Delhi Development Authority Vs. Wee Aar Constructive Builders and anr.

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Court : Delhi

Decided On : Sep-30-2004

Reported in : AIR2005Delhi140; 2004(3)ARBLR291(Delhi); 114(2004)DLT578

Judge : Vijender Jain and; Anil Kumar, JJ.

Acts : Interest Act - Sections 3

Appeal No. : FAO (OS) No. 10/1992

Appellant : Delhi Development Authority

Respondent : Wee Aar Constructive Builders and anr.

Advocate for Def. : Harish Malhotra, Adv.

Advocate for Pet/Ap. : Anusuya Salwan, Adv

Judgement :

Vijender Jain, J.

1. This appeal has been filed by the Delhi Development Authority against the order of the learned Single Judge dismissing its objections.

2. The claims of the claimant and amounts awarded by the Arbitrator, broadly speaking, are as follows :

(1) Claimant claimed Rs. 3,24,925 on account of shifting charges and wastage of material from the disputed land. Under this head the Arbitrator awarded a sum of Rs. 2,44,831.

(2) Under Claim No. 2 the claimant had claimed Rs. 1,83,480 on account of difference in rates of coarse sand. The said claim was disallowed by the Arbitrator.

(3) Claim No. 3 was a claim of Rs. 45,78,617 on account of damages sustained by the claimants due to alleged various breaches by the Department and intimated to the appellant from time to time, i.e. from 4th April, 1984. The Arbitrator after discussing in detail, awarded a sum of Rs. 18,53,643 to be paid to the claimant by the appellant.

(4) Claim No. 4 was the claim for Rs. 4,85,209 on account of difference in reasonable price and price paid by the appellant for the work executed beyond the stipulated date of completion till 12th February, 1985.

(5) Claim No. 5 was a claim for reasonable price of the work carried out after 12th February, 1985 till completion to the extent of 25% extra over the reasonable rate of 125% considered as reasonable price at the end of year 1984. The Arbitrator discussed both the issues (4) & (5) together and awarded the amount based on 125% above DSR 1977 for work done from 2nd April, 1984 till 30th Running Account Bill paid to the claimant. The extra amount was worked out to be Rs. 09,05,846.

(6) Claim No. 6 pertained to pendente lite interest. The Arbitrator held that interest be allowed @ 15% per annum and awarded interest for pre-reference period, however, excluded interest from 11th June, 1988 when Arbitrator entered the Arbitration reference up to 18th October, 1989, i.e. the date of making the Award. At page 16 of the award the Arbitrator has given the amount awarded as interest @ 15% against the claims which reads as under :

'(i) Amount awarded against Claim No. 1 18.03.1984 to 11.06.1988 and 18.10.1989 to the date of decree or actual payment, whichever is earlier.

(ii) No Award

(iii) Amount awarded against Claim No. 3 01.07.1984 to 11.06.1988 and 18.10.1989 to the date of decree or actual payment, whichever is earlier.

(iv) Amount awarded against Claim Nos. 4 & 5 31.12.1985 to 11.06.1988 and 18.10.1989 to the date of decree or actual payment, whichever is earlier.'

3. It is pertinent to point out that the appellant appointed the Arbitrator who was a former Addl. Director General of CPWD. Not being satisfied with the award the appellant filed the objections. Following issues were framed by the learned Single Judge :

(1) Whether the award is liable to be set aside in view of the objections raised by the respondent ?

(2) Relief.

4. The objections were considered by the learned Single Judge and by a detailed order and considering all the objections and submissions made and giving detailed reasons, did not find merit in them and dismissed the objections. However, the learned Single Judge had modified the Award regarding pendente lite and future interest and made modified Award rule of the Court. The learned Single Judge, however, also granted interest @ 9% per annum from the date of the Award till date of payment.

