
(2006) 03 DEL CK 0111

In the Delhi High Court

Case No : CS (OS) No. 581A of 2000 and I.A. No. 692 of 2001

Hans Raj and Co.

APPELLANT

Vs

IVT Co-operative Group Housing Society Ltd.

RESPONDENT

Date of Decision : 13-03-2006

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Contract Act, 1872 — Section 73

Citation : (2006) 03 DEL CK 0111

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Non, for the Appellant; R.K. Patel, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, J.

I.A. No. 692/2001 (U/S 30 and 33 of the Arbitration Act, 1940) IN CS (OS) No. 581A/2000

1. The respondent had awarded the contract to the petitioner for the work of plumbing for its dwelling units constructed on Plot No. 5, Sector XIII, Rohini, Delhi in pursuance to the Agreement dated 24.03.1986. Disputes cropped up between the parties and in view of the arbitration clause No. 43, the matter was referred to an Arbitral Tribunal of two Arbitrators. There were some changes in the Arbitrators, but that would not be relevant for adjudication of the present matter. Suffice it to say that each of the parties nominated their Arbitrator, who in turn nominated the umpire.

2. The Arbitral Tribunal has given a unanimous Award dated 12.03.2000 accepting part of the claims made by the petitioner. The respondent aggrieved by the same has filed the present objections under Sections 30 and 33 of the Arbitration Act, 1940 (hereinafter to be referred to as, "the said Act").

3. The unanimous Award is a non-speaking award. It is not the contention of learned counsel for the respondent that the award was mandated to be a speaking one. A perusal of the Award itself shows that proceedings were held on numerous occasions before the Award was made after hearing both the parties and taking into account the written arguments.

4. In view of the aforesaid position, learned counsel for the respondent has made a two-fold plea. The first submission of learned counsel for the respondent is that the Award is without evidence and the second contention is that the Award is against the terms of the contract. Apart from this, learned counsel also seeks to impugn the Award for the rate of interest.

5. Insofar as the first aspect is concerned, the parties produced the relevant material before the Arbitrators and it was for the Arbitrators to consider the evidence on record and come to a conclusion on the same. It is not for this Court to re-appraise the evidence or to sit as a court of appeal. Even if this Court was to come to a different conclusion on the basis of the material available with the Arbitrators, it would be no ground to interfere with the Award. In the absence of an award being absurd, reasonableness is not a matter to be considered by the Court as held by the Apex Court in *Food Corporation of India Vs. Joginderpal Mohinderpal*, . The Division Bench of this Court also considered this aspect in *DDA v. Bhagat Construction Co. Pvt. Ltd.* 2004 (3) Arb.LR 481 in coming to the same conclusion.

6. In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, , it has been held that insofar as the interpretation of the contract is concerned, the Court is not to substitute its own decision with that of the arbitrator. So long as the view taken by the arbitrator is a plausible one, though perhaps not the only correct view, the award cannot be examined by the court. It is not the function of the High Court to examine different items clause by clause as granted by the arbitrator.

7. In *State of U.P. Vs. Allied Constructions*, , it has been once again reiterated that Section 30 of the said Act providing for setting aside an award is restrictive in its operation and unless one of the conditions specified therein is satisfied, an award cannot be set aside. The Arbitrator is a Judge chosen by the parties and his decision is final and, thus, the court is precluded from re-appraising the evidence.

8. In view of the aforesaid overwhelming legal view on the scope of scrutiny by the court in respect of the matter of evidence, I am unable to accept the plea of learned counsel for the respondent that the award ought to be set aside on account of there being not enough material evidence on record.

9. The second submission of learned counsel for the respondent arises from clause 4 of the preamble which reads as under: ?4. Rates quoted shall be firm and shall not be subject to any price variation due to increase in labour wages, cost of materials, etc., or any other price variations due to any reason

whatsoever whether during the stipulated period of execution or during the extended period of completion, if any, except as expressly provided in the contract.?

10. Learned counsel submits that in view of the aforesaid plea, claim No. 2 and claim No. 6 ought not to have been awarded by the Arbitral Tribunal.

11. Claim No. 2 is only in respect of the balance payment of the 8th Running Bill and, thus, I see no application of the said clause to the award of the amount found justified. It may be noticed that only part of the 8th Running Bill has been awarded by the Arbitrators.

12. Insofar as claim No. 6 is concerned, the part amount has been awarded for statutory increase in labour wages. Learned counsel relies upon the judgment of the Apex Court in Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another, to contend that in view of the aforesaid clause No. 4, it was not open for the Arbitrators to have awarded any amount when there was a prohibition for the award of such an amount. In the said case, the Supreme Court has held that an arbitrator is the creature of the contract and it is not open for the arbitrator to go beyond the terms of the contract. The question, however, to be considered is whether the award under claim No. 6 can be said to be such an award beyond the terms of the contract.

13. A perusal of clause No. 4 shows that there is an absolute prohibition for any increase while the Arbitrators have granted statutory increase in labour wages. However, this has to be appreciated in the context of the fact that admittedly the contract went beyond the stipulated period. The plea of the petitioner was that this was on account of the faults of the respondent while the respondent pleaded that the petitioner did not complete the work within time. Clause No. 4 can apply only during the currency of the contract.

14. It would be trite to say that Section 73 of the Contract Act, 1872 gives power to the arbitrator to award an amount under such a head when the contract is prolonged beyond its stipulated period for no fault of the petitioner. In case a provision for escalation beyond the stipulated period of contract was existing, it could have been argued that the said methodology must be followed. This is not so in the present case. Since the contract has been extended beyond the stipulated date, in my considered view, the Arbitrators were not without jurisdiction to have awarded the said amount. It is also to be kept in mind that the Arbitrators did not award to the petitioner the damages claimed to the tune of Rs.3,36,660/- on account of prolongation beyond the stipulated date, but have only awarded statutory increases and labour wages for a period beyond the contract. Against the claim of Rs.90,000/- on this account, a sum of Rs.40,997/- has been awarded.

15. In view thereof, I find no merits in this contention of learned counsel for the respondent.

16. The last aspect to be considered is the rate of interest. The Arbitrators have awarded interest 18% p.a. from 24.06.1992, which is the date of reference. Learned counsel for the respondent states that pre-suit interest ought not to be granted there being no notice for the same. I am unable to accept the plea for the reason that this is the matter to be considered by the Arbitrators on the given facts of the case and even the rate of interest cannot be said to be on the higher side. The respondent however, has genuine grievance in respect of future interest from the date of the award till the date of actual payment being granted 18% p.a. In fact, the Arbitrators could have only granted interest up to the date of decree or the date of payment, whichever was earlier.

17. Taking into consideration the prevailing commercial rates of interest and the rate of interest awarded by this Court in numerous matters, I am of the considered view that the petitioner should be held entitled to interest only 12% p.a. simple interest up to the date of decree.

18. The objections stand disposed of.

19. In view of the objections having been disposed of, the Award dated 12.03.2000 of the Arbitral Tribunal made and published by Shri M.H. Chandwani and Shri J.N. Garg is made Rule of the Court with the modification that the petitioner is held entitled to simple interest 12% p.a. from 24.06.1992 till the date of decree. The petitioner is also held entitled to future interest from the date of decree till the date of realisation 9% p.a. simple interest. Parties are left to bear their own costs.

20. Decree-sheet be drawn up accordingly.