

(2010) 12 GUJ CK 0089
In the Gujarat High Court

Case No : Civil Revision Application No. 1061 of 1999

Girish Construction

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 — Section 12

Citation : (2010) 12 GUJ CK 0089

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Sandip C. Shah, for the Appellant; Government Pleader for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—Present Revision Application has been filed u/s 12 of the Gujarat Public Works Contracts Disputes Tribunal Act, 1992 challenging the award passed in Arbitration Reference Case No. 41 of 1996 on the ground stated in detail in the memo of Revision Application.

2. Learned Counsel Mr. Sandip C. Shah for the Applicant has given a note with the date of events. As it transpires from the record, a tender was invited for allotting contract work for construction of cycle and scooter parking stand between Block Nos. 5-7 and 2-4 in Sachivalaya Complex, Sector No. 10 at Gandhinagar. The last tender was submitted on 17.01.1980 with estimated cost of Rs. 18,79,918/-. The tender of the present Applicant was accepted by the Government on 18.06.1980 and the work order was issued on 18.06.1980. As per the terms of the tender agreement stipulated work was to be completed on or before 17.06.1981. As it appears, there has been delay which led to the aforesaid arbitration proceedings.

3. The main contention raised by the learned Counsel Mr. Sandip Shah that though the terms of the contract/tender agreement stipulated that the work was

to be completed within a year i.e. on or before 17.06.1981, site was not made available; the details about the foundation were also not given; there were other reasons for which, he referred to the various records.

4. Learned Counsel Mr. Sandip Shah also submitted that the Tribunal has failed to appreciate the details with regard to different claims which were submitted item wise and while allowing claim in respect of some of the items, the claim in respect of few items has not been accepted which has led to the present Revision Application. The prayer in the Revision Application is also specifically made that so far as the claims, which are disallowed in the aforesaid reference, the judgment and award in the Arbitration Reference Case No. 41 of 1996 may be set aside to that extent.

5. Learned Counsel Mr. Sandip Shah referred para-2 of the judgment and submitted that as to how the work could not be completed within the stipulated time limit, which has been enumerated in para-2 of the judgment.

6. It is required to be appreciated that after considering the different claims in detail, the Tribunal has passed the judgment and award in the aforesaid Arbitration Reference Case No. 41 of 1996 and stated in the award in detail, the claim of Rs. 1,82,148/- with running interest at the rate of Rs. 12% from 13.07.1987 till realization along with cost of Rs. 7,500/- was allowed. This aspect has been accepted by the Applicant to the extent that it has been allowed disputing the part of the claim which has not been allowed. The Tribunal considered the claim in details of claim Rs. 22,058/- on account of illegal penal recovery of steel and also in respect of cement for an amount of Rs. 2,100/-. Similarly Claim No. 13 for Rs. 20,000/- on account of extra cost due to wider foundation and extra P.P.C. wherein it has been clearly observed that "Similarly in the item of P.C.C. also as against tender provision of 82 cu.m., 136 cu.m. quantity is executed and paid. Thus, whatever extra work is done due to wider foundation and depth is fully paid and nothing remains to be paid." In the same way, the Claim No. 15 for an amount of Rs. 1,58,966/- on account of extra lead payment due to block cutting was also not accepted as the Tribunal found it to be repetition of the claim. The Tribunal has specifically observed that "The claim seems to be repetition of Claim No. 12. The tender provides for all lead and lifts as per provision under code of practice Item No. 1. This is already reproduced under Claim No. 12 and hence not repeated here....". In absence of such details, extra rate of Rs. 16/- per cu.m. is not justified and hence the claim fails. The Tribunal has discussed about the detail aspects and the Tribunal has while calculating claims of the Applicant on different heads also observed "As against tender quantity of 6870 sq. meter Petitioner executed 9450 sq. meter and payment admissible for this executed quantity is already made in the final bill. Thus no extra additional work as stated by the Petitioner is done and no amount is due and payable to him for B.B.L.C. work. Moreover how much extra work is done and how an amount of Rs. 29,000/- become payable to him is not given by the Petitioner. The Petitioner has submitted vide exhibit 14 details of claim 6 in

which it is shown that the work was executed in June 1984 and the payment for the same is made in June 1987". Thus, the payment was blocked for 36 months, and therefore, the interest was also paid referring 6 years. Further Claim No. 7 amounting to Rs. 77,000/- on account of loss due to blockage of payment of extra item is also made which is also discussed on the basis of evidence and for delayed payment though the interest is paid, the amount of Rs. 960/- was awarded for such delayed payment on the ground that loss of interest due to blockage of extra items. As a matter of fact, this ground would not justify but still since the Tribunal has decided, this Court will not interfere with the aforesaid findings in the revisional jurisdiction.

7. Therefore, the moot question which is required to be considered is, whether the submission of the Applicant that while upholding the same award in Arbitration Reference Case No. 41 of 1996, the judgment and award may be set aside to the extent, that the claim which has been disallowed is absolutely misconceived. It is required to be mentioned that the Applicant has accepted an award passed in Arbitration Reference Case No. 41 of 1996 inasmuch as the direction with regard to claim has not been challenged meaning thereby, it is just and proper in respect of the claim which has been admitted, however on the basis of appreciation of evidence as discussed above only with respect to the claims which have been modified or not allowed, the award has been challenged without any justification. Therefore, the present Revision Application cannot be entertained in light of the aforesaid discussion and finding recorded by Tribunal. It is also well accepted that the scope of exercise of revisional jurisdiction u/s 115 is very limited. The Hon'ble Apex Court in a catena of judgments including the judgment reported in the case of Yunus Ali (Dead) through his L.Rs. Vs. Khursheed Akram, wherein it is observed as under:

It is well-settled position in law that u/s 115 of the CPC the High Court cannot re-appreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the court below. Simply because another view of the evidence may be taken is no ground by the High Court to interfere in its revisional jurisdiction.

(emphasis supplied)

8. It is required to be mentioned that on the basis of the evidence, the Tribunal has delivered the award in the aforesaid Arbitration Reference Case No. 41 of 1996; the claim has been partly allowed, which is acceptable to the Applicant, and therefore, this itself suggests that it does not lie in the mouth of the Applicant to state that the findings are perverse and the Tribunal has not appreciated the evidence.

9. In the circumstances, in light of the aforesaid discussion, the present Revision

Application deserves to be dismissed. Accordingly, the Revision Application stands dismissed. Rule discharged.