
(2008) 03 DEL CK 0010

In the Delhi High Court

Case No : Civil Suit (OS) No. 826A of 1998 and is No. of 1998 (filed on 9th July, 1998) and is No. 5761 of 2002

N.D.R. Israni

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2008) 2 ARBLR 410

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : P.C. Markanda and Naresh Markanda, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By this judgment, I propose to dispose of the objections under Sections 30 and 33 of the Arbitration Act, 1940 filed on 9th July, 1998 by the Delhi Development Authority to the award dated 6th February, 1998 made and published by Shri V.D. Tiwari, Sole Arbitrator.

2. The petitioner had been awarded the work of construction of 1296 MIG Houses at Trilokpuri, SH; c/o 352 MIG Houses including internal development in Group IV, Trilokpuri. The parties entered into an agreement bearing No. 4/DD-VII-82-83. The stipulated date of completion of the work was 4th June, 1983. The contractor was granted six months extension of time to complete the contract under Clause 10(C) of the contract between the parties and thus was required to complete the work by 4th December, 1983. The admitted date of actual completion of the work was 29th November, 1984 that is after a delay of HVi months. Disputes arose between the parties and the petitioner invoked the provisions of the arbitration clause between them. Pursuant thereto, Shri V.D. Tiwari, Chief Engineer (Retired) was appointed as the sole arbitrator. The arbitrator made and published his award on 6th February, 1998 which has been

assailed by the Delhi Development Authority by way of the objections under Sections 30 and 33 of the Arbitration Act, 1940.

3. Before considering the issues raised by the parties, it would be appropriate to consider the parameters within which this Court would exercise jurisdiction under Sections 30 and 33 of the Arbitration Act, 1940. The parameters are well defined by a series of judicial pronouncements on the subject. It has been repeatedly held by the Apex Court that the arbitrator is a creature of the contract between the parties and must operate within the four corners. Interpretation of a particular condition in the agreement is squarely within the jurisdiction of the arbitrator. However, in cases where there is no question of interpretation of any term of the contract, but solely reading the same as it is, yet it is found that the arbitrator has ignored such term and awarded an amount despite the prohibition in the agreement, it would have to be held that such award was without jurisdiction. The arbitrator may have jurisdiction to entertain the claim yet he may not have jurisdiction to pass an award for particular item in view of the prohibition contained in the contract. In case of such an award, the same would amount to a jurisdictional error 1999(3) Arb. LR 335 (SC) Steel Authority of India Limited v. J.C. Budharaja, Government and Mining Contractor (para 17) New India Civil Erectors (P.) Ltd. Vs. Oil and Natural Gas Corporation, ; and Associated Engineering Co. Vs. Government of Andhra Pradesh and another, .

4. In Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another, . it was held that if the arbitrator decides a dispute which is beyond the scope of his reference or beyond the subject matter of the reference or makes an award, disregarding the terms of reference or the arbitration agreement or terms of the contract, it would be a jurisdictional error beyond the scope of reference and that the arbitrator cannot throw himself to decide conclusively that dispute as it is an error of jurisdiction.

5. In Himachal Pradesh State Electricity Board Vs. R.J. Shah and Company, the court laid down the principle that in order to determine whether the arbitrator has acted in exercise of jurisdiction, what has to be seen is whether the claimant could raise a particular dispute or claim before the arbitrator. If the answer is in the affirmative, then it is clear that the arbitrator would have the jurisdiction to deal with such a claim. On the other hand, if the arbitration clause or a specific term in the contract or the law does not permit or give the arbitrator the power to decide or to adjudicate on a dispute raised by a claim or there is a specific bar to reference of a particular claim or dispute, then any decision given by the arbitrator in respect thereof would clearly be in excess of jurisdiction.

