
(2001) 09 DEL CK 0128

In the Delhi High Court

Case No : CMs 582 and 871/96, 244/99 and CM (M) 110/94

M/s Rajendra and Company

APPELLANT

Vs

Sh. G.S. Jugti and others

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Arbitration Act, 1940 — Section 11, 12

Citation : (2001) 60 DRJ 482

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. D.S. Chauhan and Ms Beena Pandey, for the Appellant; Mr. R.M. Tatia, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—Aggrieved by the Award of the Arbitrator, the respondent has filed objections. This case has got a chequered history. Certain disputes arose a petition was filed under Sections 11 and 12 of the Arbitration Act, 1947 before the Additional District Judge. The Additional District Judge framed the following issues:-

- 1) Whether the petition has been signed and verified by a competent person and the petition instituted legally? OPP
2. Whether the petition is maintainable? OPP
- 3). Whether the petition is within the period of Limitation? OPP
- 4). Whether the petitioner is entitled to any relief? OPP
- 5). Whether the Arbitration Clause applies to the facts of this case and invoked lawfully? OPP
- 6). Whether the contract came to an end on 14.9.1986? OPP
- 7). Relief.

2. However, the Court held that the Contract has already expired and petition was time barred and the same was Therefore dismissed.

3. Aggrieved by the said order, the petitioner filed a petition being CM(M) 110/94 in this Court wherein this Court observed:-

"..... Counsel for the parties, however, have agreed that since there exists an agreement entered into between the parties containing an arbitration clause, Therefore, instead of parties this Court may appoint an arbitrator on the basis of the claims and the counter claims already preferred by the parties before their respective arbitrators. The request is allowed. Since the disputes which have arisen between the parties are covered by the arbitration clause hence these are liable to be adjudicated by an arbitrator, with the consent of the counsel for the parties that a Single Arbitrator be appointed, I appoint Shri P.C. Dhingra, Advocate (Retd. Joint Registrar of this Court) as the Sole Arbitrator to adjudicate and decide the disputes between the parties. He shall make and publish his award within the statutory period of four months. Let notice of this order an petitioner taking steps be served on him. Parties are directed to appear before the Arbitrator on 26.5.95 at 3 P.M.

The Arbitrators appointed by the respective parties whose authority has been revoked are directed to handover the papers filed by the parties before them to the party so that those papers could be presented before the Arbitrator appointed today....."

4. "Arbitrator entered into the reference and made a Award on 2.2.1996 thereby directing the respondent to pay to the Claimant a sum of Rs. 80,676/- with interest @ 12% per annum w.e.f. 26.5.95."

5. Aggrieved by the said Award, respondent filed the objections to the Award. It was contended before me by learned counsel Mr. M.R. Tatia appearing on behalf of the respondent that no agreement existed between the parties Therefore there was cessation of the arbitration clause. Arbitrator ought not to have awarded the Award which was based on two months charges in lieu of the notice terminating the Contract. It was contended before me that the period of contract was two years commencing from 15th September 1984 till 14th September, 1986. It was further contended that there was no claim based on the currency of the contract period and, Therefore Arbitrator committed a legal misconduct and Award is without jurisdiction. In support of his contention learned counsel for the respondent has cited Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd., .

6. On the other hand learned counsel appearing for the Claimant petitioner has contended that the practice adopted by the respondent was to award the contract for two years but as a matter of fact, the contractor was working from 1983 and no notice of termination was given by the respondent even after the alleged expiry of contract on 14th September, 1986. It was further contended that from the perusal of the correspondence which was placed before the

Arbitrator, the Arbitrator came to the conclusion that two months' charges in lieu of the termination of the contract was to be paid by the respondent to the petitioner. It was further contended that an application has been filed by the Claimant, inter-alia, praying that the Arbitrator has only awarded interest from 26th May, 1995 whereas the interest ought to have been awarded at least from the date when the claim was filed by the Claimant from 7th July, 1988.

7. I have given my careful considerations to arguments advanced by counsel of both the parties.

8. On 23rd May, 1995, when this Court directed the parties to go for an arbitration which was at the behest of the parties who agreed that arbitration agreement existed between the parties, the disputes were referred for arbitration. It is true that the parties by their consent cannot confer jurisdiction if there is inherent lack of jurisdiction on the Arbitrator. But in the case before hand from the perusal of the correspondence which is at page 18 of the record of the Arbitrator it has been mentioned that the period of contract was from 15th September, 1984 and the same was renewed for a further period of two years i.e. up to 14th September, 1986 and other terms and conditions remained the same. The letter of the respondent reflects that the Contractor was working prior to 1984, the alleged date of the commencement of Contract. If that is so then it belies the story put by the respondent that the contract came to an end w.e.f. 14th September, 1986. As a matter of fact, from the perusal of the correspondence on record, there is nothing to show that after 15th September, 1986 a notice of termination of the contract was given by the respondent. It is only when the contractor made a representation for increasing or revising the charges, the respondent dispensed with the services of the Contractor. Therefore, I hold that there was no cessation of the Contract and the Arbitrator has rightly held that the respondent was liable to pay to the petitioner charges for two months in lieu of notice terminating the contract.

9. As the respondent impliedly continued the contract after its expiry on 14th September, 1986, Therefore, the authority cited by learned counsel for the respondent is of no help to him. Even otherwise law regarding arbitration is well settled. Once, the parties have chosen a forum of arbitration in exclusion of normal civil law remedies, this Court will not substitute its own opinion for that of the Arbitrator. The Arbitrator after taking into consideration the correspondence, after hearing the parties made an Award and this Court will not sit in an appeal to set aside the same even if this court comes to a different conclusion until and unless same are shown to be perverse or shows any misconduct on the part of the Arbitrator. I do not see any ground to interfere with the Award. Objections are dismissed.

10. I would not like to interfere with the period with regard to grant of interest as prayed by the petitioner. Application of the petitioner is dismissed.

11. Award is made rule of Court. A Decree in terms thereof is passed.