
(2016) 06 BOM CK 0185

In the Bombay High Court

Case No : Appeal No. 246 of 2015 In Arbitration Petition No. 782 of 2014

Ms. Shirdi Country Inns Pvt. Ltd.

APPELLANT

Vs

Ms. Suvidha Engineers India Pvt. Ltd.

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37

Citation : (2016) 4 Civil LJ 466 : (2016) 5 Mh LJ 152 : (2017) 2 RAJ 37

Hon'ble Judges : Anoop V. Mohta and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mr. Rajiv Singh with Mr. Sayeed Mulani and Mr. Dileep Sutale by. Mulani and Co, for the Appellant; Mr. L.G. Rai, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.(Oral)—This Appeal is filed under Section 37 of the Arbitration and Conciliation Act,1996 (for short "the Act") against judgment and order dated 13th January,2015 passed by the learned Single Judge under Section 34 of the Arbitration Act whereby the Appellant's petition was dismissed and the Award passed in favour of the Respondent (original claimant) and against the Appellant has been maintained. Hence, this appeal.

2. The Appellant invited a tender for certain work through its consultant. The Respondent had submitted its tender. A work order was issued and the tender work was completed. The amount so due was paid accordingly. It is averred that the Respondent carried out extra work and raised various invoices for the same. Thus, disputes arose between the parties on the issue of this extra work. By a consent order dated 18th February, 2011 in an application under Section 11 of the Act, the Chief Justice appointed a sole arbitrator. The learned Arbitrator made an award which came to challenged by the Appellant by filing earlier arbitration petition. By consent of both the parties the Award was set aside by order dated 29th October, 2012. The Court appointed another Arbitrator to adjudicate the disputes. The learned Arbitrator made a fresh Award on 18th January, 2014

which was challenged in the Arbitration Petition No.782 of 2014. The petition was dismissed by order dated 13th January, 2015. Hence, the appeal.

3. There is no dispute that the Respondent's claim was arising out of extra work which was outside the purview of the basic work order. There is no issue on the fact that the work was actually carried out. The obligation of the Appellant to make payment was, therefore, considered on the basis of the claim so raised by the Respondent by ledged evidenced in support of the same with supporting documents. The learned Arbitrator has appreciated the same. This is also in the background that the Appellant did not lead any counted revidenced except making denials and/or opposing the claim, also on the ground of no jurisdiction to entertain the claim so raised.

4. Admittedly, there was no specific arbitration clause for the extra work as carried out, but the claim was raised by the Respondent covering the amount due and payable for extra work. The same was denied and has not been paid fully. It was recorded that a part payment was made in the year 2007 and what remained was a payment of Rs. 10,72,899/-. This was the foundation based upon which the learned Arbitrator and the learned Judge has accepted the case of the Respondent and rejected the submissions of the Appellant that the claim is beyond limitation. A finding is given by the learned Arbitrator and the learned Judge that the claim is within limitation. We have also gone through these findings, including the letter dated 29th March, 2008 to justify that there was no denial to the part payment made, for this extra work and the claim was for the balance amount.

5. The issue of claim being outside the purview of the work order, in the present facts, is also unacceptable, as apart from the earlier appointment of Arbitrator, as there arose disputes, after hearing both the parties in view of no objection so raised about the claim of the amount of extra work, which are stated to be outside the purview of the work, by consent for the second time an Arbitrator was appointed. The learned Arbitrator, in view of the above consent order proceeded with the arbitration. The issues were raised but no evidenced led by the Appellant though participated in the proceedings. We see that there is no illegality in deciding the claim so referred and as decided. The above order passed by the learned Judge is well within the purview of record and law.

6. The issue of jurisdiction even if raised, that itself is not sufficient to interfere with the Award passed by the learned Arbitrator. Even otherwise, there is no substance in the objection so raised with regard to the jurisdiction. This is specifically in the background of the order passed by the Chief Justice while appointing the Arbitrator on 18th February, 2011. The issue of arbitrability and the jurisdiction, in our view, is also concluded by the consent order. The Appellant cannot be permitted to go behind the consent order. Even otherwise in the present case there is no reason to permit the Appellant to reagitate the issue in appeal, merely because while appointing the Arbitrator all contentions were kept open. We have to see the background of the disputes between the parties

and so also the conduct. The work done if not in dispute and not seriously contested by not leaded evidenced in defence, on the contrary the Respondent based upon the material by leaded evidenced justified its claim and the learned Arbitrator has accepted it. We thus see no case is made out of any illegality and/or perversity.

7. The learned Judge after considering the reasoned award passed by the learned Arbitrator, has considered the submissions of the Appellant and the Respondent and rejected the petition. We have also gone through the reasons given by the learned Arbitrator and by the learned Single Judge. We also see no reason to interfere as there is no perversity and/or there is no illegality to the extent that the Appeal Court should interfere with the reasoned order passed by the learned Single Judge.

8. The judgment cited by the learned Counsel appearing for the Appellant in the case "VISA International Ltd. v. Continental Resources (USA) Ltd., 2009(2) SCC 55" is of no assistance in view of the reasons so recorded above as the Appellant itself made a part payment and the claim was for the balance amount for the extra work done. Therefore, the submission that there was no "issue" between the parties in the present case, is unacceptable. The judgment relied on is distinct and distinguishable on facts and on law also.

9. The Apex Court has reiterated and maintained the payment for the extra work done beyond the basic contract, in "Venkatesh Construction Company v. Karnataka Vidyuth Karkhane Limited (Kavika), 2016(2) All MR 953 (S.C.)."

10. Therefore, taking overall view of the matter and in view of the Judgment also in the case of "Ms. Chebrolu Enterprises v. Andhra Pradesh Backward Class Cooperative Finance Corporation Ltd., reported in "2015(12) SCALE 207", wherein it is observed that:"

20. This Court or even the Appellate Court would not look into the finding of facts unless they are perverse."

11. The appeal is liable to be dismissed. Hence, the following order:

ORDER

12. The Appeal is dismissed.

13. No costs.