

Delhi Development Authority Vs. M/S. W.S. Construction Co

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Court : Delhi

Decided On : Jan-12-2012

Appellant : Delhi Development Authority

Respondent : M/S. W.S. Construction Co

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on: 12.01.2012 + FAO(OS) 233/2002 DELHI DEVELOPMENT AUTHORITY ...APPELLANT VERSUS M/S. W.S. CONSTRUCTION CO. ...RESPONDENT
Advocates who appeared in this case: For the Appellant : Mr. Bhupesh Narula, Advocate For the Respondent: None CORAM :- HON'BLE MR JUSTICE SANJAY KISHAN KAUL HON'BLE MR JUSTICE RAJIV SHAKDHER SANJAY KISHAN KAUL, J (ORAL).

1. The appellant/DDA awarded a contract to the respondent for construction of 320 MIG houses at Jahangirpuri under agreement no.44/EE/DDV/81-82. The disputes arose inter se the parties and on account of an arbitration clause in the agreement, the respondent filed an application under section 20 of the Arbitration Act, 1940 (hereinafter referred to as the said Act). The said application was allowed by the learned Single Judge of this court vide order dated 23.02.1987 directing the Engineer Member, DDA (the designated authority) to appoint an Arbitrator. Mr. V.D. Tiwari was thereafter appointed as the Sole Arbitrator by FAO(OS) 233/2002
Page 1 of 7 the Engineer Member, DDA as per letter dated 28.04.1988 who made and published his award dated 29.08.1995 qua claims and counter claims. The

appellant thereafter filed objections under sections 30 and 33 of the said Act on the award being filed in court in suit no.2088A/1995. The objections have been dismissed by the learned Single Judge as per the impugned order dated 19.09.2001..

2. We may notice at the threshold that both the award and the order of the learned Single Judge are reasoned ones. The Arbitrator has examined each of the claims and counter claims, appreciated the evidence and reached conclusion separately under each of the heads. The respondent has been held entitled to a sum of Rs.4,21,217/- alongwith simple interest @ 14% p.a. from 14.06.1988 (the date of entering upon reference upto the date of publication of the award). A period of two months from date of publication of the award was given for payment of the amount, failing which future simple interest at 14% p.a. would also be payable. The bank guarantee of Rs.1 Lakh for security deposit in possession of the appellant was directed to be released to the respondent. The conclusion contained in the award is as under :- "The delay in the execution of work cannot be attributed to the claimants as already discussed while dealing with counter-claim no.4. So far as the defects in work are concerned, respondents are more responsible for accepting the same by certifying on each bill th at the work had been carried out as per specifications. Certain tests are required to be conducted as per CPWD specifications for various items of work and respondents certificate that work had been carried FAO(OS) 233/2002 *Page 2 of 7* out as per specifications indicates that such test results were found to be in order. The work was in progress for 11 months and it was surprising that respondents could not detect the work was sub-standard to the extent the test results of Quality Control Cell indicate. It can be considered that isolated patches of sub-standard work could have escaped respondents attention but items like placing of reinforcement, walls not in plumb, cross walls not jointed etc. could not have been missed. It has been certified that RCC work had been 100% checked by respondents A.E.. The claimants, therefore, cannot be singly blamed for sub-standard work. The counter-claim for damages for delay of 8 years and for compensation for the respondents reputation having been adversely affected is not tenable and hence is rejected. The award is for nil amount"..

3. Learned Single Judge in the impugned order has by the initial paragraph no.4 appreciated the legal principles qua interference with an award of Domestic Tribunal. It is not the function of the court to sit as a court of appeal or re-appreciate the evidence. The various judgments delivered by the Supreme Court have been examined. Suffice it to say that in view of the observation of the Supreme Court in *Arosan Enterprises Ltd. Vs. Union of India and Anr.* (1999) 9 SCC 449 and *M/s. Ispat Engineering and Foundry Works B.S. City Bokaro Vs. M/s. Steel Authority of India Ltd. B.S. City, Bokaro*, JT 2001 (6) SC 1, there is no dispute about the legal principle. In fact what was canvassed before the learned Single Judge that the Arbitrator over-stepped his jurisdiction and travelled beyond the agreement giving findings in the absence of any evidence. It is thereafter that the learned Single Judge has proceeded to consider the findings in respect of different claims..