6. For the purposes of adjudicating upon the present objections, the same are taken up claim-wise.

Claim No. 1

7. The first claim raised by the contractor related to the idle centering and shuttering during the period when the same could not be fully and gainfully

utilised due to the required quantity of cement not being available. It is an admitted position that cement was to be supplied by the Delhi Development Authority. It is also not disputed that the allocated cement was not made available to the contractor to complete the work on time. DDA has submitted that the contractor was not entitled to any amount for this reason in view of Condition No. 1 of the contract and Clause 10 of the General Conditions of the Contract. In order to appreciate the rival contentions, it becomes necessary to consider the Condition No. 1 of the specifications and conditions in the contract which reads as under:

The contractor must get acquainted with the proposed site for the work and study specifications and conditions thereto before tendering. The work shall be executed as per programme approved by the Engineer-in-charge. If part of site is not available for any reason or there is some unavoidable delay in supply of materials stipulated by the department, the programme of construction shall be modified accordingly and the contractor shall have no claim for any extras or compensation on this account.

8. Inasmuch as the Delhi Development Authority is also placing strong reliance on Clause 10 of the General Conditions of Contract, the same also deserves to be considered in extenso and reads thus:

Provided that the contractor shall in no case be entitled to any compensation or damages on account of any such materials and stores. Provided further that the contractor shall be bound to execute the entire work if the materials are supplied by the DDA within the scheduled time for completion of the work plus 50% thereof (Scheduled time plus 6 months if the time of completion of the work exceeds 12 months) but if a part only of the materials has been supplied within the aforesaid period then the contractor shall be bound to do so much of the work as may be possible with the materials and stores supplied in the aforesaid period. For the completion of the rest of the work, the contractor shall be entitled to such extension of time as may be determined by the Engineer-in-charge whose decision in this regard shall be final.

9. The arbitrator arrived at a conclusion that only such delay as was for unavoidable reason would have enabled the Delhi Development Authority to avoid its liability for delay which has occurred and that in the instant case, the Delhi Development Authority had failed to establish that there was any unavoidable delay. On a close reading of the documents placed by the parties before him, the arbitrator came to a conclusion that nearly 39,200 bags of cement were issued only by the end of June 1983, when the stipulated date of completion of the work was over. For the purposes of arriving at this conclusion, the learned arbitrator placed reliance on the cement register maintained by the Delhi Development Authority itself. It has also been noticed that there is an admitted delay on account of short supply of the cement and that such delay would have resulted in holding up of casting of roof slabs. The arbitrator has not accepted the period of delay as alleged by the claimant before him and has held

that delay of only 20 days has occurred for this reason. On this basis, the arbitrator made an award of Rs. 22,437 only.

10. It is well settled that this Court cannot substitute the reasoning given by the arbitrator for making an award for the particular item. In this behalf, reference can be made appropriately to the pronouncement of the Apex Court in *State of U.P. Vs. Allied Constructions*, wherein the Apex Court held that it was not permissible for the court to sit as a court of appeal over the verdict of the arbitrator.

11. In this behalf, the observations of the Apex Court in *M/s. Arosan Enterprises Ltd. Vs. Union of India and Another*, wherein the court reiterated the well settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact, exercise of power by the court to reappraise the evidence is unknown to proceedings u/s 30 of the Arbitration Act. It was further observed that in the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, interference would still not be available within the jurisdiction of the court unless of course there exists total perversity in the award or the judgment is based on a wrong proposition of law. However, in the event that two views are possible, for a question of law as well, the court would not be justified in interfering with the award.

12. In this landmark pronouncement, the court also clearly laid down the parameters of scrutiny by the court into an arbitration award and the scope of judicial review. In para 37 (para 36 of Arb. LR) of the pronouncement the court held thus:

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view, the award or the reasoning contained therein cannot be examined. In this context, reference may be made to one of the recent decision of this Court in the case of *State of Rajasthan Vs. Puri Construction Co. Ltd. and Another*, wherein this Court relying upon the decision of *Sudarsan Trading Co. Vs. Government of Kerala and Another*, observed in paragraph 31 of the report as below:

