

(2003) 05 DEL CK 0114

In the Delhi High Court

Case No : OMP: 126/95 and IA: 11684 of 1995

Punjab National Bank

APPELLANT

Vs

Ajanta Construction Company and Others

RESPONDENT

Date of Decision : 29-05-2003

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 33, 8

Citation : (2003) 1 ILR Delhi 501

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Jagdip Kishore, for the Appellant; R. Rajappan, for the Respondent

Final Decision : Allowed

Judgement

H.R. Malhotra, J.—This is a petition u/s 33 of the Arbitration Act and also u/s 8, 11 and 12 of the Arbitration Act, 1940 seeking an order that there is no arbitral dispute which can be referred to arbitration in view of the accord and specific confirmation by respondents no. 1 and 2, further praying for revocation of the authority of respondent no. 3 as sole arbitrator. Facts as stated in the petition are that the Punjab National Bank (herein referred to as petitioner) awarded a contract to respondent no. 1 on 3.11.87. Respondent no. 2 being the partner of respondent no. 1 was responsible for execution of entire work Staff Training Centre of the petitioner Underhill road. The total value of the work awarded was Rs. 45 lakhs out of which the respondent executed work of Rs. 22.55 lakhs and suspended the work in November 1999 and did not restart despite reminder dated 18.3.1989. It is further stated in the petition that the respondents no. 1 and 2 did not execute the balance work despite various letters written to them and, therefore, the remaining work was withdrawn and the only controversy remained between the parties about the balance payment to be made to respondent no. 1.

2. Much after the withdrawal of work, the respondent no. 1 raised its final bill dated 9.2.93, the same was verified by the petitioner and the amount payable to

the respondents no. 1 and 2 came to be Rs. 149166.82. Accordingly, the sum for this amount was handed over to respondent no. 2 on 20.10.94 who acknowledged the receipt of the said sum towards full and final payment of their final bill dated 9.2.93 and further certified that respondents no. 1 and 2 had no other claim in respect of the said work.

Such receipt reads as under:-

Received a cheque No. 851895 dated 20.10.1994 for Rs. 1,49,166.82 being the full and final payment of our Bill No. 7th and final bill dated 9.2.1993 for interior work at PNB Building at 8, Underhill Road, Delhi. We will have no further claim in respect of the said work.

3. After having received the aforesaid amount, respondent No. 1 raised further claims vide letter dated 21st October, 1994 but simultaneously got the cheque encashed which was received by them towards full and final payment.

4. The petitioner replied to respondent No. 1 refuting the additional claim of the petitioner, same being devoid of any substance. Despite that, respondent No. 1 invoked the Arbitration and appointed respondent No. 3 as their nominee Arbitrator. Since the petitioner did not appoint his nominee Arbitrator, as such respondent No. 3 became the sole Arbitrator and commenced arbitration proceedings and issued notices to the petitioner. Therefore this petition.

5. The respondent filed written statement and took the defence that the receipt executed by them towards full and final settlement was got signed under duress.

6. I have heard learned Counsel for the parties. Learned Counsel for the petitioner placed reliance on two judgments, namely, M/s. Bansal Construction Co. Vs. I.O.C., Ltd., and P.K. Ramaiah and Company Vs. Chairman and Managing Director, National Thermal Power Corpn.,

7. Having perused these authorities and applying the same on the facts of the present case, I am of the view that these authorities aptly fits into the facts of the present case as in those cases too finalities were given to the dispute after having received the payment unconditionally. The Hon'ble Supreme Court in the latter case held as under:-

8. "The full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there was accord and satisfaction by final settlement of the claims. The subsequent allegation of coercion was an after thought and devise to get over the settlement of the dispute, acceptance of the payment and receipt voluntarily given."

9. The Apex Court held that "the appellant having acknowledged the settlement and also accepted measurement and having received the amount in full and final settlement of the claims, there was accord and satisfaction. There was no existing arbitral dispute for reference to the Arbitration."

10. In the case in hand, the respondent having not furnished any proof about

duress or coercion as alleged by him in reply, therefore, such bald allegations are devoid of any substance and are of no consequence. The respondent having sent the final bills and the petitioner in turn having paid towards full and final settlement and the respondent having received the sum in that manner under signatures, the respondents are now stopped from agitating that such payment were received by them under duress. This being so, the Arbitration proceedings initiated by respondent No. 3 at the behest of respondents No. 1 and 2 are without jurisdiction, more particularly when the petitioner refused to nominate its Arbitrator. Consequently the petition is allowed. No order as to costs.