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**(2011) 07 DEL CK 0263**  
**In the Delhi High Court**  
**Case No : FAO No. 307 of 2010**

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|------------------------------------|------------|
| Janeshwar Dass Narender Kumar Jain | APPELLANT  |
| Vs                                 |            |
| Union of India (UOI)               | RESPONDENT |

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**Date of Decision :** 11-07-2011

**Acts Referred:**

Arbitration Act, 1940 — Section 20  
Arbitration and Conciliation Act, 1996 — Section 34, 37

**Citation :** (2011) 07 DEL CK 0263

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Sindhu Sinha, for the Appellant; Neeraj Choudhary, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Valmiki J Mehta, J.—By this First Appeal u/s 37 of the Arbitration and Conciliation Act, 1996, (hereinafter "the Act") challenge is laid by the Appellant/contractor to the impugned order dated 24.4.2010 passed by the Court below whereby the objections of the Respondent/Union of India u/s 34 of the Act have been accepted and certain claims as awarded by the Arbitrator have been set aside.

2. The facts of the case are that a contract was entered into between the parties for supply of furniture by the Appellant to the Respondent. The tender of the Appellant for Rs. 14,22,380/- was accepted on 11.12.1986. The date of commencement of work was 1.1.1987 and original date of completion of work was 30.6.1987. The Appellant completed the work on 31.12.1987 and three extensions were granted in this period.

3. The disputes and differences arose between the parties whereupon the Appellant filed a petition u/s 20 of the Arbitration Act of 1940 seeking reference of the matter in dispute to Arbitration. The petition was dismissed and ultimately on the matter reaching the Supreme Court, the Supreme Court referred the matter to the Arbitration, leaving the Respondent with liberty to raise the issue

argued of accord and settlement in the arbitration proceedings. The relevant portion of the order of the Supreme Court reads as under:

It is stated by counsel for the Respondent-contractor that similar SLP on the similar facts has been disposed of by this Court on 08.02.02 in the following terms:

In our view, the impugned orders passed by the High Court do not call for any interference. However, it is made clear that it could be open to the Appellants to raise the contention before the arbitrator that the Respondent contractor accepted the amount as per the bill dated 23.5.98 in C.A. No. 8123-24/2001 and 30.3.90 in C.A. No. 8116/2001 in full and final settlement of their respective claims and that they have no further claim." These appeals stand disposed of in the above terms. No order as to costs.

4. The Appellant appeared in the arbitration proceedings and filed its claim petition. The Respondent contested the claim petition by filing its response. The Award dated 30.4.2009 ultimately came to be passed, allowing some claims and disallowing some others. With respect to certain claims which were allowed, the Respondent challenged the same by means of a petition u/s 34 of the new Arbitration and Conciliation Act, 1996, and which objections have been accepted by the impugned judgment dated 24.4.2010. It appears that the parties agreed to treat the challenge to the objections under the new Act.

5. The Respondent argued before the Court below that in spite of the objections on accord and settlement having been raised, the Arbitrator failed to deal with the same and therefore the Award was liable to be set aside. This objection has been accepted and the Award has been set aside by the Court below observing as under:

31. The Respondent claims that he requested for arbitration vide letter dated 28.11.89. No party pointed out said letter from the records. This Court could not find out whether the Respondent had alleged in letter dated 28.11.89 coercion, undue influence and misrepresentation or it was a letter simpliciter to appoint the Arbitrator. In the claim petition, there is no allegation of coercion, undue influence and misrepresentation. In absence of such allegation, there is no question of Respondent establishing before the Ld. Arbitrator coercion, undue influence and misrepresentation.

32. As on 25.3.88, the Respondent while signing final bill certified that he has no further claim under the contract beyond the next amount of the bill.

33. As per Clause (3) of the IAFW-1815Z forming part of contract, no claim can be entertained after the receipt of final bill.

34. On 22.2.89, amount of final bill was worked out to be Rs. 4,621/- (minus) which was deposited in Government Treasure on 17.4.89 by Respondent through money Receivable order without any protest or demur.

35. After a prolonged gap, on 12.10.89, the list of claims for appointment of arbitrator to decide the disputes was filed.

36. In the claim petition there is no allegation of coercion, undue influence and misrepresentation in signing final bill and in remitting Rs. 4621/- in government treasury by the Respondent. The Respondent contractor even did not allege any coercion in as much as he had already received Rs. 14,17,000/- by way of 7 running Account Receipts from 31.8.87 to 19.2.88 and when he signed final bill on 25.3.88, there cannot be economic duress on the Respondent contractor as he had already received the entire contractual amount. In any case, it is stated even at the cost of repetition, that contractor has not alleged coercion, undue influence or misrepresentation while signing final bill on 25.3.88.

37. In view of the above, it is held that claims which could have been raised by the contractor before signing of the final bill on 25.3.88 but were not raised are not arbitrable as there is no allegation of coercion, undue influence and misrepresentation. However, those claims which could not even be anticipated at the time of signing of final bill and arose after signing of final bill will still be arbitrable.