A court of competent jurisdiction has both right and duty to decide the lis presented before it for adjudication according to the best understanding of law and facts involved in the lis by the judge presiding over the court. Such decision even if erroneous either in factual determination or application of law correctly, is a valid one and binding inter parties. It does not, Therefore, stand to reason that the arbitrator's award will be per se invalid and inoperative for the simple reason that the arbitrator has failed to appreciate the facts and has committed error in appreciating correct legal principle in basing the award. An erroneous decision of

a court of law is open to judicial 2008(2) Arb LR review by way of appeal or revision in accordance with the provisions of law. Similarly, an award rendered by an arbitrator is open to challenge within the parameters of several provisions of the Arbitration Act. Since the arbitrator is a judge by choice of the parties and more often than not a person with little or no legal background, the adjudication of disputes by an arbitration by way of an award can be challenged only within the limited scope of several provisions of the Arbitration Act and the legislature in its wisdom has limited the scope and ambit of challenge to an award in the Arbitration Act. Over the decades, judicial decisions have indicated the parameters of such challenge consistent with the provisions of the Arbitration Act. By and large the courts have disfavoured interference with arbitration award on account of error of law and fact on the score of misappreciation and misreading of the materials on record and have shown definite inclination to preserve the award as far as possible. As reference to arbitration of disputes in commercial and other transactions involving substantial amount has increased in recent times, the courts were impelled to have fresh look on the ambit of challenge to an award by the arbitrator so that the award does not get undesirable immunity. In recent times, error in law and fact in basing an award has not been given the wide immunity as enjoyed earlier, by expanding the import and implication of "legal misconduct" of an arbitrator so that award by the arbitrator does not perpetrate gross miscarriage of justice and the same is not reduced to mockery of a fair decision of the lis between the parties to arbitration. Precisely for the aforesaid reasons, the erroneous application of law Constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very rightly, as legal misconduct rendering the award as invalid. It is necessary, however, to put a note of caution that in the anxiety to render justice to the party to arbitration, the court should not reappraise the evidences intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the arbitrator is, according to the understanding of the court, erroneous. Such exercise of power which can be exercised by an appellate court with power to reverse the finding of fact, is alien to the scope and ambit of challenge of an award under the Arbitration Act. Where the error of finding of facts having a bearing on the award is patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference with award based on erroneous finding of fact is permissible. Similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the arbitrator. In ultimate analysis it is a question of delicate balancing between the permissible limit of error of law and fact and patently erroneous finding easily demonstrable from the materials on record and application of principle of law forming the basis of the award which is patently erroneous. It may be indicated here that however objectively the problem may be viewed, the subjective element inherent in the

judge deciding the problem, is bound to creep in and influence the decision. By long training in the art of dispassionate analysis, such subjective element is, however, reduced to minimum. Keeping the aforesaid principle in mind, the challenge to the validity of the impugned award is to be considered with reference to judicial decisions on the subject.

13. In any event, the issues raised by the DDA/objector in the matter on merits relating to default, extension of time, quantum of damages, etc. are all questions of fact which the arbitrator was within his jurisdiction to decide as deemed fit. This Court has no writ jurisdiction or authority to interdict an award on such factual issues in view of the principles laid down by the Apex Court. The DDA has been unable to point out any error of law on the face of the award.

14. In *H.P. State Electricity Board v. R.J. Shah and Company* (supra) the court laid down the principle that it is impermissible for the court to set aside an arbitration award merely because another view was possible.

15. In *U.P. State Electricity Board Vs. M/s. Searsole Chemicals Ltd.*, the court held that if the arbitrators have applied their mind to the pleadings, the evidence adduced and the terms of the contract, there is no scope for the court, including the Supreme Court, to reappraise the matter as if this were an appeal court and it is clear that where two views are possible, the view taken by the arbitrators would prevail.

16. In the instant case, the arbitrator has given reasons and has closely examined the claims made by the contractor and the stand of the Delhi Development Authority. The same have been analysed as is clearly reflected from the award. The arbitrator was nominated by the DDA and was an expert engineer with a technical background. The DDA has been unable to point out that the interpretation of the contract and the documents or the reasoning adopted by the arbitrator was not a plausible one. A Division Bench of this Court in its pronouncement reported at *Em and Em Associates Vs. Delhi Development Authority and Another*, . has in such circumstances held that the setting aside of the award was speculative.

17. I find that in the instant case, the contractor made the claim towards the payment for idle shuttering and centering on the ground that the same could not be utilised because the DDA could not supply the cement. It is an admitted case of the respondent that there was shortage of the cement and it was, Therefore, not possible for the contractor to lay the roof slabs. The arbitrator has returned a finding on consideration of the entire material that the requisite quantity, i.e. 39,200 bags of cement could not be issued by the DDA within the stipulated period.

