
(2009) 09 DEL CK 0242
In the Delhi High Court
Case No : O.M.P. No. 470 of 2009

Shri S.K. Garg

APPELLANT

Vs

Sky City Hotels (P) Ltd.

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0242

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Man Mohan Singh, for the Appellant; Sangram Patnaik, Shante Pandey and Bimola Irom, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner claiming to be a building contractor engaged by the respondent for carrying out the construction work has filed this application for interim measures of restraining the respondent from getting the balance construction work done from any third party till the measurement of the work done by the petitioner are recorded. The counsel for the petitioner, on enquiry, had on the last date stated that the construction works were carried out till 15th November, 2008. Since this petition was preferred after over ten months from the cessation of the works, no ex-parte order against the respondent was granted.

2. The counsel for the respondent has appeared today and though states that reply can be filed, has stated that the contract with the petitioner was terminated on 22nd April, 2008 and w.e.f. 13th April, 2008. He also states that the construction work has since been completed and the Haryana Urban Development Authority has on 6th April, 2009 already issued the Completion Certificate. The transcript of the e-mail dated 22nd April, 2008 of termination of contract and the photocopy of the Completion Certificate dated 6th April, 2009 are handed over in the court and are taken on record.

3. The counsel for the petitioner on enquiry states that the petitioner had done the work of construction till the upper ground floor only. Though, the counsel for the respondent controverts the aforesaid statement but from the Completion Certificate handed over, it is borne out that the same is till the stage of laying of the roof of the 8th floor. Thus, it appears that no purpose would be served in directing any measurements at this stage when substantial work has already been carried out at site.

4. The petitioner has also sought the relief of restraining the respondent from interfering with the petitioner removing his tools, machinery, plants, material lying at site. The counsel for the respondent, on instructions, states that none of the machinery, tools, plants, material of the petitioner are lying at site. In these proceedings u/s 9 of the Act, such disputed questions cannot be adjudicated and in view of the stand of the respondent and long lapse of time and intervening events, this relief also cannot be granted. It shall however be open to the petitioner to, if permissible in law, in the arbitration proceedings claim relief in this regard and/or as to the value of any machinery, tools, plants, material left at site.

5. With the aforesaid observations, the petition is dismissed. However, in the circumstances, parties are left to bear their own costs.