

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

FAO No. 197 of 2008

Date of Decision : 28-08-2008

RAJESH KUMAR MENGHANI Appellant
Through Mr. D.R.Bhatia, Advocate

versus

CHIEF URBAN PLANNER PD CELL Respondent

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the 'Digest'? Yes

REKHA SHARMA, J.

This appeal arises out of judgment of Additional District Judge Shri Raj Kumar Chauhan dated February 29, 2008, dismissing the objections filed by the appellant against an arbitration award dated January 23, 2006 made by a former Judge of this Court. The facts relevant to the disposal of the appeal are as under:-

Pursuant to an open tender, the respondent awarded a contract to the appellant for car/scooter/cycle etc. parking at Kanhaiya Nagar Metro Railway Station. The contract agreement was signed on March 25, 2004 and on the same date, the site was handed over to the appellant. It was alleged by the appellant that the conditions as projected in the tender were not complied with by the respondent particularly with regard to the area of the site made available to him. The respondent disputed the allegation of the appellant and on

October 12, 2004 terminated the Agreement. The appellant approached the court of the District Judge for appointment of an Arbitrator whereupon a retired Judge of this Court Justice K.Ramamoorthy was appointed as the sole Arbitrator to adjudicate upon the claims and counter claims of the parties. The appellant raised the following claims before the learned Arbitrator:-

i)	Refund of security deposit	Rs. 6,93,833/-
ii)	Compensation for the consequences for the breaches of conditions of contract	Rs. 2,30,827/-
iii)	Compensation for under utilization of staff due to pre-matured closure of contract	Rs. 6,87,600/-
iv)	Compensation for loss of business which the contractor/claimant had expected to realize.	Rs. 1,98,000/-
v)	Cost of litigation due to impertinent and intransigent behaviour of the respondent - DMRC	Rs. 1,50,000/-
vi)	Compound interest @ 18% on the above awarded amounts from the date of cause of action up to date of payment.	To be determined through Arbitrator

The respondent also raised its own claims which were as under:-

i)	Total dues of license fee & interest from 1.8.2004 to 19.10.2004	Rs. 2,73,445.00
ii)	Expenditure for manning Kanhaiya Nagar parking by Group 4 Securities from 20.10.2004 to 7.12.2004	Rs. 25,046.66

iii)	Expenditure for publishing advertisement for re-tendering the parking site.	Rs. 63,016.33
iv)	Misc. expenses for completion of aforesaid process etc.	Rs. 25,000.00
v)	Cost of litigation	Rs. 1,50,000/-

The learned Arbitrator on the basis of the claims and counter claims framed the following issues for consideration:-

1. Whether the Claimant had acted in accordance with the terms of the contract?
2. Whether the respondent committed breach of the terms of the contract?
3. Whether the case of the claimant that he has suffered loss is proved?
4. Whether the respondent was justified in forfeiting security deposit?
5. Whether the respondent is entitled to counter claims?
6. Whether the claimant is entitled to interest? If so, at what rate?
7. Whether the respondent is entitled to interest? If so, at what rate?
8. To what relief parties are entitled to?

The Arbitrator vide his award dated January 23, 2006 dismissed the claims of the appellant as well as the counter claims of the respondent.

Aggrieved by the dismissal of his claims, the appellant assailed the award before the learned Additional District Judge but confined his challenge only to issue No. 4 i.e. "Whether the respondent was justified in forfeiting security deposit?" Before this Court also, the challenge has been restricted to issue No. 4.

The relevant clause of the Agreement which empowered

the respondent to forfeit the security deposit reads as under:-

“If the licensee fails to pay license fee in time for any month, the license shall stand cancelled subject to provision vide item No. (4) above, and the interest free security deposit shall stand forfeited in favour of the licensor (DMRC Ltd.). Also on such cancellation of the license, the licensee shall quit immediately and licensor shall be entitled to re-tender the parking site.”

It was submitted by learned counsel for the appellant that the Arbitrator justified the forfeiture of the security deposit by the respondent for no other reason except on the basis of clause 4 of the Agreement. The said clause, it was argued was in the nature of penalty and that respondent ought not to have been allowed to forfeit the security deposit on the basis of the clause *per-se* unless and until the respondent had proved the actual loss caused to it. As per the appellant, respondent led no evidence to prove the loss, hence, the forfeiture of the security deposit was not justified. In this regard, reference was made to the judgment of the Apex Court in **Maula Bux Vs. Union of India** AIR 1970 SC 1955.

