

Delhi Development Authority Vs Shree Durga Construction Co.

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Court : Delhi

Decided On : Jul-29-2010

Judge : Mr. V.B.Gupta. J.

Acts : Code Of Criminal Procedure (CRPC) - Sections 89,151.

Appeal No. : CM (M)No. 940/2010 & CM No. 13028/2010

Appellant : Delhi Development Authority

Respondent : Shree Durga Construction Co.

Advocate for Pet/Ap. : Mr. Rajesh Manchanda, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?

Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

By way of present petition filed under Article 227 of the Constitution of India by the petitioner, it is prayed that orders dated 31st August, 2009 as well as 24th May, 2010, passed by Additional District Judge, Delhi be set aside.

2. Respondent herein, filed a suit for recovery of Rs.20 lakh against the petitioner. Respondent was awarded work of construction of certain houses by the petitioner. Respondent filed recovery suit in respect of certain claims arising out of the contract between the parties in respect of the above mentioned construction work.

3. Respondent filed an application under Section 89 read with Section 151 of the Code of Civil Procedure (for short as Code) for referring the matter to Arbitrator on account of technical nature of the same.

4. Averments made in application under Section 89 of the Code, were not specifically denied by the petitioner. Petitioner in its reply simply stated;

"Pleadings are complete. Suit is fixed for Defendants evidence. Suit can be decided on the basis of documents relied by the parties."

5. It is contended by learned counsel for petitioner that under Section 89 of the Code, Court can only refer the matter to Arbitration, Conciliation, judicial settlement including settlement through Lok Adalat or Mediation, when there is an element of settlement and same is acceptable to both the parties and in such condition, the Court has to formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same to any of the aforesaid authority for settlement of dispute between the parties. In the present case, no such observation has been made by the trial court in the impugned order. Since procedure set out in Section 89 of the Code has not been strictly observed by the trial court. Hence, impugned order is liable to be set aside.

6. Learned counsel for petitioner during the course of arguments also contended that no consent was given on behalf of the petitioner with regard to the passing of impugned order dated 31st August, 2009. In support of its contentions the counsel cited *Jagdish Chander v. Ramesh Chander & Ors* JT 2007 (6) SC 375.

7. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

8. In Waryam Singh and another vs. Amarnath and another, AIR 1954, SC 215, the court observed;

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. V. Sukumar Mukherjee, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

9. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

10. It is an admitted case of the parties that there was no Arbitration agreement in this case. Main contention of learned counsel for petitioner before this Court is that petitioner never gave its consent for referring the matter for Arbitration under Section 89 of the Code.

11. Order dated 31st August, 2009 was passed in the presence of counsel for both parties. Relevant portion of it reads as under: "In view of too technical nature of the suit in respect of completion of work, recovery and payment in respect thereof, it is desirable and appropriate that this matter be referred for arbitration. Counsel for the defendant has also submitted that despite being no arbitration clause, this Court may pass appropriate orders keeping in view the nature of the case. Keeping in view the technical nature of the suit and the amount claimed, it is felt appropriate in the interest of justice that the matter be referred for arbitration U/s 89 of CPC. It has been agreed on behalf of the parties that in order to save an unnecessary wastage of time Sh.Pramod Kumar, Superintending Engineer (Arbitration) of DDA Janakpuri, New Delhi, may directly be appointed as Arbitrator to adjudicate the dispute between the parties in this suit. The request is granted, the application in hand is allowed and Sh. Pramod Kumar, Superintending Engineer (Arbitration) of DDA Janakpuri, New Delhi is hereby appointed as an Arbitrator to adjudicate the dispute between the parties in this suit. The record of this case be directly sent to the said Arbitrator on or before 15.09.2009 with direction to the parties to appear before the said Arbitrator on 18.09.2009 after

retaining certified copies of the documents to be supplied by counsel for the plaintiff to this court. It is clarified that the documents, certified copies of which cannot be supplied may be placed on record in Photostat by the parties before the Arbitrator without wasting any time.

