

(2001) 09 DEL CK 0046
In the Delhi High Court
Case No : Suit No. 127-A of 1994

Pandit Construction Company	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Arbitration Act, 1940 — Section 14, 17

Citation : (2001) 09 DEL CK 0046

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Raman Kapur, for the Appellant; Saroj Bidawat, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—Pandit Construction Company (hereinafter described as the petitioner) has filed the present petition u/s 14 and 17 of the Arbitration Act asserting that respondents 1 and 2 had awarded the work titled Construction of 13 Nos. type E and 1 no. Type F quarters for MDI at Gurgaon. Agreement contained an arbitration clause. Certain disputes arose between the parties and were referred to the sole arbitrator respondent No. 3. Respondent No. 3 entered upon the reference on 24th October, 1991 and time for making and publishing the award was extended by mutual consent of the parties. The arbitrator had published the award on 28th December, 1993. It is claimed that the award should be allowed to be filed and decree in terms of the award may be passed.

2. Objections have been filed alleging that the arbitrator has misconducted himself and that the award suffers from various infirmities. There are errors apparent on the face of the record. The objector claims that the arbitrator has totally ignored the material on the record. Along with the objection an application has been filed seeking condensation of delay. It has been asserted that notice of filing of the award was filed on 9th January, 1995. The said department was closed and directions had been issued to the Executive Engineer to hand over all the concerned records to the other department. The records were voluminous

and in bulk. Shifting of the same took long time. The file was traced only when the counsel informed the respondent of the next date of hearing i.e. 25th April, 1995. On coming to know of this fact objections were prepared but the objector was told that it is barred by time. It is claimed that in these circumstances delay in filing the objections may be condoned.

3. In the reply filed the assertions of the objector have been controverted and it is denied that there are any just or sufficient grounds for condensation of delay. As per the petitioner, once notice was served upon the respondents on 9th January, 1995 the respondents were aware of the statutory period and Therefore objections should have been filed within time. On merits of the objections it is denied that the arbitrator has misconducted himself or that has passed an award which is erroneous.

4. So far as the petition seeking condensation of delay is concerned, it is abundantly clear from the narration of facts above that the file as such was misplaced because of shifting of the record because the department CD-15 was closed. The affidavit in this regard filed by the Executive Engineer is not controverted and Therefore once this is the position it must be held that there are just and sufficient grounds for condensation of delay and delay as such is condoned.

5. The principle of law that under the Arbitration Act, 1940 the court will only interfere and set aside the award on specific grounds most important being that the arbitrator must be shown to have misconducted himself. This court Suit No. 619-A/87 in the case of M S J Consultants Ltd. v. Delhi Development Authority while dealing with the principles in this regard held:

7. It is well settled that award is a decision of arbitrator whether he is a layman, lawyer or any other expert. He is chosen by the parties and is entrusted with power to decide a dispute submitted to him. Therefore, ordinarily, the award is not liable to be challenged on the ground that it is erroneous. On facts the award ordinarily would be conclusive unless a contrary intention appeared from the agreement. Since award is a decision of domestic tribunal chosen by the parties, civil court ordinarily would stay his hands off it. Wrong or right decisions would be binding if it is reached fairly after giving adequate opportunity to the parties to place their grievances. It is a different matter that if the award is suffering from error of law or on the face of it incorrect or there is any misconduct, the court would not hesitate to interfere.

6. The conclusions in this regard reproduced above seeks support from the decision of the Supreme Court in the case of The Upper Ganges Valley Electricity Supply Company Ltd. Vs. The U.P. Electricity Board, . Subsequently the Supreme Court in the case of B.V. Radha Krishna Vs. Sponge Iron India Ltd., had further held that High Court ordinarily will not substitute its own decision to that of the arbitrator. The High Court is not to act as a court of appeal. The arbitrator is appointed as the sole arbitrator and the final judge of all questions of law and

facts. The only exception is the cases where award is the result of corruption or fraud or the principles of natural justice are not followed. The Supreme Court held:

Bearing in mind the principles laid down by this Court in the above said cases, if we look into disposal of the matter by the High Court, it would be evident that the High Court has substituted its own view in place of the Arbitrator's view as if it was dealing with an appeal. That is exactly what is forbidden by the decisions of this court. Therefore, we have no hesitation to set aside the judgment of the High Court on this issue.

7. More recently the Supreme Court in the case of Ispat Engineering & Foundry Works, B S City, Bokaro v. Steel Authority of India Ltd., B S City, Bokaro JT 1001 (6) SC 1 also reiterated the same principles that this court is not to re-appraise the evidence and the same is not permissible.

8. With this backdrop one can conveniently refer to the objections filed and the findings that have been arrived at. With respect to claim No. 2 the arbitrator has awarded Rs. 80,000/- for additional cartage from Chandigarh. The perusal of the record reveals that the manufacturer at Badli had shown inability to supply the bricks in time. The matter was brought to the notice of the objectors. Thereupon the bricks were brought from Chandigarh. The petitioner had asserted that respondent No. 1 had agreed that case for extra payment of cartage from Chandigarh shall be borne by it. The arbitrator recorded the finding that the objectors had approved the source of procurement of machines made bricks from Chandigarh. This is purely a finding of fact which requires no interference.

9. As regards claim No. 4, the petitioner claim Rs. 1,05,282/- on account of rebate unlawfully and arbitrarily made by the department. The objectors claim that award of Rs. 52,640/- is without recording any reasons. Perusal of the award shows that reasons as such have been recorded and one has no hesitation Therefore in rejecting the said objection of the arbitrator.

10. As regards the claim No. 8, the petitioner had claimed Rs. 2938/- on account of unlawful penal rate recover made by the department for cement. The arbitrator held that in the absence of any notice had in the absence of proof of loss recovery at double the rate is not justified. This finding of the arbitrator indeed seemingly cannot be found to be incorrect and Therefore leaving no scope for interference.

11. So far as claim No. 9 is concerned, the petitioner had claim Rs. 3,74,000/- on account of losses/damages due to idle labour and prolongation of contract due to non fulfillment of contractual obligation. The objectors claim that there is no provision of loss without establishing definite breach on the part of the respondents. The findings in this regard have clearly been recorded that as per Clause 36 of the of the agreement petitioners were required to employ an engineer and other staff because of the prolongation of the contract. The arbitrator has awarded the compensation in terms of the Contract Act. Therefore

the amount of Rs. 70,000/- was rightly awarded. Lastly, plea was raised that in claim No. 10 the arbitrator has wrongly awarded interest at the rate of 14% p.a. Indeed the arbitrator has jurisdiction to award interest which was been awarded as simple interest. It cannot be taken to arbitrary and Therefore the objections must be held to be devoid of any merit.

12. For these reasons the award is made a rule of the court and decree in terms of the award is passed. Interest is awarded at the rate of 12% from the date of the judgment on the principal amount till final payment is made.