

Krishna Construction Co. Vs. Delhi Development Authority and anr.

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SooperKanoon Citation : sooperkanoon.com/714924

Court : Delhi

Decided On : May-18-2006

Reported in : 130(2006)DLT612; 2006(90)DRJ531

Judge : Manju Goel, J.

Acts : [Arbitration Act, 1940](#) - Sections 14 and 17, 20, 30 and 33; Code of Civil Procedure (CPC) - Sections 34

Appeal No. : CS (OS) 4608/92 and is 3773/94

Appellant : Krishna Construction Co.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Anil Sapra, Adv.

Advocate for Pet/Ap. : Harish Malhotra, Sr. Adv.,; Anupama Kaul and; Tanuj Khurana

Disposition : Application dismissed

Judgement :

Manju Goel, J.

1. The petitioner, Krishna Construction Company, has filed the present petition under Section 14 & 17 of the [Arbitration Act, 1940](#) (hereinafter referred to as the

`Act') for notice to respondent No. 2 (Shri S.S. Kaimal, Sole Arbitrator) to file his award dated 24.11.1992. The petitioner is a partnership firm carrying on business of building contractor. On tenders invited by respondent No. 1, Delhi Development Authority, the petitioner submitted his tender for the work styled as '1200 MIG Houses Pkt. GH-14 in the Zone G-17 at Paschim Vihar including water supply, sanitary installation & internal development of land SH: C/O 192 MIG Houses Group IV'. The tender was accepted by respondent No. 1 at 56% above the estimated cost together with rebates offered. The agreement included an arbitration clause as clause No. 25. On account of certain differences arising between the parties, the petitioner sought a reference to the Arbitrator. The petitioner moved a petition under Section 20 of the Act which was registered as Suit No. 3417-A/1990. Respondent No. 1, however, appointed respondent No. 2 as the Sole Arbitrator vide the letter dated 23.1.1991. The Arbitrator entered into reference on 7.2.1991 and finally made his award on 24.11.1992. The petitioner prays for the filing of the award and passing a decree in terms of the award. The award is then presented to the court. On receiving the notice of filing of the award objections are made by respondent No. 1 under Sections 30 & 33 of the Act. The same has been registered as is No. 3773/1994. The objections in brief are as under:

Although the objections are long the only point raised at the time of argument is that the arbitrator's award gives no reasons. Admittedly the arbitrator was required to give reasons as required by the arbitration clause. It is alleged that the Arbitrator has only mentioned the contentions of the parties and has come to his conclusions without assigning any reasons for arriving at those conclusions. It is pointed out that under item No. 4 at page 4 of the award, the Arbitrator has granted more than what is claimed without giving any reasons for doing so. In item No. 6 at page 4, respondent No. 1 is asked to pay Rs. 16,661.26 which comprise of the claim of Rs. 10,680/- and the percentage of the contractor, i.e., Rs. 5,980.96. It is alleged that the contractor's percentage was included in the amount claimed, i.e., Rs. 10,680.30, and to this extent there is an error apparent and, therefore, the award needs to be set aside. Item No. 9 at the bottom of page 4 is the claim for Rs. 36,721.59 for ready mixed paint, woodwork and steel work. It is pointed out that what is awarded is much more, i.e., Rs. 57,285.68, which is again an error

apparent and without giving sufficient reasons and, therefore, to be set aside. Similarly it is pointed out that there is discrepancy between the claim and award in various other items and the Arbitrator has not given any reasons for doing so. On coming to claim as per Annexure D at page 6 of the award, the Arbitrator has found the claim to be partially justified and has directed respondent No. 1 to pay Rs. 42,654.80 without disclosing how he has arrived at this figure. Similarly, it is alleged that how figure of Rs. 79,330/- in claim 3 at page 9 and how a figure of Rs. 2,03,959.87 in claim No. 4 have been arrived at has not been explained. The award on claim No. 8 also allegedly suffering from similar defect.

2. The claimant, however, refutes all these contentions and says that the award is valid and that reasons have been given for the award. Learned Counsel for the claimant has taken me through the award and has shown that the award actually gives reasons although the same may not have been given in the language that we find in the judgments written by the courts. In the first place, the admitted position is that the Arbitrator was entitled to enhancement @ 56% and this enhancement is mentioned in various items. Since this was an agreed term between the parties, the Arbitrator has added the enhancement without actually referring to the document in which that enhancement is mentioned. This cannot be said to be something done without any reasons or to be an error apparent on the face of the record making it perverse. Before reading item No. 4 one has to read item No. 3. The Arbitrator has referred to the payment of lintel band which he finds should be paid under agreement under item No. 3.2 (a) to (d) and not as an extra item. therefore, there is no dispute regarding the quantity and rates and thus he finds the claim justified to the extent of Rs. 21,516.13. The clauses of the agreement between the parties are available on record. These are contained in the form of Percentage Rate Tender & Contract for Works, General Rules and Directions. The description of the item at 3.2 is as under:

1. 2. 3. 4. 5. 6. Sub-head Qty. Rate Unit Amount 3.2.

