

(1970) 07 DEL CK 0002

In the Delhi High Court

Case No : Execution First Appeal No. 1 of 1966

Union of India

APPELLANT

Vs

Oriental Construction Delhi Pvt. Limited

RESPONDENT

Date of Decision : 24-07-1970

Acts Referred:

Citation : (1971) 7 DLT 9

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : B. Kirpal and B.S.C. Singh, for the Appellant;

Judgement

B.C. Misra, J.

(1) This execution first appeal u/s 47 read with section 90 of the CPC has been filed by the Union of India-Judgment-debtor and is directed against the order of a Subordinate Judge 1st Class, Delhi dated 13th May, 1966, by which he has rejected the objection of the judgment-debtor and held in answer to preliminary issue No. 1 that the execution Court could not go behind the decree.

(2) The material facts of the case are in a brief compass. On 17th August, 1964, an award was made between the parties which culminated in the passing of the decree on 5-3-1965. The award as embodied in the decree directs certain amounts of payments and adjudicates some claims for refunds and adjustments on extra payment. In respect on items Nos. 8, 9 and 10, which are in dispute before me, the award determined the rate payable as well as the number of articles, but did not specifically make the calculations nor directed payment of a lump sum amount for the said items. The contention of the judgment-debtor Union of India is that in respect of the aforesaid items, they had made considerable payments to the decree-holder before the making of the award during the pendency of the contract and they are entitled to claim its refund or adjustment from the decree holder-contractor. The contractor-decree-holder, on the other hand, asserts that the claim for refund or adjustment, if any, might and

ought to have been made by the Union of India during the course of arbitration proceedings before the Arbitrator and once they have not done so, they cannot be allowed to challenge the terms or the effect or the operation of the award by asking the Court to adjudicate on the amount, of payments made by them and allow its adjustment or set off from the amount awarded.

(3) The union of India raised their contention by an application made under Order 21, Rules] and 2, CPC in which they contended that the amount of Rs. 13)150.74 found to be due under the award may be set off against a sum of Rs. 4,478.88 which had already been paid to the decree-holder under items Nos. 8, 9 and 10 and after adjusting the same the balance due and payable was only Rs. 8,671.86. The decree-holder contested the contention, as mentioned above,

(4) On the pleadings of the parties, an issue was raised namely :-

"WHETHER the Court can go behind the decree which was passed in terms of the award" ?

The trial Court upheld the objection of the Decree-holder and repelled the contention of the judgment-debtor who has come up in appeal.

(5) Mr. B. N. Kirpal, learned counsel for the appellant, has taken me through a copy of the decree which embodies the award and he has concentrated his submissions on items Nos. 8, 9 and 19. To take an illustration, under item No. 8, the award proceeds to state that the claim of the contractor for payment of Rs. 6/4.00 is not justified, and he is however, entitled to be paid at the rate of Rs. 5.50 each for 660 numbers doors, chowkats fixed in position inclusive of all cutting, making good etc. Similar are the directions in respect of items Nos. 9 and 10.

(6) It is obvious that that appellant before me did not raise any contention before the Arbitrator that they had already paid some amount to the respondent for which adjustment should be allowed. There is no uncertainty or vagueness in the items of the award in dispute as the rates and figures are both fixed and it is only a matter of calculation for the execution Court to make in arriving at the amount payable under the said items. The question of payment and adjustment claimed by the appellant had been specifically raised by the appellant before the Arbitrator in respect of other items. For Example, in item No. 1, the award states that the claim of the contractor is justified to the extent that he should be paid an amount of Rs. 868.00 in addition to the payments already made to him in the final bill, under other items therein-in-re-adjustment. Again, in item No. 5, it is mentioned that recovery was not justified and certain amount be refunded the contractor. Again, in item No. 5, it is mentioned that the recovery was not justified and the contractor was entitled to receive certain sum in addition to payment made to him in the final bill for this item of work. In item No. 7. the Arbitrator held that the claim of the contractor for refund was not justified. This shows that the claims of the Union of India alleging payment of certain amounts and their disputes with regard to such payments as well as justification for any

recovery made, if any, were matters very much in dispute which had been raised and pressed before the Arbitrator was not seized of the question of the payment which had allegedly been made by the Union of India to the contractors on account of the contract. Perhaps it may be that the Government omitted to make their claim in respect of payments made in items Nos. 8, 9 and 10, but that is a different matter and the same cannot be allowed to be raised now in execution proceedings.

(7) My conclusion is that the decision of the Arbitrator on matters which were directly and substantially in issue before him and which had been heard and finally decided by him one way or the other, constitute the bar of res judicata as soon as a decree of the follows the same. As a corollary, any matter or claim which might and ought to have been made a ground of defense or attack in those proceedings shall be deemed to have been directly and substantially in issue in the same. As a result, the bar of res judicata operate in respect of both matters and claims relating to the subject-matter in dispute which a party raised or might and ought to have raised, but has failed to agitate before the Arbitrator. The award of the Arbitrator has become final and has been incorporated in a decree of the Court and we can, Therefore, only look to the decree and cannot go behind the same.

(8) The learned counsel for the appellant submitted that it was within the jurisdiction of the execution Court to go behind the decree and find out the claims which had or had not been made or were or were not in fact decided by the Arbitrator or the Court in the previous proceedings. The law on the subject is very clear. Should there be any ambiguity in the decree, it is open to the execution Court to refer to the judgment as well as the pleadings of the parties in order to determine the scope of the dispute between the parties, but if there is no ambiguity in the decree, the execution Court cannot go behind the decree and it must execute the decree as it finds it irrespective of any claims of the parties which they were entitled to raise before the passing of the decree. The limits within which the execution Court can go behind the decree have been laid down by the Supreme Court in an unreported judgment *Vasudev Dhanjibhai Modi v. Rajabhai Abdual Rehman*, Civil Appeal No. 406 of 1967 decided on 11th March, 1970, where their Lordships observed that an execution Court cannot go behind the decree and it must take the decree according to its tenor and cannot entertain any objections that the decree was incorrect in law or on facts, until the same is set aside by appropriate proceedings in appeal or revision. Their lordships have also observed the circumstances under which an execution Court can ignore the decree which suffers from lack of inherent jurisdiction. The learned counsel for the appellant has rightly not made any attempt to bring his case within the exceptions laid down in the said judgment.

(9) As a result, this appeal fails and is dismissed. There will, under the circumstances of the case, be no order as to costs.