

(1999) 11 DEL CK 0032
In the Delhi High Court
Case No : Suit No. 1157-A/92

Harbanslal Bhayana and Sons

APPELLANT

Vs

U.O.I. and Another

RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Arbitration and Conciliation Act, 1996 — Section 30, 33

Citation : (2000) 1 AD 972 : (2000) 52 DRJ 308

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. R. Rajappan, for the Appellant; Mr. B.P. Aggarwal and Ms. Neera Aggarwal, for the Respondent

Judgement

Manmohan Sarin, J.

is No. 4220/98 in S. No. 1157/92

1. In view of the case having been taken up for arguments, learned counsel for the petitioner does not press this application, which is dismissed as withdrawn.

S. No. 1157-A/92

By this order, I would be disposing of is No. 2180/93, which are objections filed by the respondent/UOI to the award dated 28.2.1992.

Petitioner had been awarded a contract of the construction of Suchna Bhawan vide agreement 2EE(C)/DCD-III/85-86. Disputes and differences between the parties were referred to the Sole Arbitrator, Mr. R.J. Bhakhru, who made and published his award on 28.2.1992.

2. Learned arbitrator rejected claims 4, 5 and 6 and allowed claim Nos. 1, 2, 3, 7 and 8 totalling to Rs. 2,37,197.- Learned Arbitrator also awarded simple interest @ 14% p.a. from 1.5.1990. Learned counsel for the petitioner very fairly concedes that the said date would not correspond to the date either of the

notices given for invocation of arbitration. In these circumstances, he submits that the petitioner would be satisfied and would not have any objection to the interest being awarded from the date of reference i.e. 2.11.1990. The award in respect of interest is modified to interest being granted from the date of reference i.e. 2.11.1990 till the date of payment of realisation. The petitioner has not preferred any objection and the objections preferred by this is are by the respondent.

3. Learned counsel for the respondent/objector submits that the arbitrator had committed misconduct in making an award in respect of claim No.3 inasmuch as 166 cement bags which were damaged were in custody of the contractor. Arbitrator has held that the damage was caused on account of flood, which was beyond the control of claimants/petitioner, who could not be responsible for lack of adequate drainage or the flood. It is also stated that cement bags were found to be the property of the respondent. Reasons given by the Arbitrator are cogent and there is no error apparent in the said reasoning. This court in the exercise of jurisdiction u/s 30 of the Arbitration Act, 1940 does not question the reasonableness of reasons. Objection in this regard has no merit and is rejected.

4. Learned counsel then submitted that the arbitrator had failed to appraise the evidence and misconstrued certain documents. Nothing material has been pointed out. Appraisal of the evidence is again in the domain of the arbitrator exclusively.

5. Learned counsel next contended that the rejection of counter claim No. 3 was vitiated by an erroneous approach and suffers from errors apparent, inasmuch as the arbitrator failed to notice that the defendants were responsible for the consumption of the electricity and tampering of the meters.

6. Learned arbitrator has noted the contention of the claimants that electric connection was in the name of the Assistant Engineer and the meter was located at the site office of AE with locking arrangement. Learned arbitrator held that the dispute between the respondents and the DESU was still not settled and no liability could have been established against the claimant/contractors as they have paid the consumption charges as per the undertaking given. This has to be considered in the light of the submission made by the petitioners before the arbitrator namely that the dispute between DESU and respondents was still pending and no liability against the respondent had been finally established, which may be raised by the DESU on settlement of disputes between DESU and respondents. Based on this, it would appear that the rejection of the counter claim is based on the fact that the dispute between the respondent and DESU was still pending and the liability had not crystallized. Accordingly, respondent could not have claimed, at this stage, the amount from the petitioner, especially when the consumption charges as per the undertaking had been paid. Accordingly the award as made does not suffer from any error apparent on the face of the record, which call for interference under Sections 30 and 33 of the Arbitration Act, 1940.

7. Learned counsel for the petitioner accepts that the award being made rule of court with regard to the rejection of the counter claim, at this stage would not come in the way of the respondents seeking any remedy available at law upon crystallized corporation of liability and the DESU can stake its claim against the respondents for recovery of the said amount, as permissible at law. The objections are dismissed with the direction that the dismissal of the objections against the award in respect of counter claim will not come in the way of respondents seeking to recover the said amount in independent proceedings from the petitioners in case they are held liable to the DESU.

8. Decree in terms of the award be drawn up.