

(2020) 01 DEL CK 0555

In the Delhi High Court

Case No : Original Miscellaneous Petition No. 138 Of 2008

Municipal Corporation Of Delhi

APPELLANT

Vs

M/S Paramjeet Singh Narula

RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 34(2)

Citation : (2020) 01 DEL CK 0555

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Vinita Kumar Ashutosh, Avinash K. Trivedi

Final Decision : Dismissed

Judgement

Prateek Jalan, J

I.A. No. 3131/2018 (under Order IX Rule 4 of the CPC for restoration of the application filed under Section 34 of the Arbitration & conciliation Act, 1996) & I.A.3132/2018 (under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the application for restoration)

These applications are filed for restoration of O.M.P. 138/2008 and condonation of delay in filing the restoration application.

Learned counsel for the respondent has no objection to the applications being allowed.

For the reasons stated in the applications, the applications are allowed. O.M.P 138/2008 is restored to its original number and is taken up for hearing forthwith, in terms of the orders passed on 27.07.2018 and thereafter.

O.M.P. 138/2008 and I.A. 3133/2018 (for stay/interim directions)

1. This is a petition under Section 34 of the Arbitration & Conciliation Act, 1996 [hereinafter referred to as "the Act"]. The petitioner herein has challenged an

arbitral award dated 26.09.2007 [acknowledged on 09.10.2007], passed by a sole arbitrator, namely, Sh. K.P. Singh.

2. The petitioner herein awarded Works Order no. EE(P)SH/TC/91-92/5, dated 26.07.1991, to the respondent. The said work order was for widening and improvement of Link Road from Wazirabad Road to Village Johripur, Shahdara. These proceedings arise out of the said work order.

3. Disputes arose between the parties and multiple rounds of arbitration took place. This Court, vide judgment dated 05.08.1997 passed in Arbitration Petition 1948/1996, directed appointment of an arbitrator. In compliance of the said judgment, Sh. K. P. Singh was appointed by way of a notification dated 27.10.1997. The sole arbitrator entered into the reference on 13.12.1997.

4. The respondent herein made 17 claims against the petitioner. By the impugned award, the respondent herein was awarded an amount of Rs. 11,76,243/- in respect of six of its claims, in addition to costs and interest. The remaining claims of the respondent were rejected. The relevant portion of the award, in this aspect, reads as follows: -

"xxxx xxxx xxxx

I therefore direct the respondent department to pay the awarded amount as mentioned herein below: -

Claim No.1	Rs. 3,55,044/-
Claim No.2	Rs. 6,00,509/-
Claim No.4	Rs.20,000/-
Claim No. 11	Rs.35,000/-
Claim No. 14	Rs.35,000/-
Claim No. 16	Rs. 1,00,000/-
Additional Claim	Rs. 30,690/-
Total	Rs. 11,76,243/-

Claim No. 15 Interest @9% w.e.f. 23.8.93 to 12.01.97 on claim no. 1, 2, 4, 11, 16 and additional claim and interest @10% w.e.f. 13.12.97 till the date of passing on this award on all the claims mentioned above and interest accrued and thereafter @ 10% till the date of payment of total awarded amount on pre-reference and pendente-lit interest accrued.

xxxx xxxx xxxx"

5. Notice in this petition was issued on 17.10.2008. It was dismissed for default on 11.11.2016. When the restoration application was listed on 27.07.2018, it was directed that the petition would be heard immediately if the restoration

application was allowed. The arbitral record was also called for by an order dated 01.10.2018. On 09.01.2019, the parties were directed to reconstruct the arbitral award or file a joint compilation thereof.

6. An adjournment was sought by the petitioner on 27.03.2019, when the following order was passed: -

"Ms. Vinita Kumari, Ld. counsel has entered appearance submits that she has been recently engaged in this matter. A perusal of the record shows that the OMP is of 2008. The same was dismissed for non-prosecution on 11th November, 2016. The applications were filed after almost one and a half years with enormous delay for restoration. Vide order dated 6th March, 2018, the execution proceedings were kept in abeyance. On 27th July, 2018, the matter was fixed for hearing on 1st October, 2018 and thereafter again on 9th January, 2019. The MCD has today engaged a fresh counsel. In the meantime, the execution proceedings have been stalled. The award is for a principal sum of Rs. 11,76,243/- and interest has been awarded from 23rd August, 1993 on few claims.

It is clear that Corporation is simply delaying the matter for no reason. It is accordingly directed that the Corporation shall deposit a sum of Rs.20 lakhs within six weeks with the Registrar General of this Court, which shall be kept in a fixed deposit FDR. Subject to the said deposit, the execution shall continue to be in abeyance.

List the matter for hearing on 10th October, 2019. The matter would be listed as item no.1. If parties do not file any record before the next date, the Court would proceed on the basis of the documents on record."

