

(1999) 03 DEL CK 0084

In the Delhi High Court

Case No : Suit No. 477-A/98, is 5718/98

J.K. Cement Works

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Arbitration Act, 1940 — Section 29

Citation : (1999) 50 DRJ 391

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Rajesh Banati, for the Appellant; Meet Malhotra and Parmod Sehgal, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this order, I propose to dispose of objections filed under Sections 30 and 33 of the Arbitration Act against the award dated 29.1.1998.

2. In response to an invitation to tender, the petitioner submitted its offer and the same was accepted by the respondent. Consequent upon some disputes having arisen between the parties, the matter was referred to sole arbitrator in terms of the arbitration agreement. The arbitrator rendered his award on 13.2.1996. The award was challenged by respondent No.2 before this Court. By the order dated 16.1.1997 passed in suit No. 1771- A/96, the award was remitted to the arbitration with a direction to give a reasoned award after taking into consideration evidence on record including the test reports. Pursuant to this direction, the arbitrator published his award dated 29.1.1998.

3. The respondents have not filed any objection against the award. The petitioner has filed objections under Sections 30 and 33 of the Arbitration Act. The petitioner is aggrieved by non-grant of interest by the arbitrator. The counsel for the respondent contended that the issue of award of interest was considered and rejected by the arbitrator and this Court cannot substitute its discretion to that of the arbitrator for awarding pendent lite interest to the petitioner. Reliance was placed on a decision rendered by the Supreme Court in Secretary, Irrigation

Department, Government of Orissa and others Vs. G.C. Roy, .

4. On a perusal of the award, it appears that the issue for grant of interest was considered and rejected by the arbitrator . In M/s. M.K. Shah Engineers and Contractors Vs. State of Madhya Pradesh, , it was held that award need not express decision of the arbitrator on every point of difference, nor is it necessary that the award be a speaking one. Consequently, the award cannot be set aside on the ground that the arbitrator has not assigned reasons for rejecting the claim of interest. The arbitrator has power to award interest but that does not mean that in every case the arbitrator should necessarily award interest pendent lite. It is a matter within his discretion to be exercised in the light of facts and circumstances of a particular case. The discretion exercised by the arbitrator in rejecting the claim of interest cannot be interfered with when it is not shown that the discretion was arbitrarily exercised. However, interest on the sum awarded by the arbitrator can be granted by this Court from the date of the award till realisation. Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, and Babu Lal Barwa Vs. Delhi Development Authority and Others, .

5. For the foregoing reasons, the objections filed by the petitioner are rejected. The award dated 29.1.1998 is made a rule of the court. In addition, the petitioner shall be entitled to recover interest on the sum awarded by the arbitrator @ 12 % p.a. from the date of award till the date of realisation. Parties shall bear their own costs.

6. A decree be drawn up accordingly. The award dated 29.1.1998 shall form part of the decree.