(2012) 04 DEL CK 0200

In the Delhi High Court

Case No : FAO (OS) No. 39 of 2007

Walchandnagar Industries Ltd. APPELLANT

Vs

Cement Corporation of India RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 28, 34, 37
Limitation Act, 1963 — Section 3(2)(b)

Citation : (2012) 2 ARBLR 219

Hon'ble Judges : Valmiki J Mehta, J;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Ramji Srinivasan, Jatin Zaveri, Gaurav Aggarwal and Vivek Oriel, for the Appellant; B.B. Sawhney (Sr.), Sunil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This first appeal filed u/s 37 of the Arbitration and Conciliation Act, 1996 impugns the judgment of a learned Single Judge of this court dated 05.12.2006 which allows the objections filed by the objector/ respondent/Cement Corporation of India (''CCI'') u/s 34 of the Act vide OMP No. 32/2005. By the impugned judgment, the learned Single Judge, while allowing the objections in OMP No. 32/2005, has set aside the findings of the arbitrator as per which the claims of the objector were held as time barred. The claims of the objector/respondent were towards its entitlement for damages on account of losses suffered by it due to the breaches/delays caused by the appellant/non-objector/contractor in performance of its obligations under the contract between the parties. The net effect of the impugned judgment is that the amount which was awarded to the appellant under the award of the arbitrator dated 20.04.2004 has been adjusted against the claims of the objector and the award has been converted into a ''nil'' award. The learned Single Judge has held that the claims of the objector/respondent were only in the nature of adjustments (not counter-claims) and hence not barred by limitation. The facts of the case are that the respondent/CCI invited a tender for supply of machinery/equipment and supervision during erection and commissioning thereof. The machineries were pertaining to two cement mills which were a part of a cement plant to be set up by the respondent at Tandur in the State of Andhra Pradesh. The appellant being the successful tenderer was issued a Letter of Intent (LoI) dated 09.11.1982. The contract awarded to the appellant did not encompass all the works of the cement plant inasmuch as various civil works as also the actual erection and commissioning were the jobs which were contractually awarded to other parties.

2. Under the contract, the supply was to commence from the 12th month of entering into the contract and completed by the 21st month. Commissioning was to commence from the 28th month and was to be completed by the 30th month. The entire contract was to be completed in 30 months. The scope of the contract between the appellant and the respondent also included preparation by the appellant of various detailed engineering drawings and which were after approval to be supplied by the appellant to the respondent. The respondent/objector pleaded that there were gross delays and hence breaches on the part of the appellant/contractor in performance of its obligations inasmuch as the dispatch of equipment which was to start in November 1983 but the same did not start till March 1984. Completion was done by November 1985, though as per the LoI the same was to be done by 24.08.1984. It was also the grievance of the respondent/ objector that the supply of equipment was not only delayed but was made in a haphazard and irregular manner, i.e. not in the required sequence. It was stated that the machinery which was required subsequently was supplied earlier whereas machinery which in its sequence for setting up of the plant was required earlier was supplied later. The appellant/contractor countered that there were, in fact, delays by the respondent in releasing various payments under the contract which led to the consequent delays in performing the obligations by the appellant under the subject contract. There were also disputes and differences which arose between the parties with respect to the guaranteed performance/output of the two cement mills. The respondent contended that performance of the first cement mill was not only not as per contractual specifications but also there were various defects which were not rectified. The appellant contended otherwise by arguing that so far as the first cement mill is concerned the same met all the requisite parameters and so far as the second cement mill is concerned, it was contended that the appellant failed to give the performance test of the said cement mill, only because the respondent was guilty in not offering for trial the second cement mill.

3. The aforesaid disputes and differences which had arisen resulted in the subject arbitration proceedings in which claims were made by both the parties. Though initially claims under different heads were made by both the parties, ultimately the issues in the arbitration proceedings however boiled down to the claim of the appellant towards the unpaid bills and its claims towards the amounts which were recovered by the respondent by encashing of the two bank guarantees of Rs. 32,39,000 and Rs. 32,37,815, the respondent''s claim for retention of the

amounts of the bank guarantees towards its claims of damages for losses it had suffered.

