DRJ521

Judge : Vikramajit Sen, J.

Appeal No. : I.A. 10778/98 and S. No. 534-A/98

Appellant : Subhash and Company

Respondent : Dda

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

Advocate for Pet/Ap. : Mr. K.R. Gupta, Adv

Judgement :

ORDER

Vikramajit Sen, J.

1. In the Award dated 29.7.1993, in respect of Claim No.5 which dealt with escalation, the Sole Arbitrator Shri V.D. Tiwari had granted a sum of Rs.66197/-; and in respect of interest, covered by Claim No. 7 he had awarded Rs.36,904/-. Pursuant to the Judgment of A.D. Singh, J. dated 18.2.1997, only these portions of the Award were remanded back for fresh adjudication. The Judgment dated 18.2.1997 was appealed against but the Appeal was dismissed in limine. In

compliance with the Judgment dated 18.2.1997, after hearing the parties again, the Arbitrator, by his Award dated 14.1.1998, reduced the claim of escalation under Claim No. 5 from Rs. 66197/- to Rs.44602/-. In respect of Claim No. 7 for grant of interest, the Arbitrator also scaled down the amount awarded from Rs. 36904/- to Rs. 32045/-. He further ordered that the principal sum on which interest would be payable would be modified from Rs. 2,64,019/- to Rs. 2,42,424/-. As recorded in the impugned Award, the DDA have neglected to pay their share of fees of Rs. 500/-. Objections have been filed against this Award.

2. It has been contended and argued that the Arbitrator has failed to give reasons for the Award; that the Award is contrary to the conditions of the Agreement; that it is contrary to the directions contained in the Judgment dated 18.2.1997; that the findings in respect of Claim No.5 were erroneous since the work has been rescinded by the Department and, therefore, escalation could not be paid under 10CC; that the findings in respect of Claim No.7 are also contrary to the Agreement between the parties.

3. I find no merit whatsoever in the Objections. The grounds on which the Award is being assailed are clearly barred by the principle of rest judicata. As has already been mentioned above the detailed Award dated 29.7.1993 had been assailed in the previous proceedings disposed of by A.D. Singh, J. in S.No.1996/93. There is no justification whatsoever for the Respondents to raise questions and issues which are now not open for agitation. Whether the Claims for escalation and for interest are contrary to the Agreement between the parties cannot be resurrected and tried for the second time. Even if these contentions had not been raised they would be barred on considerations of the principle of rest judicata. The only question to be determined by the Arbitrator on the second occasion was to 'work out the amount which would be payable to the Petitioner towards the escalation up to 15.3.1990 in accordance with Clause 10CC' In respect of Claim No. 7 a fresh determination was consequentially essential if a modification of Claim No. 5 was to be carried out. This is precisely what the Arbitrator has done. These Objections are not justified in law.

4. The remaining objection to be considered is whether the Arbitrator has given reasons in the impugned Award. The reasoning is succinct and clear and is based on the Respondents calculations submitted in their letter dated 2.5.1997 as mentioned in the Award. This ground is, therefore, also without merit.

5. The Objections are dismissed with costs of Rs.5000/-.

S.No. 534-A/98

There is no cause to remit the Award or to set it aside. The judgment is accordingly pronounced in terms of the Award dated 14.1.1998.

6. Decree sheet be drawn up.

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