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Union of India (Uoi) Vs. Simplex Concrete Piles India (P) Ltd.

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Court : Delhi

Decided On : Nov-24-2003

Reported in : 2003(3)ARBLR536(Delhi); 108(2003)DLT732; 2004(72)DRJ53; 2004(1)RAJ320

Judge : S.K. Mahajan, J.

Acts : Code of Civil Procedure (CPC) - Sections 34; Interest Act - Sections 2

Appeal No. : FAO No. 93/1997

Appellant : Union of India (Uoi)

Respondent : Simplex Concrete Piles India (P) Ltd.

Advocate for Def. : V.P. Chaudhary, Sr. Adv.

Advocate for Pet/Ap. : Salim Ahmed, Adv

Disposition : Appeal dismissed

Judgement :

S.K. Mahajan, J.

1. ADMIT.

2. This appeal is directed against the judgment of the Additional District Judge whereby the objections of the appellant to the award of the Arbitrator were dismissed and the award was made a `rule' of the Court and decree in terms thereof was passed.

3. Learned counsel for the appellant has raised two points to challenge the award, namely, (i) that under Clause 25 of the Arbitration Agreement in case a claim was not made within 90 days of the intimation from the Government that final bill was ready for payment, the claim of the contractor will be deemed to have been waived and absolutely barred, and (ii) the Arbitrator had no jurisdiction to award pendent lite interest and consequently the award of interest by the Arbitrator is against law.

4. In my view, none of the two grounds on which the award has been challenged can be sustained. The Arbitrator has clearly held in the award that the final bill was ready only on 11.3.1983 and from this bill a sum of Rs. 15,000/- was withheld and was finally adjusted by the respondent on 1.5.1984. According to the Arbitrator, there was thus no finalisation of the final bill till 1.5.1984 and the arbitration agreement having been invoked on 26.6.1984, claim was not time barred under Clause 25 of the agreement. Not only that the Arbitrator has given a clear finding about the question of limitation under Clause 25 after perusing the material on record that the claim was not barred by time but even otherwise he being the sole arbiter of both law and facts this Court will not sit as a Court of appeal over his findings, even if the Court may take a different view of the matter on the same facts. Even otherwise, Clause 25 of the arbitration agreement limiting the time during which a claim can be made by a party, in my view, is clearly against public policy and in view of Section 28 of the Contract Act is void.

5. In support of his second contention that the Arbitrator had no jurisdiction to award interest, learned counsel for the appellant has relied upon the judgment of the Supreme Court in : [1988]1SCR253 where it was held that the Arbitrator being not a Court had no jurisdiction to award pendent lite interest. This judgment has been overruled by the Supreme Court itself in : [1991]3SCR417 . Moreover, under Section 2(a) of the Interest Act, the Court includes a Tribunal and an Arbitrator. Since the Court has power to award interest under Section 34 of the CPC, in my

view, the Arbitrator was fully justified in awarding pendent lite interest.

6. In this view of the matter, I do not find any merit in the appeal and the same is, accordingly, dismissed. Interim order passed earlier stands vacated. The amount lying in deposit in this Court, pursuant to the orders passed by the Court earlier be released in favor of the respondent along with interest, if any, after the maturity of the fixed deposit.

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