4. It is relevant at this stage to mention that the arbitration proceedings commencing and thereafter continuing up to a stage, till such stage the bank guarantees were not encashed by the respondent inasmuch as there was litigation with respect to the encashment of the bank guarantees and which litigation reached right till the Supreme Court. Ultimately, in view of the law with respect to the courts not interdicting the encashment of the bank guarantees, the respondent was allowed to encash the bank guarantees. By this time in the arbitration proceedings, the appellant had filed its claim petition and the respondent had filed its written statement-cum-counter-claims. Due to the encashment of the bank guarantees during the pendency of the arbitration proceedings, the appellant consequently amended its claim petition by raising its claim to the amounts of the bank guarantees recovered by the respondent and the respondent defended its action of encashment and prayed for retention of the amounts of the bank guarantees on account of losses suffered by the respondent due to the delays and breaches in performance by the appellant of its obligations under the subject contract. The arbitrator in his award held that the respondent was justified in recovering the amounts of the bank guarantees, however, since the claims with respect to the bank guarantees which were made in the counter-claim were held to be barred by limitation, therefore, the ''counter-claims'' of the respondent were dismissed. The net effect was that the appellant was awarded the amounts of the bank guarantees which were recovered by the respondent.

5. The learned Single Judge, vide the impugned judgment dated 05.12.2006, has held that the counter-claims of the respondent were basically/really in the nature of a defence of adjustments of its dues for its claims and that the arbitrator ought to have interpreted the defence as a plea of adjustment and not a counter-claim, and since there is no limitation with respect to the defence of adjustment, the learned Single Judge held that respondent was entitled to retain with it the amounts of the bank guarantees. The learned Single Judge has, for allowing of the defence of adjustment, firstly held that respondent had otherwise proved on record the various losses which were caused to it, being an amount of Rs. 37,69,000 towards delay in supply of the machinery and loss of Rs. 16,12,500 towards delay in supply of engineering drawings, and, therefore, the learned Single Judge has held that the respondent was entitled to the amounts of the bank guarantees totaling Rs. 53,72,500 and to which amounts, if the claim of respondent towards interest on blocked capital at the rate of 4% p.a. is allowed, the total of such amounts would far exceed the amounts of the two bank guarantees of Rs. 64,76,615. The learned Single Judge in paras 16 to 26 of the impugned judgment has dealt with the issue that the claims of the respondent were not time barred by making the following observations:

16. The only further question which arises for consideration is, whether the counter-claims were barred by limitation.

17. Suffice would it be to note that if petitioner was retaining the amounts under the bank guarantees, it was a case of pleading adjustment and not a counter-claim as strictly understood in law.

18. As held in the decision reported as Cofex Exports Ltd. Vs. Canara Bank, a defendant has a right to defend himself by raising all possible pleas permitted by law. No court-fee is leviable on a written statement. The nature of the several pleas which can be taken by a defendant faced with a suit for recovery of a debt broadly can be classified as payment, adjustment, set-off and counter-claim. A payment is the satisfaction or extinguishment of a debt prior to the filing of the written statement. An adjustment contemplates existence of mutual demands between the same parties in the same capacity. The broad distinction between a payment and an adjustment is that in an act of payment one party deals with the other, while in an adjustment it is an act of the party himself prior to the filing of the written statement though the benefit of both is claimed by raising a plea in the written statement. A plea of adjustment is to be distinguished from a plea of a set-off or counter-claim. Adjustment like payment is relatable to a period anterior to the date of such plea being set out before the court. A plea in the nature of payment, adjustment and the like can be raised in defence as of right. The plea, if upheld, has the effect of mitigating or wiping out the plaintiff''s claim on the date of the suit itself. The plea is not a claim made by the defendant. A counter-claim or a plea of a set-off is a claim made by defendant. It does not extinguish the plaintiff''s claim; it exonerates the defendant from honouring plaintiff''s claim though upheld. Such plea if raised shall be gone into by the court, if permitted by law applicable to the court, and would have the effect of a decree in favour of the defendant taking away plaintiff''s right to realise such amount as has been upheld in favour of the defendant.

19. In the report published as Union of India (UOI) Vs. Karam Chand Thapar and Brs. (Coal Sales) Ltd. and Others, it was held:

''14. On general principles supported by rationality and reasonability, it appears to be a sound proposition that a person who is obliged to pay a sum of money to another person and also has in his hands an amount of money which that other person is entitled to claim from him, then instead of physically entering into two transactions by exchanging money twice that person may utilise the money available in his hands to satisfy the claim due and legally recoverable from such other person to him. However, this equitable principle is not one of the universal application and has its own limitations.