18. The arbitrator has further held that the DDA was required to make out a case that the delay which occurred was for reasons which were unavoidable. It has been held that the DDA failed to establish that the delay had occurred on account of any reasons which were unavoidable. On an analysis of the material led before

him, the arbitrator has awarded all such idle charges only for a period of 20 days. In my view, the challenge to the award made on Claim No. 1 by the arbitrator is, Therefore, only misconceived and legally not tenable. The same is accordingly rejected.

Claim No. 4

19. The petitioner made a claim for damages due to prolongation of the contract period beyond the stipulated date of completion of the work due to an increase in the price, of materials and other overheads. The DDA has assailed the award on this claim of Rs. 11,38,438 on the ground that the arbitrator has ignored the relevant specifications and Additional Condition No. 1 of the agreement which, according to the DDA, stated that no damages could be awarded in case there was unavoidable delay in handing over of the site or in supply of material in any circumstances. The DDA has also objected that any increase in price of material and labour that is to be paid is taken care of under Clause 10(C) of the contract and nothing extra is payable to the contractor.

20. I find that the learned arbitrator has again closely discussed the evidence on record and given findings which have been drawn on the documents as well as conditions of the contract. The arbitrator arrived at a conclusion that the DDA was in breach of the contract on account of non availability of drawings from 4th June, 1982 to 22nd July, 1982; belated decision of mosaic flooring from 4th June, 1982 to 1st November, 1983; presentation of high tension line from 4th June, 1982 to 1st December, 1983; belated decision of flush door shutters from 4th June, 1982 to 5th January, 1984 and the time required for doing the extra work. The stipulated date of the completion of contract was 4th June, 1983. After an extension of six months under Clause 10(C) the contract was to be completed by 4th December, 1983. It is an admitted position that on account of the above noticed reasons for delay, the contract could actually be completed only on the 29th November, 1984. The DDA has objected to the award on the above claim on the ground that in terms of Additional Condition No. 1, in case the site was handed over belatedly or in parts, the contractor was not entitled to any damages or compensation. The arbitrator has decided that such condition could not apply as it cannot be stretched to mean that the site could be handed over even during the extended period of the contract and that the Additional Condition No. 1 did not envisage such a condition. The Additional Condition No. 1 only postulated a situation that the site could be handed over belatedly and in parts. Certainly a contractor could not be deprived of his dues and their profits if the site was handed over beyond the period of contract. The DDA is unable to point out any contractual provision under which it was authorised to hand over the part of the site beyond the stipulated date of completion of the contract that is during the extended period.

21. So far as the relief on Clause 10 is concerned, the arbitrator has given an interpretation of the term in the contract and held that the same does not apply as the delay envisaged in Clause 10 was only a delay of six months whereas the

delay which has occurred on the part of the DDA in supplying the stores was to the tune of 581 days.

22. In view of the above, reference can usefully be made to the pronouncements of this Court reported at *Shri Sunder Lal Khatri Vs. Delhi Development Authority*, (para 7 at page 483); 2004 (3) RAJ 540 (Delhi.) : 2004(3) Arb. LR 291 *Delhi Development Authority v. Wee Aar Constructive Builders* (paras 5 and 6); and 1998 (2) RAJ 336 (Delhi) : 1998(Supp) Arb. LR 300 (Delhi) *P.C. Sharma and Company v. Delhi Development Authority* (para 24), wherein the impact of Additional Condition No. 1 has been clearly considered.

