

(1997) 03 DEL CK 0033
In the Delhi High Court
Case No : Suit No. 1164A of 1984

Sthapati Engineers and Builders

APPELLANT

Vs

Central Building Research Institute and Another

RESPONDENT

Date of Decision : 06-03-1997

Acts Referred:

Citation : (1997) 1 ARBLR 533 : (1997) 66 DLT 232

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mukul Rohatagi, Rallut Gupta, A.K. Sikri and Piyush Sharma, for the Appellant;

Judgement

M.K. Sharma, J.

(1) Disputes having arisen between the parties to the Contract entitling "Fabrication of R.C.C. Channel Units for School Building Project, C.B.R.I., Aligarh", the same were referred to the sole arbitration of the respondent No. 2.

(2) The respondent No. 2 entered into the reference and on receiving evidence on record and on hearing the parties made and published his award on 30.6.1984 granting a sum of Rs.28,930.00 to the petitioner and Rs. 13,890.00 to the respondent No. 1 in terms of their counter-claim. The Arbitrator further passed an award awarding simple interest @ 9% per annum from 1.4.1977 to 30.6.1984 on the net amount of the award in favor of the petitioners with the stipulation that if the respondents did not make the payment as awarded to the petitioners within 45 days from the date of publishing the award, a simple interest @ 12% per annum would be payable to the petitioners from the date of expiry of 45 days.

(3) The petitioners filed a petition in this Court under Sections 14 and 17 of the Arbitration Act praying for a direction to the respondent No. 2 to file the award and the records of the arbitration proceedings and also for making the award a Rule of the Court. On the aforesaid petition, notice was issued to the Arbitrator to

file the award and upon filing of the award by the Arbitrator, notice was issued to the respondent No. 1 of filing of the award in the Court. The respondent No. 1 filed an objection under Sections 16, 30 and 33 of the Arbitration Act on which I heard the learned Counsel appearing for the parties.

(4) The award is admittedly a non-speaking award and by the aforesaid award, the Arbitrator awarded a lump sum Rs. 28,930.00 in favor of the petitioners against the various claims raised by the petitioners before the Arbitrator. In respect of the counter-claim filed by the respondent No. 1, the Arbitrator allowed the counterclaim in full awarding Rs, 13.890.00 .

(5) The power and jurisdiction of the Court in respect of interfering with a nonspeaking award is well settled. It is not open to the Court to speculate, where no reasons are given by the Arbitrator, as to what impelled him to arrive at his conclusion. The fact that a lumpsum award has been given is no ground to declare the award bad. Therefore, in respect of a non-speaking award, the Court can set aside the award only under a very limited and restricted sphere. Keeping in mind the aforesaid legal proposition, let me examine the contention of the learned Counsel appearing for the parties.

(6) The first objection raised is with regard to the territorial jurisdiction of this Court to entertain the petition and try the same. It was submitted by Mr. A.K. Sikri, Counsel appearing for respondent No. 1 that this Court has no jurisdiction to entertain this application inasmuch as, the respondent No. 1 has its office at Roorkee, where the tenders were invited and the tenders were also submitted at Roorkee and accepted at Roorkee and the subject-matter of the claim is also stated to be in the State of U.P. I have given my thoughtful consideration to the submissions made. However; I find myself unable to agree with the aforesaid submission. The Central Building Research Institute is admittedly a Unit of Council of Scientific and Industrial Research, which is a society having its registered office in Delhi. In that view of the matter, this Court shall have jurisdiction to try and decide the present petition, Besides, the Arbitrator has also filed the award in this Court. Accordingly there could be no objection to this Court trying and deciding as to whether the award passed by the Arbitrator could be made a Rule of the Court or not. The preliminary objection of the learned Counsel for the respondent No. 1 stands rejected.

(7) The next contention of the learned Counsel appearing for the respondent No. 1 was that the Arbitrator has misconducted himself in conducting the proceedings as there was violation of the principles of natural justice in not giving ample opportunities to the respondent No. 1. It was submitted that the Arbitrator took into consideration the documents filed by the parties without conducting any admission / denial in respect of the said documents. It is settled law that the Arbitrator can formulate his own rules regarding conduct of the arbitration proceedings and is not bound by the technical rules. The contents of the award disclose that the Arbitrator after considering the statements of both the parties and considering the oral and documentary evidence as also the written

arguments produced before him by the parties and having heard and after duly weighing and considering the facts passed the award. In view of the aforesaid specific observations of the Arbitrator in the award, I do not find any merit in the contention of the learned Counsel appearing for the respondent No. 1.

(8) The next submission was with regard to grant of interest. It is by now well settled that the Arbitrator has power and jurisdiction to grant pre-suit pendente lite and future interest. In this connection, reference may be made to the decision of the Supreme Court in *Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir*, in which the Supreme Court has upheld the power and jurisdiction of the Arbitrator to grant interest in respect of pre-suit, pendente lite and future interest. In that view of the matter, granting interest by the Arbitrator in the present case @ 9% per annum from 1.4.1977 to 30.6.1984 cannot be said to be an error, since the Arbitrator has discretion to grant interest. In my considered opinion, the Arbitrator also has the power and jurisdiction to issue a direction that in case the awarded amount along with the interest is not deposited within 45 days from the date of publishing the amount, the same would carry a future interest @ 12% per annum from the date of expiry of 45 days. The learned Counsel appearing for respondent No. 1 also submitted that the award passed by the Arbitrator is without any sufficient documentary proof. This Court in absence of reasons in the award cannot probe the mental process of the Arbitrator and speculate as to what impelled the Arbitrator to arrive at his conclusion. In the present case, the Arbitrator was under no obligation to give reasons in support of his decision and accordingly the Arbitrator has chosen not to give any reason in support of his decision. In absence of any reason for making the award, it is not open to the Court to interfere with the award unless it could be shown that there is an error apparent on the face of the records. In absence of any reason in a non-speaking award, it is not open to this Court to make an endeavor to infer or deduce reasons in the award or in the record accompanying the award and proceed to examine whether those were right or erroneous. The Arbitrator is held to be the Sole Judge of the quality as well as the quantity of the evidence and, Therefore, it is not open to this Court to take upon itself the task of being a Judge of the evidence before the Arbitrator. Accordingly, the aforesaid objection raised by the respondent No. 1 has also no merit.

(9) In the result, the objection filed by the respondent No. 1 is held to be without any merit and the same stands rejected. The award passed by the Arbitrator is made a Rule of Court. Let a decree be drawn up in terms of the award. In addition the petitioners shall also be entitled to interest at the rate of 15% per annum from the date of decree till realisation, in terms of Section 29 of the Arbitration Act. No costs.