15. Set-off is defined in Black''s Law Dictionary (7th Edition, 1999) inter alia as a debtor''s right to reduce the amount of a debt by any sum the creditor owes the debtor; the counter-balancing sum owed by the creditor. The dictionary quotes Thomas W. Waterman from A Treatise on the Law of Set-Off, Recoupment and Counterclaim as stating:

Set-off signifies the subtraction or taking away of one demand from another opposite or cross-demand, so as to distinguish the smaller demand and reduce the greater by the amount of the less; or, if the opposite demands are equal, to extinguish both. It was also, formerly, sometimes called stoppage, because the amount to be set off was stopped or deducted from the cross-demand.''

20. In my opinion, a rough and ready test to determine whether the defendant has pleaded a set-off/counter-claim or is claiming adjustment is whether the claim in the plaint as well as the claim in the written statement can stand together. In other words, if plaintiff can be held entitled to sum claimed by him and so would the defendant be entitled to the claim it would be set-off or counter-claim. Thereafter, adjustment to be made. But where the defence actually is that really speaking plaintiff would not be entitled to a sum in relation to what the plaintiff claims, it would not be a plea of counter-claim/set-off but a plea of adjustment.

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25. I principally hold that the so-called counter-claims are in fact a justification for retention of the amounts recovered under the bank guarantee. Loss suffered was a proof that having suffered the said loss, petitioner was entitled to the amounts under the bank guarantee and no award could be made in favour of the respondent pertaining to the sums covered by the bank guarantee.

26. The net result, therefore, is that I dispose of the petition setting aside the award insofar as it directs petitioner to pay Rs. 64,76,615 to the respondent. Since no amount is payable by the petitioner to the respondent, question of any interest being paid does not arise.

(underlining is ours)

6. A reading of the aforesaid paragraphs of the impugned judgment shows that after making a reference to the Division Bench judgment of this court in Cofex Exports Ltd. Vs. Canara Bank, he learned Single Judge held that the claim of the respondent was essentially one of adjustment as it arose between the same parties in the same capacity. One may usefully, therefore, refer to the relevant paragraphs of the Division Bench judgment of this court in the case of Cofex Exports Ltd., where Hon''ble Mr. Justice R.C. Lahoti (as he then was), speaking for the Division Bench, observed as under:

10. An adjustment contemplates existence of mutual demands between the same parties in the same capacity. The broad distinction between a payment and an adjustment is that in an act of payment one party deals with the other, while in an adjustment it is an act of the party himself prior to the filing of the written statement though the benefit of both is claimed by raising a plea in the written statement.

11. A plea of adjustment is to be distinguished from a plea of set-off or counter-claim. Adjustment like payment is relatable to a period anterior to the date of such plea being set out before the court. A Division Bench of High Court of

Madhya Pradesh had an occasion to deal with the plea in State of Madhya Pradesh Vs. Raja Balbhadra Singh, . It was held (paras 4 and 7):

''Where two persons have certain accounts and monies are payable by each to the other, they are both entitled to mutual adjustments of the monies provided they are really due and recoverable. The distinction between payment and adjustment is that payment is made to the creditor while the adjustment is made by the debtor himself. Although it is not called ''payment'' in common parlance yet it undoubtedly partakes the character of payment. At all events, it cannot be called a claim for set-off, nor can it be said to be a counter-claim, as the defendant does not seek enforcement of his claim, and, therefore, court-fee is not due.

On a general principle a person is entitled to pay to himself that amount which is due to him from another if he has in his hand monies belonging to that other, provided that his dues are legally recoverable. Although that question will be adjudged by the court of law when it arises, he is not obliged to sue for the recovery of the money which he is already in possession of.

(aforesaid emphasis is ours)

12. To the same effect is a Division Bench decision of Orissa High Court rendered in The Tata Iron and Steel Co. Ltd. vs. R.N. Gupta, AIR 1963 Orissa 174.