23. In FAO (OS) No. 252/1994-*Delhi Development Authority v. Sunder Lal Khatri & Sons* the court held thus:

The plea raised by learned Counsel for the appellant in regard to Claim No. 3 is that the arbitrator had no powers to award any amount under Clause 10(C) and only the Superintending Engineer of Delhi Development Authority could determine the amount payable in terms of Clause 2 of the agreement. This contention cannot be sustained for the reason that the powers of Superintending Engineer were confined to fixing the compensation when the contractor failed to complete the work within the stipulated period. The Superintending Engineer was not the final authority to determine compensation claimed by the contractor on account of delay by DDA under Clause 10(C) of the agreement. Further plea that the arbitrator had awarded the sum of Rs. 70,548.45 p. in favor of the claimant without any basis whatsoever is also devoid of any substance for the reason that the arbitrator had awarded this amount on the basis of details worked out by appellant's officers vide Exhibit R-30 and a letter, Exhibit C-50, addressed by Executive Engineer of the appellant to his Superintending Engineer admitting that the delay was not on account of any fault of the contractor. Therefore, learned Single Judge was fully justified in upholding this claim against the appellant. The judgment in *Oriental Structural Engineers Vs. Delhi Development Authority*, relied upon by learned Counsel for the appellant was under entirely different facts and circumstances inasmuch as in the said case the Superintending Engineer exercising his powers under Clause 2 of the agreement had held that the delay was on the part of the contractor and had then levied a compensation which was payable by the contractor to DDA. The award in respect of Claim No. 4 was under Clause 10(C) and the arbitrator had relied upon Exhibit R-31 prepared by the officers of the appellant. Learned Single Judge had rightly declined to interfere with this claim. The challenge to Claim No. 7 on the ground that there was no agreement between the parties for payment of damages to the respondent/claimant and the damages ought to have been calculated on the basis of accruals was rightly negated by the learned Single Judge.

In *Dwaraka Das Vs. State of Madhya Pradesh and Another*, . Their Lordships of the Supreme Court clearly held that a contractor was entitled to claim damages for loss of profit which he was expected to earn by undertaking the contract and claim of expected profits was legally admissible on proof of the breach of

contract by the erring party. A Division Bench of this court in *Metro Electric Company, New Delhi v. Delhi Development Authority* reported in AIR 1980 Delhi 266 had upheld the award of damages against DDA recognising the contractor's right to damages for breach of the contract. Mere extension of time cannot be taken as a substitute for claim of damages. The award of damages in this case was on account of the loss incurred by the contractor due to increase in the prices of material and because of delay on the part of the appellant/DDA. The arbitrator had taken the help of cost index published by the government and had awarded damages. The learned Single Judge dealt with this submission in detail and we do not find any good grounds for taking a different view. The amount of damages was calculated by taking into consideration the quantum of work executed by the contractor and then applying percentage increase on the basis of index number after deducting the cost of material issued by the appellant. There are thus no grounds at all for interfering with the view taken by learned Single Judge on this issue.

24. I find that so far as the objection of the respondents that Clause 10(C) shall not be applicable in view of the judgments of the Division Bench of this Court reported at AIR 1980 Delhi 266 *Metro Electric Company Limited v. Delhi Development Authority* (para 90), in this judgment the Division Bench held that Clause 10(C) presumed that the contract was completed during the agreed period of the contract and was applicable only during the progress of the work within that period. In the instant case, the DDA failed in providing the materials and not even handing over the site and consequently the DDA cannot take the shelter of the Clause 10(C) which presumed that the contract is completed during the agreed period of contract. Reference can also be usefully made to the pronouncements of this Court reported as *Delhi Development Authority v. S.S. Jetley* 2001(1) Arb. LR 289 (Delhi) (para 8 at page 294); *Prem Chand Sharma and Co. Vs. DDA and Another*, and *Pt. Munshi Ram and Associates (P) Ltd. v. Delhi Development Authority* 2006 (1) RAJ 86 (Delhi) : 2006(Supp) Arb. LR 121 (Delhi) in this regard.

25. The last objection to the award made on Claim No. 4 is based on the plea of the DDA that the learned arbitrator could not have awarded any amount on the basis of the cost index. My attention is drawn by Mr. Markanda, learned senior counsel appearing for the petitioner, to judicial pronouncements on this very plea which are-*Sunder Lal Khatri v. Delhi Development Authority* (supra), wherein the court has upheld the award based on a cost index published by the State periodically based on scientific data. Similarly in *Nav Bharat Construction Co. Vs. Delhi Development Authority*, , the court approved an award where the arbitrator found that it was fair and reasonable to work out the increase on the basis of the cost index applying the CPWD Manual. It was held that no fault could be found in the arbitrator doing so to arrive at a judicious and reasonable decision. Again in *Prem Chand Sharma and Company v. Delhi Development Authority* (supra) it was held that the approach of the arbitrator in finding that the building cost index calculated by the CPWD is the rightly recognised method of working out the cost

escalation could not be faulted. The court had found that the CPWD rates are not profit rates but are rates of escalation computed by statutory authorities which have been relied upon for the purposes of arriving at the escalation figure. Just as in the present case, the respondent had not produced any other material to enable the arbitrator to come to a different conclusion.

