

**S.A. Builders Vs. Delhi Development Authority**

**S.A. Builders Vs. Delhi Development Authority**

**SooperKanoon Citation :** [sooperkanoon.com/699339](http://sooperkanoon.com/699339)

**Court :** Delhi

**Decided On :** Sep-10-1998

**Reported in :** 1998VAD(Delhi)905; 1998(2)ARBLR472(Delhi); 75(1998)DLT456; 1999(48)DRJ288

**Judge :** S.K. Mahajan, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 30 and 33

**Appeal No. :** IA Nos.9601/91, 8380/96 & Suit No.1526A/91

**Appellant :** S.A. Builders

**Respondent :** Delhi Development Authority

**Advocate for Def. :** Mr. V.K. Sharma, Adv.

**Advocate for Pet/Ap. :** Mr. Manmohan, Adv

**Judgement :**  
ORDER

**S.K. Mahajan, J.**

1. By judgment dated July 27,1990 passed in Suit No.2346/97 & I.A.1675/88 and Suit No.287-A/88 this Court had set aside the award dated 12th October,1987 passed by the Arbitrator in so far as the same related to additional items (c) to (g),

(i), (j), (l) and (m) of claim no.2 as well as claim no.6 and remitted the same to the Arbitrator for reconsideration and to make an award in respect thereof with reasons within four months. This portion of the award was set aside on the ground that no reasons whatsoever had been given by the Arbitrator on the said claims. The Arbitrator has now given reasons in respect of additional items (c) to (g), (i), (j), (l) and (m) of claim no.2 and claim no.6. After the said reasons were filed in court, the respondent has once again filed objections to the Award which have been registered as I.A.No.9601 of 1991. There was some delay in filing the objections and the court, therefore, framed the following issues:

1. Does the application under section 5 of the Limitation Act disclose sufficient cause for delay in filing the objections?
2. If issue no.1 is found in favor of the respondents is the award dated 13.2.1991 liable to be set aside on the grounds taken in the objection petition being I.A.No.9601/91?
3. Relief.

By order dated August 19,1996 the court condoned the delay in filing the objections under Sections 30 and 33 of the Arbitration Act and presently issues 2 and 3 remain to be decided by this Court.

2. The respondent has not objected to the award in respect of claim no.2(g). With a view to appreciate the objections of the respondent it will be proper to deal with each item of the claim.

Item No.(c)

3. This claim related to the award for extra item for plastering external walls of height beyond 10 metres. The Arbitrator while deciding this claim has held that in terms of CPWD Specification 1977 Vol.I page 327 external plastering at height of over 10 metres is to be measured separately. For this extra plastering at a height of over 10 metres the contractor is entitled to an extra rate of Rs.1.28 per sq.mtr. in terms of the Delhi Schedule of Rates 1974 Item 66 page 127 including enhancement under Clause 12. The Arbitrator, therefore, held that as the

quantity of work above the height of 10 metre was 12260 sq.m. as reported by the Executive Engineer the claimant was entitled to a sum of Rs.15,693/-.

4. Mr.Sharma on behalf of D.D.A. has objected to the award of this amount and the reasons given by the Arbitrator. It is contended by Mr.Sharma that under clause 3.15 of the Specifications and Conditions of the Contract the rates quoted by the contractor were to hold for work at all heights and depths and that the contractor was not to be paid anything extra for maintaining in good condition all the work executed till completion of the entire work. It is, therefore, the contention of Mr.Sharma that as rates quoted by the contractor were to hold for work at all heights and depth the petitioner was not entitled to the extra rate for having done plastering above the height of 10 metres. In my view, the contention of Mr.Sharma is wholly fallacious. Under Clause 3.1.1 of the agreement, C.P.W.D. Specification for the works at Delhi Vol.I & Vol. II 1977 with correction slips up to the date of receipt of tender were applicable for execution of the work. In view of this clause in the Specifications & Conditions, in my view, the petitioner was entitled to extra rates for having worked above 10 metres height. Clause 3.15 is not applicable to the present case. Moreover, after the Arbitrator has given reasons for the petitioner to be entitled to the award of the said amount, in my view, this Court will not sit as a court of appeal over the conclusions of the Arbitrator by re-examining and reappraising the evidence considered by the Arbitrator. In my view, therefore, no case has been made out for setting aside the award in respect of this item.