Reinforced cement concrete work in vertical and horizontal find individually or forming box louvers, bands and facials including finishing and plastering and exposed surface with cement mortar 1:3 (1cement:3 fine sand pf. Thickness not

exceeding 6mm to give a smooth and even surface but excluding the cost of 1:2:4 (1cement:2coarse sand:6 graded stone agg.12.5 mm. Nominal size).

a) up to floor two level. 0.08 Cum. XXX XXX Rs.45/-b) from floor two level to floor three level 0.08 Cum. XXX XXX Rs.45/-c) from floor three level to floor four level 0.08 Cum. XXX XXX Rs.46/-d) from floor four level to floor five level 0.08 Cum. XXX XXX Rs.46/-

3. The items 'bands' is found by the Arbitrator to include lintel bands and the Arbitrator says in item No. 3 that the lintel bands are covered by item Nos. 3.2 (a) to (d) and not as an extra item. The Arbitrator has then given calculations, which are as under:

Amount due under 3.2(a) to (d) Rs. 61,438.90 Plus contractor's enhancement at @ 56% Rs. 34,405.78-----Rs. 95,844.68 Amount paid under extra item as per item 16 of Annexure A Rs. 74,338.55-----Amount awarded Rs. 21,506.13-----

4. The respondent is then directed to pay the amount to the claimant. It has to be understood that the Arbitrator himself is a retired Additional Director of General Works and was aware of technical facts. Certain things which may appear obvious and apparent to him have not been reduced in writing in his discussion. With a little care the thought process of the Arbitrator becomes apparent and clear.

5. Very similar is the situation with item No. 4 which was a claim for shuttering of lintel band. The Arbitrator has written in his award that the shutter and the lintel band have to be paid for under agreement item No. 3.9(e). The technical assessment of the Arbitrator is that lintel band are covered by item No. 3.9(e) regarding vertical and horizontal fins individually or forming box louvers bands and facials. Accordingly he has taken the claim under this item and not as an extra item and has accepted the claim of the contractor albeit with the contractor's percentage of 56%. The contractor's percentage is calculated at Rs. 9,524.27. The calculation of this amount has not been challenged. Same is the situation with all the other items and it is not necessary for this Court to narrate here each and every item. The Arbitrator has generally expressed himself and has given

indication of this thought process.

6. What is meant by reasoned award has come for examination before this Court as well as before the Supreme Court in several judgments. In *Delhi Development Authority, New Delhi v. Alkaram, New Delhi* : AIR1982 Delhi365 this Court had the following to say:

In the instant case one of the clauses of the agreement provided for the arbitrator giving a reasoned award when the claim in dispute was for a sum of Rs. 50,000/- or above. Thus it was mandatory for the arbitrator to give reasons for the award as the claim in dispute was for more than Rs. 50,000/-. The fact that the arbitrator indicated his reasons is apparent from the award. What reasons are sufficient in any particular case must, of course, depend upon facts of the case. There is no error apparent on the face of the award nor has the arbitrator misconducted himself and there was material for him to come to his conclusion. When an arbitrator gives a reasoned award he is not required to write a detailed judgment setting out each logical step of his reasoning but it is sufficient if he indicates the trend of his thought process, so that errors can be eliminated and arbitrariness avoided. But the Court's function remains restricted. It does not permit reviewability of the reason; nor a combing through as an appellate forum would be advised to do, as this would amount to an 'impeachment' of the award which is not permissible; the purpose of arbitration being speed, cheapness and certainty a necessary requirement for commercial conduct of business.

7. In *Municipal Corporation of Delhi v. Jagan Nath Ashok Kumar and Anr.* : [1988]1SCR180 the Supreme Court examined the question of sufficiency of reasons to be given by an Arbitrator and the court accepted the proposition that the question of the reasonableness of the reasons in a speaking award cannot be challenged in a proceeding like the present one. Once the Arbitrator has given the award and has given reasons for his award, the sufficiency of those reasons cannot be questioned. It observed that the Arbitrator was the sole judge of the quality as well as the quantity of evidence and the court could not take upon itself the task of being a judge of the evidence before the Arbitrator. It observed further that it may be possible that on the same evidence the court might have arrived at

different conclusions than the one arrived at by the Arbitrator but that by itself is no ground for setting aside the award of the Arbitrator.

8. This Court in *Delhi Development Authority v. Bhagat Construction Co. (P) Ltd. and Anr.* 2004 (3) A.LR 548 further said that the Arbitrator need not disclose the mathematical calculations in the Award.

9. Thus, in view of the above judicial opinions, it cannot be said by this Court that the award of the Arbitrator is liable to be set aside on account of absence of reasons. The Arbitrator has awarded interest *pendente lite*, i.e., during the pendency of the reference before the Arbitrator at the rate of 18%. The Supreme Court in the case of *Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy* : [1991]3SCR417 has held that the Arbitrator has the power to grant *pendente lite* interest. The Arbitrator's decision to fix the interest payable at 18% has not been challenged in this petition. So far as interest from the date of the award is concerned, it is within the jurisdiction of this Court and not within the jurisdiction of the Arbitrator. Keeping in view the provisions of Section 34 CPC, for the period commencing from the award till realisation, it will be sufficient to award interest at the rate of 9% per annum.

10. Accordingly the objections under Sections 30 & 33 of the Act are liable to be dismissed with the modification stated above. Hence is No. 3773/94 is disposed of as above. The suit, CS(OS) No. 4608/92, is decreed. The award is made a rule of the court with the modification that interest from the date of the award till realisation is payable at the rate of 9% per annum on the awarded amount.