
(2001) 03 JH CK 0048
In the Jharkhand High Court
Case No : M.A. No. 240 of 1999 (R)

Ram Kamal Construction Co. Pvt. Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Arbitration Act, 1940 — Section 30
Contract Act, 1872 — Section 73, 93

Citation : (2001) 49 BLJR 2026 : (2001) 4 CCC 135

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Devi Prasad and Sudhir Kumar, for the Appellant; M.M. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Guru Saran Sharma, J.—Heard the parties and perused lower Court records. This appeal u/s 39(i)(vi) of the Arbitration Act, 1940 thereafter referred to as "the Act") has been filed against judgment/order dated 29.6.1999, passed by 3rd Subordinate Judge. Palamue at Daltanganj in Title Suit No. 10 of 1992, whereby award dated 2.11.1995 was set aside and the matter was referred to another Arbitrator for fresh adjudication after hearing the parties and obtaining proposal for fresh Arbitrator, in terms of Agreement No. 61/A-F-2 of 1987-88. The agreement in question was for construction of Auranga Right Main Canal RD 35.20 to RD 36.90. Stipulated date to complete the work was 26.2.1990. Altogether the contractor raised five items of claims. A sum of Rs. 55,000/- against claim No. 1 for loss of advance on material, labour, etc. a sum of Rs. 7,47,170/- against claim No. 2 for loss of idle labour, plant and equipment, a sum of Rs. 2,28,000/- against claim No. 3 for compensation for infrastructure cost of overhead establishment etc. and a sum of Rs. 2,28,000/- against claim No. 5 for loss of profit on the work, which could not be executed and thus altogether total amount of Rs. 12,58,170/- was awarded with interest @ 12% per annum from 1.8.1991 onward till the date of award.

2. A perusal of the award revealed that it was a non-speaking and unreasoned award.

The main objection to the award was whether the Arbitrator had misconducted in conducting the Arbitration proceeding and had committed any error of fact in passing the award in question.

A perusal of items 1 to 3 and 5 revealed that those claims were for damages and loss of profit founded on the breach of contract: In other words, the contractor claimed compensation for breach of contract arising u/s 73 of the Contract Act.

3. Section 73 of the Contract Act provides that when a contract is broken, party, who suffers by such breach is entitled to receive from the party, who has broken the contract, compensation for any loss or damages caused to him thereby which naturally arose in the usual course of things from such breach. As aforesaid, a perusal of all the claims 1 to 3 and 5 shows that they are founded either for damages or on loss of profit, based upon delay, laches and negligence alleged against the respondents herein. In other words, the appellant claimed compensation for breach of contract u/s 73 of the Contract Act. The question is whether the Arbitrator had applied his mind in a judicious manner so as to bind the parties by his award made on the aforesaid claims.

4. Section 73 encompasses all the aforesaid claims as damages. However, the Arbitrator awarded mechanically different amount for each claim. In my opinion, it was certainly a case of non-application of mind amounting to legal misconduct and the Arbitrator had misconducted the proceedings in the present case. It was clearly misconduct u/s 30(a) of the Act. He did not act in a judicious manner objectively and dispassionately, which goes to the root of competence of the said Arbitrator to decide the dispute. Besides the above, while setting aside the award dated 2.11.1995 by impugned judgment, the Court below in paragraph 6 assigned other good reasons for doing so.

5. I, therefore, find no reason to interfere with the impugned judgment/order. There is no merit in this appeal. It is, accordingly, dismissed.

6. M.A. dismissed.