Item No.(d) & (e)

5. The objection of Mr.Sharma to the award under these items is that the work 'Making grooves in D.P.C. and in plaster' was not executed by the contractor. However, I find that when a joint inspection was carried out under the orders of the Arbitrator, the Engineer of the Department himself had given a report about these works having been executed by the contractor. In view of the report of the Engineer the respondent cannot contend that this work was not executed at site. The objections of the respondent therefore, in respect of these items are without any basis.

Item No.(f)

6. In respect of the claim under this item, the objections of the respondent are again that under clause 3.15 the petitioner is not entitled to any amount under this item. In view of my findings under Item (c) that in view of clause 3.1.1 the petitioner will be entitled to the rates applicable under the C.P.W.D. Specifications, the objections under this item as well cannot be sustained.

Item No.(i)

7. The objections of Mr.Sharma under item 2(i) are that the Arbitrator has not given any reasons but has only given his conclusions and in the absence of reasons the award is liable to be set aside.

8. The Arbitrator while making his award in respect of this item stated 'The rate claimed by the contractor as per analysis given by them with their letter dated 16.7.87 (at page 158 of file no.2) is Rs.57.54 which is reasonable'. I have gone through page 158 of file no.2 and I find that the Arbitrator having relied upon the reasons at page 158 of file no.2 it cannot be said that the award of the Arbitrator is without reasons. Court while deciding the objection cannot go into the reasonableness of the reasons and if there is an indication as to how the arbitrator has arrived at his conclusion, in my view, the Court cannot interfere with the award. I am, therefore, unable to agree with Mr.Sharma that no reasons have been given by the Arbitrator while making the award under item no.2(i).

Item No.(j)

9. It is argued by Mr.Sharma that the reasons given by the Arbitrator in arriving at his findings in respect of this item are not sufficient. Where reasons have been given for the award, challenge to the award cannot be sustained on any view of the matter. Interference with the award is justified only if it is shown that the arbitrator has reached a decision which no reasonable man could have reached. Conclusion of the arbitrator being based on a possible view of the matter, the Court would not interfere with the award.

Item No.(l) & (m)

10. During the course of arguments Mr.Sharma conceded that no notice had been given to the contractor for rectifying the deficiencies for which reduction has been made by the respondent. In my view, in the absence of any notice the respondent was not justified in making deductions and the Arbitrator was, therefore, justified in making his award in respect of this item.

#### CLAIM NO.6

11. Under this claim the Arbitrator has awarded interest @ 18% per annum to the petitioner from 23.3.84 up to the date of his entering upon the reference. It is stated in the objections that the Arbitrator was not competent to award pendente lite interest and consequently, according to Mr.Sharma, the award of the Arbitrator in respect of claim no.6 is liable to be set aside.

12. I find from the award that the Arbitrator has not awarded any pendente lite interest to the petitioner. On the other hand, the Arbitrator has clearly stated: 'the Hon'ble High Court has directed that the arbitrator has no power to award interest for the period after entering on the reference' and interest has, therefore, been awarded only up to the period of the Arbitrator's entering upon the reference and not subsequent thereto. In judgment dated July 27,1990 the court had clarified that the Arbitrator would re-consider the award of interest only for the period prior to the date when he entered upon the reference. In view of the court having given power to the Arbitrator to consider the award of interest prior to the date of his entering upon reference, in my view, there is no infirmity in the findings of the Arbitrator when he awards interest up to the date of his entering upon the reference.

13. Mr.Manmohan, learned counsel for the petitioner relying upon the judgment in Secretary, Irrigation Department & Others Vs . G.C. Roy, : [1991]3SCR417 has argued that as this matter was pending before the Arbitrator, this Court should award interest from the date when the arbitrator entered upon the reference. In my view, this was not a point for consideration before the Arbitrator and the Arbitrator having been empowered only to consider the grant of interest up to the date of his entering upon the reference, this Court will not go into the question whether the petitioner was entitled to interest from the date when the Arbitrator entered upon

the reference till the date of his making the award.

14. In view of the above, the award of the Arbitrator dated 13.2.1991 is made a rule of the court and decree in terms of the award is passed. The petitioner will be entitled to interest @ 12% per annum from the date of the award till the date of decree. The petitioner will also be entitled to interest at the same rate of 12% per annum from the date of decree till payment.

15. In the circumstances of the case I leave the parties to bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**