6. Before giving the aforesaid findings in paras 31 to 37, the Court below had referred to the judgments on the issue of accord and settlement, including the decision in the case of National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd.,

In my opinion, the conclusions in this regard of the Trial Court are fully justified and cannot be faulted with. The Trial Court has rightly noted that in the claim petition, there is no allegation of any coercion, undue influence and misrepresentation in signing the final bill and remitting the amount of Rs. 4,621/- in the Government Treasury by the present Appellant. Further, the Trial Court has also noted that as on 25.3.1988, when the Appellant signed the final bill, it was also certified that the claimant/contractor had no further claim under the contract except the net amount of the bill. In my opinion, the court below has been quite just and fair by holding that claims which could have been raised by the contractor before the signing of the final bill cannot be raised, however, the other claims which could not be anticipated at the time of the signing of the final bill, could be arbitrated upon.

7. In view of the above conclusions and findings, only arbitrarily of claim Nos. 5, 9 and 10 remained. However, the Trial Court as a matter of abundant caution has even gone into the merits/demerits of the Arbitrator awarding claim Nos. 2, 5 and 7.

8. So far as the claim No. 2 is concerned, the Trial Court has held that claim No. 1 was analogous to the claim No. 2 and if claim No. 1 was rejected the claim No. 2 has also to be rejected. This is for the reason that if there were defects in the furniture and which defects had to be remedied by the contractor at its own costs, the other related claim with respect to polishing of the furniture, has also to be at the cost of the contractor. No disputes therefore can be raised to this

finding of the Court below.

9. So far as the claim No. 3 is concerned, the same was a claim dealt with by the Arbitrator under two heads. The first head was compensation for delay in signing of the contract. The second head was the increased cost to the contractor during the period of extension of 6 months. So far as the first part of claim No. 3 is concerned, the Trial court has rightly held that a reference to the claim petition shows that there was no claim made for damages caused on account of delay of signing of the contract. This part of the Award of the Arbitrator has been accordingly set aside. To this, I may add that even assuming this claim was made, no damages can be awarded for delayed signing of the contract, inasmuch as, a contractor at the stage of accepting of the contract, may exercise an option to withdraw from the contract if there is any delay in accepting of the contract, however, after acceptance of the tender and thereafter performing the contract, it does not lie in the mouth of the contractor to claim damages for delayed signing of the contract.

So far as the second part of the claim No. 3 is concerned it could not be disputed by counsel for the Appellant before me that no evidence was led as to how there was increased cost to the contractor during the extended period of 6 months of performance of the contract. No doubt Evidence Act, 1872 does not apply to arbitration proceedings, however, that does not mean that there does not have to be at least a modicum of evidence. Self-serving statements cannot take the place of evidence, more so, if the same are only pleadings. In the present case, except the pleadings, there is no evidence with respect to increase of the cost to the contractor, and even in these pleadings, no details are forthcoming and nor could be pointed out to me, as to which labour cost component or which material cost component increased, if increased by how much per cent, and on what basis was the increase of percentage asserted. Accordingly, I find that the Trial Court was justified in disallowing the claim for enhanced costs during the extended period of 6 months. There is another aspect, which bears mention at this stage while dealing with this claim. A reference to paras 19 to 21, under which claim No. 3 has been dealt with by the Arbitrator shows that there is absolutely no finding whatsoever that the Respondent herein was guilty of delays in performance of the contract leading to unnecessary prolongation of the contract. The Arbitrator has simply observed that there is extension in period of performance of the contract and therefore the contractor has to be compensated. This conclusion flies in the face of the law because before compensation/damages are awarded for delayed performance of the contract, it is necessary for the Arbitrator to first arrive at the finding that there was a delay in performance of the contract on account of fault of the Respondent/UOI, and with respect to which finding, there is a conspicuous absence. Accordingly, the Trial Court, in my opinion, was justified in setting aside the Award so far as the claim No. 3 is concerned.

10. Claim No. 7 pertains to claim of the Appellant/contractor for Central Sales Tax. The Trial Court has rightly observed that sympathies cannot substitute the

legal position. The contract was a lump-sum contract and there was no provision for payment of Sales Tax. It is also not the case of the Appellant/contractor that the Central Sales Tax is being claimed on account of any increase in the sales tax during the period of performance of contract. What is claimed is that the price which is payable was exclusive of the sales tax. Once the contract is lump-sum contract and there is no clause in the contract entitling payment of any sales tax, the Trial Court, in my opinion, was justified in disallowing the claim of sales tax and which was allowed only on account of sympathy by the Arbitrator. In fact, a reference to Clause 32 of the contract shows that even on the issue with respect to change of tax during the performance of the contract, claim with respect to sales tax was excluded. Accordingly, there is no basis to challenge the findings of the Trial Court with respect to claim No. 7 also.

11. The last claim is claim No. 9 for release of interest on additional security deposit. In this regard, the Trial Court has observed that the Appellant/contractor had filed a suit for mandatory injunction for return of the FD Rs given as additional security deposit. In this suit interest was also claimed, but this interest was not awarded. Accordingly, on the principle of constructive res judicata, the Trial Court has set aside the claim in this regard granted by the Arbitrator. No fault thus can be found with this finding of the court below. 12. No other claim or any argument has been pressed before me. The Trial Court has upheld awarding of the interest granted to the contractor so far as the claim No. 5 is concerned. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.