13. Halsbury''s Laws of England (4th Edn., Vol. 42 vide para 401 at page 239) categorises three types of claims which a defendant may raise by way of cross-complaint against the plaintiff-(1) B''s right where his cross-complaint consists of a money claim, in the as that and is of A cross-complaint own his on adjudicated has court until part, or wholly claim, A?s meeting defer may he doctrines relevant from derives B which advantage substantial hallmark, procedural bear to appears this applicable jurisprudence much Whilst A. by brought claim cross-complaint non-pecuniary raise right B?s (3) claim; over excess an any establish extinguish reduce so A, such successfully legitimately (2) cross-complaint; representing sum paid amount deduct> Typically, the doctrine of set-off, counter-claim and abatement are concerned with deductions made by B. If these are permissible and B has a triable cross-complaint, then B is entitled to withhold payment, wholly or pro tanto, until his cross-complaint has been resolved by the court. If the deductions are impermissible, B may at best have to meet A''s claim at once, the trial of his cross-complaint being deferred to a later hearing.

7. In Cofex Exports Ltd. it is held that in every suit for recovery of moneys, there are basically defences which are in the nature of either payment or adjustment or set-off (including equitable set-off) or counter-claim. The reason why the defences are separately classified is that with respect to the defences of payment and adjustment, they fall under the head where neither limitation applies nor court-fee is payable, whereas, with respect to defences of set-off and counter-claim, law of limitation applies and the person who pleads set-off and counter-claim is also liable to pay the court-fee on the set-off and counter-claim. The fact

that limitation applies to pleas of set-off and counterclaim becomes clear from Section 3(2)(b) of the Limitation Act, 1963 and which reads as under:

3. Bar of limitation-

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(2) For the purposes of this Act,-

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(b) any claim by way of a set-off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set-off, on the same date as the suit in which the set-off is pleaded;

(ii) in the case of a counter-claim, on the date on which the counter-claim is made in court;

On the aspect of court-fee, it may be noted that Entry 1 of Schedule 1 of Court-fees Act, 1870 requires payment of court-fee with respect to a suit which is instituted and also for a set-off and counter-claim which is pleaded. This entry does not provide that for the pleas of adjustment and payment, court-fee is payable.

8. To the observations which have already been made by the Division Bench of this court in Cofex Exports Ltd., we seek to reiterate and add that as regards the pleas of payment or adjustment, i.e. where the defendant sets up such pleas and consequently pleads that the plaintiff is not entitled to the suit amount, the defences of payment or adjustment have to be adjudicated by the court after the defendant proves its case during trial in accordance with law. Meaning thereby, even where pleas of payment or adjustment are taken, an adjudication by the court does take place and an imprimatur of the court is given in the final judgment with respect to the validity of the defence with respect to payment or adjustment. If the defendant fails to prove its entitlement, the defence of payment or adjustment is rejected and suit of the plaintiff for recovery of moneys will be decreed. Be it noted that in spite of the fact that there is a requirement of adjudication, neither limitation applies nor court-fee is payable because the defendant does not go to a court of law as he already has moneys in his pocket for which he does not have to file a suit for recovery. We also seek to remove the misconception that the plea of adjustment is the same as the plea of equitable set-off. Though the effect of both the pleas is extinguishment of the claim of plaintiff, equitable set-off is pleaded where there is an agreed crystallisation of the amount/an admitted amount which is payable being an admitted contractual amount or where there is a decree of a court in favour of the defendant for an amount. There is, however, a difference on one aspect between the defence of equitable set-off and the defences of payment/ adjustment, and which is that unlike in the case of payment/adjustment there

has to be adjudication in the defence of equitable set-off, no exhaustive adjudication or evidence is required to support the defence of disentitlement of the plaintiff to the suit amount inasmuch as there is an existing adjudication or an admitted position that an agreed amount is due and payable.

9. In the present appeal, learned senior counsel for the appellant has laid stress on the following points:

(i) That the learned Single Judge has erred in calling the defence of counter-claim as an adjustment inasmuch as the language of the written statement shows that the respondent had in fact made a counter-claim.

(ii) That a plea of adjustment is only possible on a specific plea of adjustment, and a counter-claim cannot be equated to a plea of adjustment.

(iii) Reliance is also placed upon the judgments of the Supreme Court in the case of Union of India (UOI) Vs. Raman Iron Foundry, and H.M. Kamaluddin Ansari and Co. Vs. Union of India (UOI) and Others, to canvass the proposition that there is a difference between entitlement for withholding of the moneys and the right/entitlement to appropriate. It was argued, relying upon the aforesaid two decisions of the Supreme Court, that the entitlement to retain cannot be equated with appropriation or adjustment for which there will have to be necessary adjudication.