5. Ms. Salwan learned counsel appearing for the appellant has vehemently contended that the award given by the Arbitrator in relation to Claim No. 3 ought not to have been given. She has contended that the reasoning of the Arbitrator is erroneous. It was contended that when the tender document had been taken by the claimant, the position of the site was known to the claimant/respondent No. 1. It was contended that award on Claim No. 3 is wrong in view of the Clause 1 of the specifications and conditions in the contract, under which DDA/appellant is not liable to give any damage to the respondent No. 1 even if there was any delay in making a site available to the respondent No. 1 in time. She has also contended that the Arbitrator has ignored the fact that certain sites could not be made available to the respondent No. 1 on account of stay orders obtained in respect of

said sites by certain interested parties from the Court. The same argument was advanced by the learned counsel for the appellant before the learned Single Judge. Learned Single Judge after reproducing Clause 1 in the impugned order has given the finding that Arbitrator has interpreted the said clause to mean that there must exists some reason for not making available the site to the contractor before this clause could come to the rescue of the appellant. The Arbitrator has categorically held that the appellant failed to disclose and prove any reason and, thereforee, the appellant cannot take shelter under the said clause.

6. We have perused the order passed by the Arbitrator as well as the learned Single Judge. The case of delay by the appellant remained unexplained. It does not entitle appellant to invoke Clause 1 or take shelter under it and impugn the award. The respondent No. 1 has suffered losses on account of infructuous expenditure on labour, losses on account of idle tools, plants and machinery, losses due to hire charges for longer period for the idle steel shuttering plates and losses on account of wastage on building material due to deterioration of wooden scaffolding, bailies, battons, planks, etc. and losses on account of expenses over huts, blocking of working capital, incurring administrative charges and loss of profit. The Arbitrator has gone into details while awarding this amount on the basis of material produced before the Arbitrator. This Court in appeal will not substitute its own opinion for that of the Arbitrator. The view taken by the Arbitrator is a plausible view keeping in view his handling of projects as an Engineer. This Court will not interfere with the view of Arbitrator, even if different inferences may possibly be drawn by the Appellate Court. The Arbitrator has considered the agreement and clauses in the agreement and the evidence led by the parties and after due application of mind has come to findings which can not be assailed on the grounds as has been alleged by the appellant.

7. The next argument which was advanced by the learned counsel for the appellant was in relation to Award under Claim Nos. 4 and 5. Ms. Salwan has contended that after having been awarded Claim No. 3, the Arbitrator ought not to have awarded any further sum under Claim Nos. 4 and 5. Her contention is that claims are similar to Claim No. 3 and have been allowed without proper consideration of the nature of claims.

8. We have perused the award and the impugned order. The Claim No. 3 was in relation to damages sustained due to breaches by the appellant from 04.04,1984 as detailed above whereas the award under Claim Nos. 4 and 5 pertain to escalation beyond the stipulated date of completion till 12.02.1995 in cost of material. The claims are distinct. The learned Arbitrator and the learned Single Judge have applied their mind and rejected similar contention of the appellant, now raised again before us. We do not find any merit in the submission of the learned counsel for the appellant. The law regarding Arbitration is well settled. The learned Single Judge has relied on : [1989]1SCR880 -Food Corporation of India v. Joginderpal Mohinderpal and Anr.; : AIR 1989 SC777 -Puri Construction Pvt. Ltd. v. Union of India : [1989]1SCR318 -Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) P. Ltd. and Anr. and : [1990]2SCR638 -Hind Builders v. Union of India. When the parties have chosen a forum to refer their disputes to be adjudicated not by Civil Court by filing a suit, this Court while exercising appellate power will not substitute its opinion with than that of the Arbitrator. If the clause in the contract is open to two plausible interpretations, it is legitimate for the Arbitrator to accept one or the other available interpretation and even if the Court may think that the other view is preferable, the Court will not or should not interfere with such plausible view taken by the Arbitrator. The Award cannot be said to be perverse. It cannot be stated that the Arbitrator has not taken the material before him into consideration before coming to a conclusion in allowing claims. In the circumstances the grounds taken by the appellant are without any merit. There is no merit in this appeal.