There can be no dispute that the Supreme Court in the case of **Maula Bux** (supra) has held that where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable but not exceeding the amount specified in the contract as liable to forfeiture. In other words, the Supreme Court says that the clause does not give absolute right for forfeiture of the amount specified

therein unless the loss caused to that extent is proved and it has right to award only reasonable compensation.

No doubt the Arbitrator has disallowed the claim of the appellant for refund of security amount but it will not be correct to say that he has done so only on the basis of clause 4 of the Agreement. The findings of the Arbitrator have to be understood in the over-all context of what he has observed while rejecting the claims of the appellant including the claim for refund of the security deposit and the finding given by him on the counter claims of the respondent.

The basis for rejecting the claim of the appellant is discernible from paragraphs 8 and 18 of the Award. The said paragraphs run as under:-

“8. Mr. Rajesh Kumar Menghani, the Claimant filed his affidavit by way of evidence on 20.10.2005. He also filed documents C-10 to C-13. In the affidavit by way of evidence the Claimant has reiterated what is stated in the claim petition. The Claimant has elaborated the claim on pages 11 and 12 in the affidavit by way of evidence as Annexure C-13. In the cross-examination, the Claimant admitted that he operated on the basis of the contract in the contract places from 30.3.2004 to 19.10.2004 F.N. only. He admitted that he inspected the site before bidding. He would say that without verifying the site he took possession for operation. He admitted that the site was measured before possession was given to him. The Claimant has also admitted that the license fee would be adjusted if area fell short or additional area would be given to the contractor. He has also admitted that he collected parking charges during the period of operation.

18. Having regard to the overall facts and circumstances and the provisions of the contract there is absolutely no difficulty in coming to conclusion that the Claimant has committed breach of the terms of the contract. As a prudent businessman he must have taken care of relevant facts before bidding and signing the contract. He admits that he has visited the parking places and measurements were taken. Under clause 3 he is bound to pay the license fee as agreed. It was upto him to bid any amount. He having been highest bidder it was accepted by the respondent. Now, it is not open to the claimant to say relying upon the contract amount now obtained by the respondent and tried to develop an argument. Before making the claims, the Claimant is bound to prove in law that the respondent had acted contrary to the terms of the contract. It is settled law that Arbitral Tribunal has to adjudicate on the disputes in the light of the terms of the contract.”

The reason for rejecting the counter claims of the respondent are given in paragraphs 26 the Award which is as under:-

“On issue no. 5, the respondent has made counter claims alleging that it is on account of the breach committed by the claimant. Already the items of counter claims are extracted. The respondent put an end to the contract in October 2004 and it had forfeited the security deposit, having forfeited the security deposit, in my view, the respondent is not entitled to make the counter claims. The respondent stood amply compensated by forfeiting the security. I find that the respondent is not entitled to the amounts claimed in the counter claims.”

What do the afore-mentioned paragraphs go to show? They clearly indicate that the learned Arbitrator has found the appellant guilty of breach of the terms of the contract and consequently dismissed his claims. No doubt, the learned Arbitrator also rejected the counter claims of the respondent but what is of significance is that they were not rejected for the same reason for which he had rejected the claims of the appellant. The counter claims were rejected because the Arbitrator felt that by forfeiting the security of the appellant, the respondent stood amply compensated. In other words, the Arbitrator felt that the loss which the respondent incurred was equivalent to the security amount which the respondent had forfeited. In this view of the matter, nothing over and above the security deposit was awarded to the respondent against the counter claims. It is true that the Arbitrator has not given elaborate reasons as to how the forfeiture of the security deposit was sufficient to compensate the respondent vis-à-vis the counter claims but if he has not done so, he was not required to do so. It is well settled that the Arbitrator is not required to give detailed reasons for the conclusions arrived at by him. It is enough if the Award reflects application of mind which in the present case it does as the Arbitrator while deciding issue No. 4 relating to counter claims of respondent has clearly stated that they were not being awarded as the respondent stood amply compensated on its forfeiting the security deposit of the appellant. The jurisdiction of the reviewing court under the Arbitration and Conciliation Act, 1996 is not appellate in nature and the reasons which he records cannot be scrutinized by the court in a manner it does in the exercise of its appellate jurisdiction. The court would not interfere with the Award merely because it finds that the view taken by the

Arbitrator does not agree with the view of the court in the facts or on law.

Having regard to the above findings, the refusal by the Arbitrator to order refund of security deposit to the appellant has to be seen in context of the finding given by him on issue No. 5. If the two are read together, no fault can be found with the award.

Having regard to the above, I find no justification to interfere in the impugned order. The appeal is dismissed.

REKHA SHARMA, J.

AUGUST 28, 2008
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