4. The principal contention arose out of the stand of the appellant that the work carried out was defective and of poor quality which resulted in the appellant rescinding the contract and demolishing certain structures upto the foundation level to be re-constructed. There was also an issue of delay in the execution of the work attributed to the respondent. The concurrent findings both of the Arbitrator and the learned Single Judge on appreciation of evidence is that the delay could not be attributed to the respondent. As far as the main issue of defects in the work is concerned, the checks and balances were provided by the Engineer of the appellant being required to certify that the work has been carried out as per specifications. The tests were required to be carried out as per CPWD specifications for various items of work and certification of work was done only after the test results were found to be in order..

5. The work was in progress for 11 months and at no stage was found defective or sub-standard. It is thus the finding of the Arbitrator that isolated patches of sub-standard work could have escaped the attention of the appellant but the items like placing of reinforcement, walls not in plumb, cross walls not jointed, etc. could not have escaped the attention. The certification available shows that the RCC work had been 100% checked by the Assistant Engineer of the appellant and thus, it has been found that the respondent could not be blamed singly for sub-standard

6. It is in view of the work carried out that the amount has been quantified by the Arbitrator. The findings recorded by the learned Single Judge are reproduced as under :- "20. Coming to the counter claims laid by the respondent, the 1st counter claim was for Rs.26,23,698/- on account of sub-standard work executed by the petitioner. The arbitrator recorded that the execution of the work was started in March/April 1982 and continued upto February 1983. These bills were running bills and were paid. IN the 6 th and 7th bill there is a noting that the work has been carried out as per specifications. In other words, the findings were that the respondents were fully satisfied with the nature of the work that has been done and consequently the claim as such did not find favour with the arbitrator. The assertions of the objector/respondent that the work executed by the arbitrator was defective or sub-standard, therefore, does not find support from the material on the record. If subsequently they had to dismantle the blocks that by itself does not put an end to the findings of the arbitrator which as already recorded above are based on the evidence because 6th/7th bill had the endorsement that work had been carried as per specification. It cannot in these circumstances be permitted that the arbitrator has come to an erroneous finding or mis- conducted himself to permit the courts interference."

7. The counter claims arises from cost of material alleged to have been wasted FAO(OS) 233/2002 Page 5 of 7 by the respondent by doing sub-standard work and for rectification of defects by other agencies at risk and cost of the respondent have been found unsustainable as the work under contract was mostly carried out during the period between March 1982 to February, 1983. In this relevant period of time, no defects were pointed out by the representatives of the appellant. In fact, there is not even a single letter indicating so. The assertion of the respondent that field test on CC cubes had given desired strength, has not been rebutted. No action was taken by the appellant for 33 months from the date of issue of the notice for rectifying the defects and thus the repairs were duly carried out..

8. The finding is that the appellant was never serious about the rectification work and thus the counter claims arising on account of levy of compensation under

clause 14 of the contract for non supply of cement bag has also been rejected. The same is the fate of the claim of damages of the appellant..

9. Learned counsel for the appellant could not seriously dispute before us that the findings of both the Arbitrator and the learned Single Judge are based on appreciation of evidence and it is really not a case of absence of evidence or findings being given by the Arbitrator dehors the terms of the contract. In that view of the matter, as noticed above, it is not the function of the court to re- appreciate the evidence..

10. Learned counsel for the appellant lastly urged that the interest awarded @ 14% p.a. simple interest is on the higher side. We fail to appreciate this submission as the regime of interest when, the award was pronounced, was more *FAO(OS) 233/2002 Page 6 of 7* than what has been awarded by the Arbitrator and there have been periods of lower regime of interest and higher regime of interest. The mean of the same would show that interest at 14% p.a. is not excessive. Not only that, we find that the amount was never paid to the respondent but was deposited by the appellant in court as the condition of stay, to be released to the respondent on furnishing a bank guarantee. The bank guarantee was not furnished by the respondent with a result that the amount has remained deposited in court, albeit earning interest on account of direction to put it in FDR. This fact would also show that the respondent has not been able to enjoy the fruits of success of the award or the order of the learned Single Judge..

11. We thus find no merit in the appeal, which is dismissed. No costs as the respondent is unrepresented before us..

12. The amount deposited in court alongwith accrued interest be released to the respondent. *SANJAY KISHAN KAUL, J RAJIV SHAKDHER, J January 12, 2012 yg FAO(OS) 233/2002 Page 7 of 7*