7. However, on the next date of hearing i.e., 10.10.2019, arguments could not commence as it was stated by learned counsel for the petitioner that the counsel, whose Vakalatnama was on record on behalf of the Corporation, was not available and an adjournment was sought. It was recorded in that order that the Corporation had not deposited the amount of Rs. 20 lakhs as directed. However, the delay in depositing the said amount was condoned, subject to payment of costs of Rs. 25,000/- to the Delhi High Court Legal Services Committee. It was also inter alia recorded in that order that the Corporation had not placed on record any relevant documents.

8. On 18.12.2019, arguments of learned counsel for both parties, on the basis of documents available from the record, were heard. The contention of the petitioner that the award is unsupported by reasons was rejected. However, a final opportunity was granted to the petitioner to ascertain whether the contract documents or any part of the arbitral record could be produced. The petitioner was directed to place on record any document that may be traced out, at least one week prior to the next date of hearing. The order dated 18.12.2019 is reproduced below: -

"1. Learned counsel for the petitioner states that the amount of Rs. 20,00,000/- has been deposited in this Court, pursuant to the order dated 23.07.2019. Costs of Rs. 25,000/- directed by the order dated 10.10.2019 have also been paid.

2. At the outset, counsel for the parties state that the arbitral record is not available with either of them. Even the copy of the contract is not on record. The only material placed on record by the parties are their pleadings in this petition, and a copy of the impugned award dated 26.09.2007.

3. Learned counsel for the petitioner submits that the award is unsupported by reason and draws my attention to the contents of paragraph 2 thereof, which reads as follows:-

"2. FINDINGS: -

(i) It is admitted fact that the claimant has executed the work of Rs. approximately Rs. 54 Lacs against the contractual amount of Rs. 55,16,582/-.

(ii) The respondent has failed to substantiate its claims that the drawing of drain, invert label of drain and cross section were given to the claimant in reply to the letter of the claimant dated 09-08-91 (exhibit C-2) within time. The plea of the respondent that the qualified Engineer was not employed by the claimant is not justified as the Degree Holder Engineer was employed by the claimant to supervise the work. The respondent has not placed any letter written during the currency of the contract thereby pointing out that the Engineer was not deployed by the claimant. Mere mentioning in a letter that at the specific time of visit, the Engineer was not present at the site, does not mean that the Engineer was not employed. The respondent has also failed to invoke the clause 2 and 3 of agreement during the currency of contract if the claimant failed to execute the work as per terms of agreement and therefore, not entitled to take this plea at this stage. The hindrance in execution of work is apparently substantiated by the claimant

xxxx xxxx xxxx"

4. Upon perusal of the award, I find that out of the 17 claims urged by the respondent herein, five substantive claims were awarded, in addition to costs and interest.

The total award amount was of Rs. 11,76,243/- alongwith further interest thereupon. From the above extract of the award, it appears that the arbitrator had reached a finding on the evidence placed before him, and that the petitioner herein was unable to substantiate its contention that the required drawings were supplied to the claimant/respondent within time. The contention of the respondent that a qualified engineer was not employed has also been rejected. The awarded claims have followed as a consequence of these findings. As the arbitrator has proceeded on a consideration of evidence, the objection to the award appear to be beyond the scope of the Court's jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996. It is clear inter alia from the

judgment of the Supreme Court in Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49 that reconsideration of evidence is not a matter for the Court in a petition for setting aside of an award. None of the available grounds are sustainable from the materials placed on record.

5. At this stage, learned counsel for the petitioner seeks some time to ascertain whether contract documents or any part of the arbitral record can be produced to demonstrate to the Court that the award is liable to be set aside under the narrow parameters of Section 34 of the Act.

6. At his request, as a last opportunity, the hearing is adjourned to 27.01.2020. If the petitioner wishes to reply upon any materials, learned counsel will place the same on record, at least one week prior to the next date of hearing.

7. List on 27.01.2020 as a part heard matter."

9. No further material has been produced by the petitioner pursuant to the order dated 18.12.2019. Today, learned counsel for the petitioner states that no documents could be traced out. In this view of the matter, there is no reason to depart from the conclusion recorded in the order dated 18.12.2019 that the arbitrator's award is based on the evidence placed before him. The arbitrator recorded a conclusion that the petitioner herein was unable to substantiate its contention that the required drawings were supplied to the respondent/claimant within time, as also the contention that a qualified engineer was not appointed.

10. The impugned award was based on these findings, which cannot be reopened in exercise of jurisdiction under Section 34 of the Act. This position is well settled in a number of judgments of the Supreme Court including inter alia in Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49, wherein the Court held as follows: -

"xxxx xxxx xxxx

33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held: (SCC pp. 601-02, para 21)

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the

appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.

xxxxxxxxxxxxx"

11. For the reasons aforesaid, the petitioner has failed to make out any ground to set aside the impugned award.

12. The petition (alongwith the pending application) is dismissed, but with no orders as to costs. Interim orders stand vacated.

13. The amount of Rs. 20 lakhs deposited in this Court pursuant to the order dated 23.07.2019 will be released to the respondent.