26. Even otherwise, the learned arbitrator has found that as per the cost index the amount due to the petitioner worked out to Rs. 16,45,977 but he has only made a conservative award of Rs. 11,38,438 equivalent to 10% of the work done in the extended period of contract.

27. Perusal of the award shows that the arbitrator has drawn a clear distinction between acts completed within the stipulated date of completion of the contract and done thereafter. The arbitrator has also displayed the calculations reflecting that the cost of material supplied within the stipulated period has been deducted from the amount awarded.

28. As noticed above, it is not permissible to set aside an award only on the ground that another interpretation may be possible.

29. In this view of the matter, certainly the challenge to the award made on Claim No. 4 is wholly misconceived and is hereby rejected.

Claim No. 6

30. The claimant had made a claim of Rs. 1,10,640 on account of extra payment for straightening and cutting of steel bars which were issued by it in coils and bent up bundles. The arbitrator has awarded a sum of Rs. 67,950 on this claim.

31. Mr. P.C. Markanda, learned senior counsel appearing for the claimant, before this Court submits that this issue stands decided by judicial pronouncements of this Court reported in *Narain Das R. Israni Vs. Delhi Development Authority*, ; *Prem Chand Sharma and Co. v. DDA and Ors.* (supra) (para 7), wherein it was held by the court that unless such a claim was made by the contractor during the currency of the contract when he was required to perform this work, such a claim raised before the arbitrator for the first time would not be maintainable. There is no dispute that no such claim was made by the claimant to the respondent at any time before raising the claim before the arbitrator. In view of the principles laid down in these two judgments, such claim would not be maintainable.

32. Learned senior counsel appearing for the claimant submits that he does not press this claim. Accordingly, the objections of the DDA so far as this claim is concerned are sustained and the award made on Claim No. 6 shall stand set aside and quashed.

Claim No. 8

33. The DDA has objected to the award made by the arbitrator on Claim No. 8. The claimant had claimed an amount of Rs. 25,89,560 on account of interest on the withheld amount of the claim from the due date of the final bill to the

anticipated date of appointment of arbitrator by the Engineer Member within the period specified in the Arbitration Act. I find that the arbitrator has effected detailed calculations with regard to the interest which he has held awardable on the amounts due to the contractor for the delay in the payment of the final bill. The arbitrator has held that the contractor entitled to interest at the rate of 13% per annum for the pre-suit period of 7 1/2 years from 1st August, 1985 to 28th February, 1993 and hence has calculated an amount of Rs. 5,87,189 as due and payable to the contractor on the amounts which have been awarded on the different claims.

34. It is well settled that so far as award of interest is concerned, the court shall not normally interfere in the award rendered by the arbitrator. In this behalf, learned senior counsel for the claimant has drawn my attention to the principles laid down by the Apex Court in *Steeman Ltd. Vs. State of H.P. and Others*, . In view of the principles laid down by the Apex Court and upon consideration of the reasons given by the arbitrator, in my view, the award of interest at the rate of 13% for the period in question cannot be interfered with in the present matter.

Claim Nos. 10, 11 and 13

35. Learned Counsel appearing for the DDA has assailed the award made by the arbitrator on these claims of the contractor. I find that Claim No. 10 is a claim made by the contractor of Rs. 30,740 on account of providing grooves in the ceiling. Such a claim and award thereon was upheld by this Court in *Nav Bharat Construction Co. v. Delhi Development Authority* (supra).

36. Claim No. 11 is the amount which has been claimed by the contractor on account of expenses of maintaining watch and ward at the site during the period for which the work was delayed.

37. The arbitrator has noted that even though the work was completed in November 1984, but the same was handed over to the allottees only from 1987 onwards and during the intervening period the contractor had to maintain watch and ward at site. Payment vouchers were placed on record in support of the claim.

38. Mr. Markanda, learned senior counsel for the contractor, has pointed out that the payment vouchers placed on record justify an award for a much larger amount however the arbitrator has allowed only an amount of Rs. 1,71,200. There is no real challenge to the award made on this claim which is based on factual findings/premises on the evidence on record.