It is clarified that the plaint of the present suit shall be treated as claim of the plaintiff, written statement as counter statement of the defendant and replication as rejoinder to the counter statement of the DDA. Nothing more remains to be adjudicated by this court in the present suit."

12. Petitioner thereafter, filed an application under section 151 of the Code, dated 19th September, 2009 for recalling/modification of order dated 31st August, 2009, in which it was stated that Mr. Pramod Kumar, Superintending Engineer (Arbitration) of petitioner authority was appointed to adjudicate the dispute between the parties. Since Sh. Pramod Kumar, had retired on 31st August, 2009 now, the competent authority has appointed Sh. Jai Kishan Garg, Superintending Engineer (Arbitration), Janak Puri, New Delhi. Thus, petitioner itself prayed that Sh. Jai Kishan Garg be appointed to adjudicate the dispute between the parties to the suit.

13. In this application it was nowhere pleaded that order dated 31st August, 2009 passed by the trial court is wrong or it was not a consent order.

14. Thereafter, petitioner filed another application under Section 151 of the Code on 8th January, 2010, praying to appoint an Arbitrator from one of the member as mentioned in Para 6 of this application or to appoint Sh. Jai Kishan Garg, Superintending Engineer (Arbitration).

15. So, in these applications petitioner itself had been praying for appointment of an Arbitrator though of its choice. However, these applications were dismissed by the trial court. The Court in its order observed that previous order dated 31st August, 2009, appointing Mr. Pramod Kumar, Superintending Engineer (Arbitration) (now retired) shall remain as it is.

16. Bare reading of order dated 31st August, 2009, shows that order appointing Mr. Pramod Kumar, Superintending Engineer (Arbitration), DDA, Janak Puri, New Delhi was a consent order.

17. In none of the subsequent applications filed by petitioner it ever took this plea that petitioner was not a consenting party to order dated 31st August, 2009.

18. In the present petition, petitioner took a somersault as its counsel contended that no consent was given on behalf of the petitioner. Since, Mr. Pramod Kumar, Superintending Engineer (Arbitration), was appointed with the consent of the parties, now it does not lie in the mouth of the petitioner to change its previous stand. The petitioner is estopped from taking a new plea that petitioner was not a consenting party, when petitioner itself is pleading before the trial court time and again that an Arbitrator of its choice be appointed. The decision of Jagdish Chander (Supra) as cited by learned counsel for the petitioner is not applicable to the facts of the present case as petitioner himself had been pleading before the trial court for appointment of an Arbitrator of its own choice.

19. Under these circumstances, present petition under Article 227 of the Constitution of India is not maintainable.

20. Before parting with, I must express my deep anguish over the manner in which this petition has been filed. Petitioner being a statutory body, without applying its mind has filed this frivolous petition. It is well known fact that courts across the country are saddled with large number of cases and Government bodies are the biggest litigant in these cases. The courts have been expressing their displeasure at the statutory bodies compulsive litigation habit.

21. Further, it has been observed time and again by Supreme Court and this Court that frivolous and meritless litigation must be dealt with heavy hands. Time has come to fix personal responsibility on the concerned officials. With this measure only frivolous and needless litigation can be checked. The rise in litigation is also because the departments do not examine the cases properly and goes on filing frivolous and needless petition in the Court. The frivolous litigation clogs the wheels of justice, making it difficult for courts to provide easy and speedy justice to

genuine litigants.

22. Since, there is no illegality, infirmity or irrationality in the impugned order, the present petition being most bogus, meritless having no legal force and frivolous one, is hereby dismissed with costs of Rs.25000/- (Twenty Five Thousand).

23. Petitioner is directed to deposit the costs with Registrar General of this court, by way of cross-cheque, within four weeks from today.

24. List for compliance on 31st August, 2010.

25. Dismissed.

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