
(2009) 11 DEL CK 0036
In the Delhi High Court
Case No : OMP No. 308 of 2009

Ravi Builders

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

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

Citation : (2009) 11 DEL CK 0036

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Manmeet Arora and Abhijeet, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this petition u/s 34 of the Arbitration and Conciliation Act, the petitioner has sought setting aside of the award dated 27th August, 2008 passed by the learned Arbitrator in respect of those claims for which the award had gone against the petitioner.

2. A dispute between the petitioner and the respondent regarding construction of "Road Under Bridge" at Patparganj Road near Madhuban Chowk was referred to the Arbitral Tribunal. The petitioner filed a statement of claims containing 17 claims totaling to Rs. 85,36,259/-. During pendency of arbitration, petitioner modified statement of claims and withdrew some of the claims. He withdrew claim No. 2 regarding "cost bank protection", claim No. 4 regarding "idling of labour", claim No. 6(i) and 6(ii). Against claim No. 6(iv) claimant had mentioned no amount. Thus nil award was given.

3. The Tribunal considered rest of the claims which were not withdrawn and were pressed before the Arbitral Tribunal. After considering evidence of both the sides and the material placed before it, the Arbitral Tribunal came to conclusion that the claimant and the respondent both equally contributed to the delays.

Considering claim No. 1 for Rs. 23,37,373/- Tribunal observed that similar claim, during pendency of the contract, was referred to the previous Arbitral Tribunal and the previous Arbitral Tribunal had awarded a sum of Rs. 7,48,500/- as the extra costs to the claimant for lowering the water table by "well point system" for a six months period despite observing that during normal period of execution of work, de-watering by "well point system" was an essential activity in the non-schedule item No. 1. However, since the claimant was allowed extra payment by earlier interim award on the basis of contract extending beyond the specified contractual period, the Tribunal adopted the same logic and considering that since both the petitioner and the respondent were equally liable for delay, allowed 50% of the claim made by the petitioner. The Tribunal also allowed claim No. 5 in full to the tune of Rs. 9,000/-. The Tribunal allowed claim No. 6(vi) in full to the tune of Rs. 1,58,000/- and claim No. 6(vii and ix) therefore were allowed to the tune of 50%. Cost of arbitration was also directed to be shared by the parties equally. Thus, the Tribunal allowed the claim of claimant to the tune of Rs. 16,10,950/-. The Tribunal did not allow pendent lite and future interest.

4. A perusal of objections against the award would show that the petitioner has assailed all disallowed claims or partly allowed claims on merits. The contention of the petitioner is that the Tribunal allowed 50% amount of the claim No. 1 by misreading earlier interim award and committed an error in allowing only partial costs of lowering water table, instead of full cost by holding that petitioner and the respondent both were equally responsible for the delay. It is further submitted that the Tribunal committed an error by not compensating the petitioner for losses caused due to increase overhead cost and Tribunal wrongly held that certain claims of the petitioner were not supported by conditions of contract. The Tribunal wrongly rejected the claim No. 6 (iii) and 6(v) of the claimant and the decision of Tribunal was contrary to the material placed on record.

5. It is settled law that while considering objections u/s 34 of the Arbitration and Conciliation Act, this Court does not sit as a Court of appeal and cannot re-appreciate the evidence and come to a different conclusion. The Court cannot pass a fresh award instead of the award passed by the learned Arbitrator by holding that the claims were not properly decided by the Tribunal. u/s 34 of the Arbitration and Conciliation Act, 1996 an award can be set aside on the following grounds as laid down by the Supreme Court in *Delhi Development Authority Vs. R.S. Sharma and Co., New Delhi*,

(a) An Award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996; or

(iii) against the terms of the respective contract; or

(iv) patently illegal, or

(v) prejudicial to the rights of the parties, is open to interference by the Court u/s 34(2) of the Act.

(b) Award could be set aside if it is contrary to:

(a) fundamental policy of Indian Law; or

(b) the interest of India, or

(c) justice or morality:

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

6. The petitioner has failed to make out any of the above grounds. I find no force in this petition. The petition is hereby dismissed.