(iv) It has been argued that the learned Single Judge has erred in interfering with the award inasmuch as the scope of interference to an award is limited because unless there is shown that the award is in violation of law or perverse or against the provisions of the contract, the award cannot be interfered with.

(v) Finally, it was argued that since in the present case no adjustment was made prior to the first filing of the written statement because admittedly the bank guarantees were encashed during the pendency of the arbitration proceedings consequently the defence of the respondent must fail because adjustment necessarily has to exist as a complete event as on the date of filing of the suit/ commencement of arbitration or at least prior to the filing of the written statement.

10. We are afraid we are unable to agree with any of the arguments as urged on behalf of the appellant.

11. The respondent in its response to the amended claim petition, which was filed by the appellant, specifically in paras 52A and 52B (more particularly in para 52B) disputed the entitlement of the appellant to call back the amounts of the bank guarantees. This, in our opinion, is in fact a defence of disentitlement of the appellant to the amounts of the bank guarantees, viz. the defence is one of the entitlement on account of adjustment. This para 52B does not talk of a counter-claim to be made by the respondent in this regard. Of course, in a portion of the relief para of the respondent in the written statement-cum-counter-claim there is a mention of a counter-claim of the respondent being allowed, however, the

earlier part of the relief clause specifically pleads that the claim submitted by the claimant may be disallowed, i.e. it is prayed that the claim petition be dismissed. Once the prayer is made for claim petition for the amounts of the bank guarantees to be dismissed, we cannot selectively read the prayer clauses and the other averments made in the written statement to come to a conclusion that the plea which is raised by the respondent must necessarily be taken only as a counter-claim and not the plea of defence of adjustment.

12. It is trite that mere nomenclature is not determinative of a fact. The expression adjustment may not have been specifically used, however, merely because the expression is not used, will not mean that if in substance, such plea is found to exist, courts will decline to give benefit thereof assuming the plea by a wrong nomenclature is called a counter-claim. Technicalities and forms can never be allowed to override substantial justice. If, therefore, it is found that there was entitlement of the respondent on account of its having been caused losses on account of breaches committed by the appellant under a contract and which are on account of the delays in performance by the appellant qua supply of the engineering drawings, machinery, personnel required towards the obligation of supervision during erection and commissioning, the respondent will definitely be entitled to deny the claim of the appellant, by whatever name the defence be called, i.e. whether the defence of disentitlement or the defence of adjustment or a wrong nomenclature of ''counter-claim'' because after all the respondent has moneys in its pocket and is not seeking recovery of the same through a judicial process of courts/arbitration--the basic feature of the plea of adjustment. Pleadings cannot be read like statutes. In the facts of the present case, if the pleading of the respondent is read as a whole the same shows the defence of disentitlement of the claim of the contractor/appellant to the amount of bank guarantees, and, therefore, we would not like to take such a technical interpretation of pleading as is sought to be urged on behalf of the appellant so that substantial justice is frustrated.

13. Learned counsel for the appellant very strenuously relied upon paras 10, 11 and 24 of the judgment in Cofex Exports Ltd. to argue that the plea of adjustment can only be permitted if the adjustment takes place by means of a proper entry/document prior to filing of the written statement and since in the present case, no adjustment had taken place prior to filing of the written statement as the bank guarantees were encashed subsequent to filing of the written statement, the plea of adjustment should be disallowed. Of course, there seem to be observations in the aforesaid paragraphs of Cofex Exports Ltd. which seem to suggest that the adjustment takes place prior to filing of the written statement, we would, however, take this opportunity to explain those observations that what is really stated in those paragraphs is that the adjustment is a fact/an aspect which is mentioned in the written statement as the record of a factum which has taken place, i.e. adjustment takes place de hors the written statement and the written statement refers to the factum of adjustment having already taken place, but that is all and that does not mean adjustment must, as