9. The respondent No. 1 has filed cross objections regarding not granting pendente lite interest from 11th June, 1988 to 18th October, 1989. The learned Single Judge had held that unless the reference is made for pendente lite interest, the Arbitrator had no jurisdiction to award pendente lite interest. Regarding pre-reference period it was held by the learned Single Judge that in view of Section 3 of the Interest Act, the pre-reference interest could be granted. While giving the finding on Issue No. 2 the learned Single Judge, held that the finding of Arbitrator for grant of pendente lite and future interest is liable to be set aside.

10. Perusal of the award shows that the learned Arbitrator had granted pie-reference period interest till the date of entering upon reference i.e. 11th June, 1988 and future interest from the date of award i.e. 18th October, 1989 till the date of decree or actual payment whichever was earlier. The learned Arbitrator did not grant pendente lite interest. The learned Single Judge, however, held that the respondent No. 1 is entitled for pre-reference period interest @ 15% per annum till 11th June, 1988. Though the learned Arbitrator had not granted pendente lite interest, yet the learned Single Judge on a wrong notion set aside the Award regarding grant of pendente lite interest. The learned Single Judge also set aside the award for future interest from 18th October, 1989 till the date of decree or actual payment whichever was to be earlier while deciding Issue No. 2, yet in his order he granted future interest @ 9% per annum from the date of award till payment of decretal amount.

11. The pendente lite interest was perhaps not granted by the learned Arbitrator and the learned Single Judge in view of the judgment of Hon'ble Supreme Court in Executive Engineer, Irrigation, Galimala and Ors. v. Abhaduta Jena and Ors. : [1988]1SCR253 . The judgment in Abhaduta Jena and Ors. (supra), was however, over ruled by the Hon'ble Supreme Court in Secretary, Irrigation Department, Govt. of Orissa and Ors. v. G.C. Roy : [1991]3SCR417 , holding that Arbitrator can grant pendente lite interest. The respondent No. 1 in his cross objections has prayed pendente lite interest @ 15% from 11th June, 1988 to 18th October, 1989 and future interest also at the rate of 15% from the date of Award till the date of payment.

12. Considering all the facts and the circumstances, award of pre- reference interest by the Arbitrator to the respondent No. 1 @ 15% per annum till the date of entering upon reference i.e. up to 11th June, 1988 is sustained. Award of future interest by the learned Single Judge @ 9% per annum from the date of award i.e. 18th October, 1989 till the payment of decretal amount is also sustained. The finding of the learned Single Judge that the respondent No. 1 is not entitled for future and pendente lite interest is set aside. The respondent No. 1 is, thereforee, also awarded pendente lite interest from 12th June, 1988 till 18th October, 1989 9% per annum on the amounts of claims awarded by the learned Arbitrator.

13. Consequently the appellant's appeal is dismissed with cost and the cross objections are allowed to the extent of granting pendente lite interest 9% as stated hereinabove. Bank guarantee furnished by the respondent No. 1 is released in his favor.

14. It has been contended before us that for furnishing Bank guarantee the respondent has paid substantial charges to the Bank to keep the Bank guarantee alive. As a matter of fact, the public authorities and corporations where public money is involved, go on filing appeal after appeal not being satisfied by either the award passed by the Arbitrator who had been appointed by them and thereafter objection petitions are filed without application of mind. The award in the present case was given 18th October, 1989 and the objections were dismissed by the learned Single Judge way back on 21st August, 1991. Since 1991 although the amount has been released in favor of the respondent but respondent has incurred cost on account of Bank charges, which has been paid for keeping the Bank guarantee alive. Considering the facts and circumstances, the appellant will pay 50% of the said charges to the respondent No. 1 within four weeks after the same is intimated by the respondent No. 1 to the appellant within two weeks. This will constitute the cost of these proceedings.

15. Appeal and cross objections stand disposed of and decree sheet in terms hereof be prepared.