
(1997) 03 DEL CK 0044
In the Delhi High Court
Case No : Suit No. 1222 of 1992

K.R. Anand

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Citation : (1997) 4 AD 1006 : (1997) 2 ARBLR 109 : (1997) 68 DLT 143

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : B.M. Sehgal and A. Salwan, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This is a petition under Sections 14,17 and 29 of the Arbitration Act filed by the petitioner praying for making the award a Rule of the Court. Subsequent to the filing of this petition, notice was issued by this Court to the Arbitrator directing him to file the award Along with the records of tile arbitration proceedings. In terms of the said order passed by this Court, the Arbitrator filed the award in this Court Along with the records of the arbitration proceedings, on receipt of which, notices were issued to the parties intimating them about the filing of the award.

(2) The respondent No. 1 tiled an objection in that Court under Sections 30 and 33 of the Arbitration Act, against the award which was registered as 1.A. No. 11741 / 1992 The petitioner, however, did not file any objection as against the award and prayed that the award be made a Rule of the Court.

(3) In the objection filed by the respondent No. 1, objections have been mainly raised as against the award passed by the Arbitrator in respect of Claims No. 2,4 and 5.

(4) I have heard the learned Counsel appearing for the parties and I propose to dispose of the objections filed by the respondent No. 1 by that order.

(5) Claim No. 2 : This claim relates to award of interest of Rs. 25,000.00 by the Arbitrator. Claim No. 2 originally related to claim of the petitioner for a sum of Rs. 20,000.00 on account to wrong recovery made in the final bills. However, subsequently the respondent No. 1 returned the recovered amount of Rs. 20,000.00 to the petitioners.

The Arbitrator, however, while considering the aforesaid claim held that the recovery made by the respondent No. 1 in respect of the aforesaid amount of Rs. 20,000.00 was arbitrary and incorrect and the petitioners were deprived of the use of the money and, Therefore, they are entitled to be paid interest from the period the money was withheld wrongly, that is, from 20.6.1990 to 8.5.1991. The said interest has been assessed by the Arbitrator at Rs. 2,000.00 , which he has awarded under the present award.

The learned Counsel appearing for the respondent No. 1 submitted that the Arbitrator was not justified in allowing pre-suit interest when there was no specific claim in respect of the same. However, on perusal of Claim No. 3 claimed by the petitioner before the Arbitrator, it appears that the petitioner claimed interest on their claims 1 and 2 till the date of their payment. The Arbitrator, however, did not grant interest under Claim No. 3, as interest was awarded under this claim. Under those circumstances, it is apparent that the petitioner did claim interest on the amount of Rs. 20,000.00 which was illegally withheld by the respondent No. 1. The Arbitrator having exercised his discretion to grant interest in favor of the petitioner, I am not inclined to interfere with the aforesaid discretion exercised by the Arbitrator and, Therefore, the said award awarding Rs. 2,000.00 as interest on the illegally withheld amount is upheld.

(6) Claim No. 4 : This claim of the petitioner relates to claim of Rs. 6,07,152.72 on account of extra work involved in items 2 and 3. The Arbitrator after hearing the parties and on consideration of the records of the case awarded a sum to Rs. 1,13,382/- as against the aforesaid claim of the petitioner. The learned Counsel appearing for the respondent No. 1 submitted that since there was no written instructions from the respondent No. 1 to carry out the extra work in respect of which the petitioner have claimed the aforesaid amount, the Arbitrator committed an error apparent on the face of the records by allowing the aforesaid amount in favor of the petitioner in his award. In support of her submission, the learned Counsel relied upon the decision of that Court in K.C. Goyal & Co. v. Delhi Development Authority and Another, reported in 1994(2) A L R 115. The learned Counsel appearing for the petitioner on the other hand submitted before me that the Arbitrator having awarded the aforesaid amount on consideration of the evidence on record, that Court has no power and jurisdiction to interfere with the award of the Arbitrator even if such award is based on scanty evidence. I have carefully considered the submissions of the learned Counsel for the parties. On careful perusal of the award passed by the Arbitrator, I find that the Arbitrator has awarded the aforesaid amount in favor of the petitioner as against the claim on the basis thereof by referring to the two exhibits namely Exbs.

"C-1/ 4" and "C-1/5". The learned Counsel for the petitioner submitted that if the petitioner was to carry out certain extra work, then in accordance with the terms of the agreement, he is liable to be paid for such extra works executed by him. Under Clause 12 of the Agreement executed between the parties, it was stipulated that the Engineer-in- Charge would have power to make any alterations, omissions additions to or substitutions for the original specifications, drawings, designs and instructions, that might appear to him to be necessary during the progress of the work and the contractor would carry out the same in accordance with any instructions which might be given to him in writing, signed by the Engineer-in-Charge. A reading of the aforesaid clause makes it crystal clear that if the Engineer-in-Charge makes certain alternations or additions in the works assigned to the contractor, the contractor is entitled to payment for such extra work which was carried out by him provided the same was carried out in accordance with written instructions of the Engineer-in-Charge. Admittedly in the present case, no written instruction was issued by the Engineer-in-Charge for carrying out the aforesaid extra work for which the petitioner has claimed the amount of Rs. 6,07,152.72 as against which the Arbitrator has awarded Rs. 1,13,832.00 . Thus, it appears to me that the Arbitrator has awarded the aforesaid amount in respect of the aforesaid claim contrary to the stipulation made in Clause 12 of the Agreement. I have also perused the decision of that Court in K.C. Goyal and Co. (supra). I respectfully agree with ratio laid down in the aforesaid decision. In paragraph 14, it has been laid down that if an Arbitrator makes an award contrary to the terms of the agreement, the same amounts to an error apparent on the face of the record and on that count, the award is liable to be set aside.

In my opinion, in the present case, the Arbitrator has committed an error apparent on the face of the record in awarding a sum of Rs. 1,13,832.00 in view of the specific stipulations in the agreement regarding payment for extra work only when there is written instructions from the Engineer-in-Charge. In the notice inviting tender in Clause 2A of the inviting tender, it was stipulated that the site was available for inspection. Therefore, the petitioner must have inspected the site and was, Therefore, aware of the difficulties to be faced in excavating the earth. Having been so aware and having not stipulated any term in the agreement in respect of the said extra work at the time of submitting his tender and subsequently having not obtained any written instructions from the concerned Engineer as stipulated under Clause 12,1 am of the considered opinion, that the petitioner is not entitled to claim any amount as claimed in Claim No. 4. In awarding an amount in respect of the said claim, the Arbitrator has committed an error apparent on the face of the record and, Therefore, the said award as. passed by the Arbitrator in respect of Claim No. 4 is set aside.

(7) Claim No. 5: This is a claim in respect of the claimant against the arbitration proceedings, in respect of which the Arbitrator has awarded a sum of Rs.4,000.00 . The Arbitrator has the discretion to allow cost for the arbitration proceedings and the Arbitrator having so exercised his discretion to allow cost in

the present case, I do not find any error in the award passed by the Arbitrator in respect of that claim.

(8) In the result, the objection filed by the respondent No. 1 is partly allowed. The award passed by the Arbitrator in respect of Claim No. 4 is set aside. The award passed by the Arbitrator in respect of Claim Nos. 2 and 5 are upheld. The award is made a Rule of the Court to the extent indicated above. Let a decree be drawn up in terms of the award upheld in that order.