39. By Claim No. 13 the contractor has claimed an amount of Rs. 22,776 on account of refund of deductions made for the rebate for monthly payments on the ground that the DDA failed to make the payments as it was required to do so under the contract.

40. My attention has been drawn to the detailed reasons recorded by the learned arbitrator for holding that the claimant was entitled to the amounts claimed. It is

not disputed that a view taken by the arbitrator on a detailed reasoning with regard to the merits of the matter is not to be interfered with by the court. The award of the arbitrator on these aspects on Claim Nos. 10, 11 and 13 is detailed and 1 see no reason to interfere with the same.

Claim No. 15

41. The contractor has raised the claim of Rs. 6,35,600 on account of the balance amount of the final bill which was required to be paid on 27th May, 1985.

42. The objections of the DDA were limited to the final rate of recovery and incorrect rate of flush door shutters having been awarded. After a detailed consideration, the arbitrator made an award against this claim of only Rs. 2,09,059. No objection has been raised by the DDA, Therefore, in respect of the award to the extent of Rs. 1,14,420.67. I find that in detailed discussion, the arbitrator has relied on Clause 42 of the agreement between the parties in respect of the penal rate recovery. Mr. Markanda, learned senior counsel for the petitioner, has drawn my attention to the judicial pronouncements reported at M/s. Jagan Nath Ashok Kumar Vs. Delhi Development Authority, and P.C. Sharma and Co. v. DDA (supra).

43. So far as the amount awarded on the flush door shutters is concerned, the arbitrator has recorded detailed reasons for the award which has been made. No error which was apparent on the face of the record has been pointed out.

Claim No. 19

44. The DDA has contested the award of the arbitrator on Claim No. 19 allowing hiding charges of J&P, etc. due to belated issuance of drawings and designs, etc. Again I find that the arbitrator has recorded findings and reasons based on a consideration of the evidence laid before him. The arbitrator has also allowed rates based on DSR 1977 which was admittedly applicable to the instant case. The Additional Condition No. 1 and Clause 10 are not applicable inasmuch as the hiding was extended beyond the contractual period. For this reason, the award on Claim No. 19 cannot be faulted on any legally tenable ground.

Claim No. 21

45. The DDA has assailed the award made by the arbitrator on Claim No. 21 whereby the claimant had claimed pendente lite and future interest at the rate of 24%. The arbitrator has awarded pendente lite and future interest at the rate of 18% per annum. Mr. P.C. Markanda, learned senior counsel for the petitioner, on instructions submits that the claimant would have no objection if the claimant is awarded pendente lite and future interest at the rate of 13%.

46. Accordingly, the objection of the DDA so far as pendente lite and future interest are concerned is accepted. The claimant would be entitled pendente lite and future interest at the rate of 13% per annum.

47. In State of U.P. v. Allied Constructions (supra) (para 4) the Hon"ble Apex

Court laid down parameters within which the award can be scrutinised and a perusal thereof reveals, it is not permissible for the court to sit as a court of appeal over the verdict of the arbitrator.

48. Such a view was also taken in *Arosan Enterprises Ltd. v. Union of India and Anr.* (supra) (paras 34-37), where it was observed that even in the event that there were reasons in the award, courts would still not interfere with it unless of course there exists a total perversity in the award or the judgment is based on a wrong proposition of law. In the event, however, two views are possible on a question of law as well, the court would not be justified in interfering with the award.

49. In view of the above discussion, the award dated 6th February, 1998 to the extent of Claim No. 6 is hereby set aside and quashed. Furthermore, the award on Claim No. 21 shall stand modified and the claimant-petitioner would be entitled to pendente lite and future interest at the rate of 13% per annum.

50. The award when filed in this Court has been registered as Suit No. 826A/1998. In view of the order passed on the unnumbered application filed on 9th July, 1998 under Sections 30 and 33 of the Arbitration Act, 1940 it is directed that subject to the above modifications, the award is directed to be made rule of the court. Suit No. 826A/1998 and is No. (unnumbered) filed on 9th July, 1998 is disposed of in the above terms. The Registry to draw up a decree sheet accordingly.

IA No. 5761/2002

This application was not pressed before this Court and accordingly is dismissed.