

(2009) 07 DEL CK 0336

In the Delhi High Court

Case No : F.A.O. (OS) No. 185 of 2003 and C.M. No. 471 of 2003

D.C.M. Ltd.

APPELLANT

Vs

R.K. Towers (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2010) 1 CompLJ 282

Hon'ble Judges : Neeraj Kishan Kaul, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Sanjeev Anand, Kajal Chandra and D. Nishant, for the Appellant;
Neeraj Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This appeal challenges the judgment dated 13th March, 2003 passed by the learned Single Judge by which the learned Single Judge declined to review its order dated 15th December, 1999.

2. The order dated 15th December, 1999 reads as follows:

15.12.1999

Present: Mr. Sanjeev Anand with Ms. Kajal Chandra for the petitioner.

Mr. Neeraj Malhotra for the respondent.

S.No. 1836 A/98

Ld. Counsel for the respondent states that the objections were filed but were returned with objections and were not filed. Ld. Counsel further states that the respondent does not want to file objections against award. The petitioner has also not filed any objections against the award.

The award dated 22nd June 1998 has been made by Sh. Dharam Vira, Sole Arbitrator.

As the parties have not challenged this award, this award is hereby made rule of the court. Interest is also awarded on the principle amounts payable under the award @ 18% per annum from today till realisation.

The petition stands disposed of.

Dec. 15, 1999

Sd/

J.B. Goel (J)

3. This order was preceded by proceedings before the Joint Registrar, where the following statements of the Counsel were recorded on 26th October, 1998:

26.10.1998

Present: Ms. Kajal Chandra for the petitioner

Suit No. 1836-A/98

Counsel appearing for the petitioner accepts notice of filing of award on behalf of the petitioner. No objections are to be filed. Left fresh court notice of filing of award be issued to the respondent, without process fee for 19.2.99.

Joint Registrar

4. It is, therefore, contended by relying upon the learned Single Judge's judgment that the statement was made by the respondent to withdraw the objections as the appellant/petitioner had made a statement that it would not be filing objections to the award. Since the appellant/petitioner chose not to file the objections and, in fact, made a statement to that effect before the Joint Registrar and the Court, in this view of the matter, the award was made Rule of the Court by the learned Single Judge vide its order dated 15th December, 1999 which was sought to be reviewed by the impugned order of the learned Single Judge dated 13th March, 2003, challenged before us. It was also contended on behalf of the respondent that the award was made rule of the Court with consent of the parties and it was not open for the appellant/petitioner to reopen the whole case.

5. It is also pertinent to refer to the finding of the learned single Judge in para 20 of the impugned judgment wherein the learned single Judge has held as follows:

Be that as it may, the fact remains that the Award is being sought to be modified or set aside in respect of the interest by the Executing Court. The award has already attained the status of a decree. The Executing Court cannot go behind the decree unless such a decree suffers from the vice of inherent lack of jurisdiction.

6. Mr. Anand in support of its plea for review has submitted that even if objections are not filed to the award, the Court must still look into legality of the award and since the compound interest was not claimed by the respondent the

award passed by the Arbitrator was not justified.

7. The contentions of the Counsel for the appellant/petitioner may be right but in the facts of the present case, we are not persuaded to go into this plea. However, since the respondent were persuaded to withdraw their objections as the appellant had not filed any objection and the award appears to have been made a Rule of the Court without any challenge by any of the party, we are satisfied that permitting the appellant to raise this plea, at this juncture, would be unfair to the respondent beside being inequitable and unjust. It is not even the case of the appellant/petitioner that the award was made rule of the Court without the consent of the parties. Accordingly, we find no merit in the appeal and the same is hereby dismissed. The pending application also stands disposed of.