a necessity, take place at a point of time before filing of the suit or filing of the written statement by an entry or other document as a completed event. It is in context as explained by us that the observations in paras 10, 11 and 24 of the judgment in Cofex Exports Ltd. have to be read. We have already made observations that even with respect to the defence of payment, the defendant has to prove the same during the course of trial and the court has to adjudicate on the defence of payment and, therefore, if the defence of adjustment is pleaded in the written statement, similarly, it has to be adjudicated like a plea of payment (unlike a plea of equitable set-off) and thus there is no requirement of existence of an entry or document before filing of the written statement as is sought to be urged on behalf of the appellant. All that is required to be mentioned in a written statement qua adjustment would be existence of entitlement for disentitling the claim of the plaintiff for amounts on account of claims of the defendant which will extinguish the claims of the plaintiff because of the fact that the defendant has moneys in his/its pocket and he/it is not the one who has come to the court seeking recovery. The endeavour on behalf of the appellant to mix up the concepts of equitable set-off with adjustment, i.e. it is necessary for the plea of adjustment that there should a crystallisation of dues and existence of liquidated agreed amounts and which only thereafter can be adjusted, is an argument without merit because in law the defences of payment, adjustment and equitable set-off are distinct and separate depending upon the facts in each particular case. So far as the plea of adjustment is concerned, the same can be taken up even when the defendant after filing of the written statement comes into possession of the moneys of the plaintiff and which amounts the defendant pleads to have been used for adjustment of its claims. The facts of the present case also show that it is necessary to understand the observations made in paras 10, 11 and 24 of the judgment of Cofex Exports Ltd. for the written statement only to contain the record/statement of the factum of adjustment and not that adjustment has to take place prior to filing of the written statement and if the defendant in a suit receives amounts from/of the plaintiff in his hands subsequent to the filing of the suit, surely it can retain such monies and claim adjustment with respect to such monies. If we were to agree with the strict interpretation and the argument as urged on behalf of the appellant that adjustment can only take place on or before filing of the written statement, then the defendant in a suit, will be prevented from claiming adjustment with respect to the moneys it has received during the pendency of the litigation and will have to file a suit although moneys are already in the pocket of the defendant, and accordingly we refuse to give such interpretation as advanced by the appellant. We, therefore, hold that the respondent was perfectly justified in taking up a defence thereby claiming that the amounts which were claimed by the appellant were not payable because the monies which the respondent received during the pendency of the arbitration proceedings by encashment of the bank guarantees were amounts which were validly available with it for sustaining its defence of adjustment and thereby extinguishing the claim of the appellant.

14. The argument on behalf of the appellant that the respondent only had a right of withholding and not appropriation in view of the judgments of the Supreme Court in Raman Iron Foundry and H.M. Kamaluddin Ansari is based on a misreading of the said judgments as the observations of the right to withhold only and not to appropriate in the said judgments are made only in the context and qua the stage of deciding of the interim injunction applications and that at such interim stage there cannot take place appropriation/adjustment. However, the third argument urged on behalf of the appellant is answered by that very argument as the aspect of adjustment/appropriation can take place on due adjudication and which due adjudication is done subsequently at the time of passing of the award, i.e. after due adjudicatory process in the arbitration proceedings.

15. The argument that the learned Single Judge could not have interfered with the award as the scope of interference is limited overlooks the fact that in terms of Section 28 of the Arbitration and Conciliation Act, 1996 the arbitrator has to apply the law of the land and it is no longer res Integra that an award in violation of law (in this case, in violation of the law entitling adjustment) is against public policy and can be interfered with by the courts. Refusal to apply the law of adjustment is also a perversity causing grave injustice entitling interference with the award.

16. Insofar as the aspect that there have, in fact, taken place breaches of contract by both the parties, and more so by the appellant, thereby entitling the respondent to make claims for losses suffered by it under different heads of delays in supplying of the engineering drawings, machinery and personnel for supervision and erection, we may for the record state that such findings of fact of the arbitrator have not been challenged by either of the parties before us and in fact could also not have been challenged inasmuch as the arbitrator is the final authority for arriving at findings of facts on the basis of the evidence which has been led before him.

17. An appellate court will only interfere with the findings and conclusions of a court below only if the findings and conclusions are wholly illegal or perverse. Merely because two views are possible, an appellate court will not substitute its findings and conclusions for the findings and conclusions of the court below. In any case, we are of the same considered view as of the learned Single Judge inasmuch as substantial justice must always prevail over technicalities and forms. In view of the above, we do not find that mere is any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

