
(1997) 08 DEL CK 0015
In the Delhi High Court
Case No : Suit No. 2259 of 1991

Bharat Lal

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Citation : (1997) 5 AD 384 : (1997) 70 DLT 43 : (1997) 42 DRJ 765

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : B.K. Divan and Rajesh Kumar, for the Appellant;

Judgement

Vijender Jain, J.

(1) Petitioner has filed the petition for making the award rule of the Court. Respondent filed its objections to the award being made rule of the Court. Award in this case was made by Mr. Banarasi Dass. Super intending Engineer of the respondent on 7-6-1991.

(2) Learned counsel for the respondent Mr. Rajesh Kumar, has contended that the award under Claim Nos. 5, 6 and Additional Claim No. 7 is based on no evidence and no reasons whatsoever have been given by the Arbitrator for making the award and, Therefore, the award be set-aside.

(3) Yet another contention raised by the learned counsel for the respondent is that the award under Additional Claim No. 2 could not have been granted to the claimant petitioner as in terms of Clause 2 of the agreement a penalty was levied on claimant-petitioner. Lastly learned counsel for the respondent has contended that by not awarding the counter claim No. 3 by which the respondent has claimed a sum of Rs. 29,895.00 towards compensation levied by the competent authority due to non-completion of work by the claimant. Arbitrator has misconducted the proceedings.

(4) On the other hand, Mr. B.K. Dewan, learned counsel for the petitioner-

claimant, has contended that award is reasoned one and Arbitrator has arrived at the findings after taking into consideration the documents and material placed on record. Learned counsel for the claimant-petitioner has contended that objections of respondent be dismissed and award be made rule of the court.

(5) I have heard the arguments advanced by the learned counsel appearing for both the parties at length. Dealing with the first objection of the respondent with regard to Claim Nos. 5, 6 and Additional Claim No. 7, claimant-petitioner claimed a sum of Rs. 35,000.00 , Rs. 10,000.00 and Rs. 75,000.00 respectively. Rs. 35,000.00 was claimed on account of shuttering, which was damaged due to respondent's fault. Rs. 10,000.00 was claimed for hire charges of shuttering which was allegedly wrongfully held by the respondent and under the Claim No. 7, claim was for Rs. 75,000.00 towards damages. The Arbitrator has returned a finding that it was the respondent who ordered not to remove any shuttering material after the collapse on 14-3-1985 and a letter was produced before the Arbitrator dated 6-4-1985 in which respondent had directed the claimant not to remove the shuttering material, which is Ex -- 47 after taking into totality of circumstances and the material placed before him, out of a total claim of Rs. 1,20,000.00 the Arbitrator has assessed an amount of Rs. 25,000.00 as reasonable damages against the aforesaid claims. The Arbitrator has also held that the claimant was not responsible for the collapse and there was no justification for the respondent not to allow the petitioner-claimant to remove shuttering material brought by the claimant on hire charges. I do not see any infirmity in the award of the Arbitrator to the grant of a sum of Rs. 25,000.00 on these claims by the Arbitrator.

(6) Dealing with the next objection of the respondent regarding Additional Claim No. 2 by which the claimant has claimed a sum of Rs. 25,000.00 under Clause 10(c) of the agreement. I have perused the award in which it has specifically been mentioned by the Arbitrator that during the course of the proceedings the respondent worked out the amount as Rs. 2578.00 under Clause 10(c) of the agreement. When the respondent themselves admitted that this amount of Rs. 2578.00 is payable to the claimant-petitioner, the objection of the respondent not to make the payment of that amount is unsustainable. The argument advanced to the contrary by the learned counsel for the respondent before me is devoid of any force.

(7) The objection of the learned counsel for the respondent that the Arbitrator had not allowed counter Claim No. 3 for a sum of Rs. 29,895.00 towards compensation levied by the competent authority under Clause 2 of the agreement due to non-completion of work is not sustainable in view of the judgment of the Division Bench of this Court in Dda Vs. M/s.Sudhir Brothers 1995(2) A.L.R.306 in which it was held that the Arbitrator was not within his powers to adjudicate upon a dispute when penalty under Clause 2 has been levied by Superintending Engineer, it was a mistake on the part of the respondent to have referred this counter claim to the Arbitrator for which he had

no power to adjudicate. In view of the above discussions, the objections of the respondent are dismissed. The award is made rule of the Court. Decree is passed accordingly. The petitioner-claimant, shall be entitled to interest at the rate of 15% p.a. from the date of decree till its realisation.