

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 356/2006**

Reserved on: September 2nd, 2008

% Date of Decision: September 26th, 2008

MANOHAR LAL SETHI Appellant
Through: Mr. Adarsh B. Dial, Senior
Advocate with Ms. Sumati
Anand, Advocate
Versus

DDA Respondent
Through: Mr. Bhupesh Narula,
Advocate.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE MANMOHAN

- | | |
|--|----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the digest? | No |

J U D G M E N T

MANMOHAN, J :

1. The present appeal has been filed under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 seeking to set aside the judgment and order dated 12th January, 2006 in OMP No. 110/2002 whereby learned Single Judge has dismissed the objections filed to the Arbitrator's Award dated 8th January, 2002.

2. The facts of this case are that DDA awarded to the Appellant the work for development of land for construction of storm water drain in Mangolpuri Industrial Area in pursuance to an Agreement dated 28th June, 1985 being No. 28/EE/HD-25/DDA/85-86. Some disputes arose between the parties which resulted in rescission of contract by DDA on 23rd January, 1990. In view of clause 25 of the terms and conditions agreed between the parties, the Engineer Member of DDA referred the matter to sole Arbitrator. The learned sole Arbitrator after hearing the parties, published his Award dated 8th January, 2002. After the publication of the Award, both the parties filed objections under Section 34 of the Arbitration and Conciliation Act, 1996.

3. The primary submission of Mr. Adarsh B. Dial, learned Senior Counsel for Appellant is that the Arbitrator having held that the rescission of contract by DDA was unjustified, it obviously meant that DDA was responsible for delay of 839 days and consequently the Arbitrator could not have rejected the Appellant's claim for loss of profit due to prolongation of contract. Mr. Dial stated that even though 31st December 1985 was the scheduled date of completion, the site was not handed over by DDA till the year 1989 and on 23rd January, 1990 the contract was rescinded by DDA.

4. Mr. Bhupesh Narula, learned Counsel for Respondent has drawn our attention to the fact that the Arbitrator had rejected the Appellant's claim for loss of profit as Appellant had not filed any documentary proof to show that he had suffered any loss/damage. Mr. Narula also drew our attention to the Arbitrator's finding that the cost index issued by the CPWD was not applicable to this work as it did not involve either timber or steel or carpentry work. Mr. Narula further pointed out that cement was issued by the Respondent at fixed rate and the Arbitrator had separately awarded to the Appellant compensation for statutory increase in wages of labour under Clause 10(c).

5. Before we deal with the aforesaid submission of learned Senior Counsel for the Appellant, it would be useful to refer to the findings of the Arbitrator in his Award dated 8th January, 2002. The relevant portions of the Award are reproduced hereinbelow:-

“CLAIM No. 8: Claimants claim Rs. 28,04337/- on a/c of damages.....

Respondent argument is accepted that cost index issued by C.P.W.D. is applicable for building work and not applicable for this work. Item of timber, steel and carpenter are not there in this work. Cement is also being issued at fixed rate. Claimant has been awarded compensation under Clause 10(c) for statutory increase in wages of labour, mason. So claimant claim is not justified.

CLAIM No.9: Claimants claim Rs. 10 lacs on a/c of damages towards establishment.

.....Respondent argument is accepted that claimant has never employed staff as claimed by him e.g. claimant has claimed for employment of two Engineers when on inspection of respondent executive, no engineer was found at site engaging of eight chowkidars, eight supervisors are not reasonable and further no documents have been filed to prove the expenditure done to claim damages. So claimant claim is not justified.

COUNTER CLAIM No. 2: Respondents claim a sum of Rs. 19,79,263/- on a/c of work done at risk and cost by M/s Vishal Engineering & Builders.

.....Thus there have been delay on both sides. It appears a mistrust came in the mind of claimant which lead the claimant to abandon the work.

..... As rescission of the contract has been held not justified, accordingly respondent counter claim No. 2 is not justified.

CLAIMANTS CLAIM NO. 2:

.....As while deciding the respondent counter claim No. 2 it has been held that there has been delay on the part of both the parties resulting in prolongation of contract, so claimant claim is not justified.”

6. In our opinion, in view of Arbitrator’s finding that both the parties are responsible for prolongation of contract as well as the fact that the Appellant had been compensated for statutory increase in the wages and further as the Appellant had not filed any documentary proof in support of its claim for loss of profit,

the Appellant's claim for loss of profit due to prolongation of contract cannot be granted.

7. Lastly, Mr. Dial contended that the nature of reasons given by the Arbitrator for rejection of Appellant's loss of profit did not satisfy the parameter of a reasoned award. However, we find that learned Senior Counsel for Appellant, on the instructions of the Sole Proprietor of the Appellant, had stated before learned Single Judge that he would not press the plea of sufficiency of reasons as he did not want the entire Award to be set aside. Consequently the Appellant is estopped from raising such a plea.

8. Since no other submission was raised before us, the present appeal being devoid of merits is dismissed but with no order as to costs.

**[MANMOHAN]
JUDGE**

**[MUKUL MUDGAL]
JUDGE**

September 26th, 2008
rn