
(2003) 03 JH CK 0082

In the Jharkhand High Court

Case No : Misc. Appeal No. 148 of 2001

Steel Authority of India Ltd.

APPELLANT

Vs

Pee Kay Enterprises Engineers and Contractors

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Arbitration Act, 1940 — Section 30, 39

Citation : (2003) 2 CCC 146 : (2003) 2 JCR 169

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; J.K. Pasari, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal u/s 39 of the Arbitration Act, 1940 is directed against the judgment and decree dated 5.5.2001 passed by Sub-Judge, 1st Bokaro at Chas in Title Arbitration Suit No. 4 of 1998, whereby he has confirmed the Award dated 16.2.1998 given by the Arbitrator and rejected the application filed by the appellant u/s 30 of the said Act for setting aside the Award.

2. The facts of the case lie in a narrow compass.

3. The appellant floated a tender notice dated 4.1.1982 inviting quotation for construction of Community Hall in Sector VIII. Pursuant to the said tender notice, the respondent submitted quotation which was accepted and letter of intent was issued by the appellant on 12.5.1982 and an agreement was signed on 15.7.1982. In terms of the agreement the period of completion of work was 10 months to be reckon after 15 days from the date of issuance of letter of intent or actual start of the work whichever be earlier. The respondents was required to complete and hand-over the work in phase manner.

4. It appears that after completion of entire work, the same was handed over to the appellant on 30.11.1984 but it was found that there were profuse leakages, cracks and other defects. Respondent was called upon to rectify the defects at

their own risk and cost. The defects were rectified for which amount of Rs. 45, 826.60 was incurred. Respondent thereafter raised dispute and differences claiming Rs. 5,30,730/-. The dispute was ultimately referred to the arbitrator for adjudication. The Arbitrator published the Award justifying the claim of Rs. 80,000/-. The respondent then filed Misc. Arbitration Case No. 14/89 before Sub-Judge at Chas for appointing and referring the disputes to the Umpire and in terms of the Court order the matter was referred to the umpire. The Umpire after hearing both the parties made and published the Award dated 16.2.1998 wherein he disallowed eleven claims but allowed two claims of Rs. 10,800/- against claim No. 8 i.e, loss caused due to watch and ward over building" and Rs. 46,100/- against claim No. 7 i.e. unlawful recovery of Rs. 46,100/-only. The appellant challenged the Award by filing application u/s 30 of the Arbitration Act for setting aside the Award. Learned Court below after hearing the parties, passed the impugned judgment and held that the Award given by the Umpire is fit to be confirmed and accordingly the Award was made rule of the Court.

5. I have heard Mr. Rajiv Ranjan, learned counsel for the appellant and Mr. J.K. Pasari, learned counsel for the respondents.

6. Mr. Rajiv Ranjan, assailed the impugned judgment and the Award on various grounds. Learned counsel submitted that the umpire has travelled beyond reference and committed serious error of jurisdiction in acting contrary to the contract inasmuch as under the arbitration clause of the agreement, the respondents was required to keep watch and ward till the monsoon could be over. The Arbitrator and the umpire committed serious error of facts in observing that building was complete in all respect by November, 1983. Learned counsel submitted that the umpire has ignored the fact that the building was taken over on 30-11.1984 with understanding that the leakages through roof slab shall be watched in the monsoon of 1985. The umpire has further ignored the fact that the decree charging of claim for deputing watchman till 30.11.1984 shows that till date building was not complete.

7. From perusal of the Award given by the Umpire it appears that he has considered all the aspects including relevant clauses of the contract and after discussing the evidence has given the Award. Learned Court below in my opinion rightly held that the Court while considering the application u/s 30 of the Act could not re-appreciate the evidence and come to a different finding.

8. It is well settled that when a Court is called upon to decide the objection raised by a party against an arbitration Award, jurisdiction of Court is limited as expressly indicated in the case and it has no jurisdiction to sit in appeal examining the correctness of the Award on merit. If the Arbitrator or the Umpire after considering the facts and the evidence takes a particular view and come to a finding then the Court can not substitute its own decision.

9. In the instant case, the Umpire examined different claims and gave an award then in absence of any gross misconduct including legal misconduct in giving

award, the award can not be interfered with. Learned court below does not appear to have committed any error Of law in passing the impugned judgment and making the Award rule of the Court.

10. For the aforesaid reasons, I do not find any illegality in the impugned judgment. This appeal is accordingly dismissed.