

R-11

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

**Date of decision : April 22, 2009**

+ **FAO(OS) 261/2001**

M/S. INDIA FURNISHERS ... Appellant  
Through Mr. B.K.Dewan with Mr. Bhavesh Kr.  
Sharma, Advs.

versus

PUNJAB NATIONAL BANK .. Respondent  
Through : Mr. Jagdeep Kishore, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MUKUL MUDGAL**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

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

% **JUDGMENT (ORAL)**

**MUKUL MUDGAL, J.**

1. The appellant challenges the judgment of the learned Single Judge dated 15<sup>th</sup> March, 2001 by which the objections of the respondent against the award dated 24<sup>th</sup> December, 1993 were allowed and the award set aside on the ground that the Umpire had not given reasons for awarding of the estimated amount in

respect of claims No.7,11 and 12.

2. The learned Single Judge instead of remanding the matter thought it fit to appoint a learned senior counsel of this court as an arbitrator. This direction for the appointment of the arbitrator by the learned Single Judge was stayed by the Division Bench of this court while admitting the appeal. The learned Single Judge has further held that for awarding the amount payable to the appellant only conclusions have been given by the arbitrator which are not supported by any reasons, even though the award is a reasoned award.

3. The counsel for the appellant flawed the judgment of the learned Single Judge on the ground that the contract between the parties did not require reasons to be given. We have perused the contract and it is apparent that no reasons are required to be given as is evident from the perusal of clause 13 which is set out hereunder :

“13. ARBITRATION

In case any dispute or difference arises between the Contractor on any matter within the scope of this contract, except as the matter left entirely to the discretion of the Interior Designers under the provisions of this Agreement, then either party shall forthwith give to the other written notice of such dispute or difference and such dispute or difference shall be referred to arbitration of an Arbitrator or Arbitrators, one to be nominated by the Employer and the other by the Contractor, or failing agreement between the said arbitrators, by an Umpire appointed by them and such award shall be binding on both the parties. The procedure laid down the Indian Arbitration Act 1940 shall apply in the matter of this reference.”

4. The reasoning of the learned Single Judge thus does not appear to be justified as clause 13 of the Arbitration Agreement does not require any reasons

to be given by the arbitrator. If the reasons given are inadequate then at best the award becomes a non-speaking award, but after all if the Arbitrator or Umpire can pass a non-speaking award, then, no fault can be found with an award on the ground that the reasoning is absent or lacking or inadequate.

5. Furthermore, upon a perusal of the award itself we find that in fact reasons were given. For this purpose we deem it necessary to extract the relevant portions of the award by the arbitrator in respect of claims No.7,11 and 12.

“Claim No.7 : Claimants are entitled for the damages to the tune of Rs.1,66,046/- on account of prolongation of the contract and execution of the contract beyond the stipulated date of completion.

The stipulated date under the contract was 31.1.1988. The period of work was extended by respondent. The work was to be done under schedule on the basis of samples. Only 13 samples were given upto 31.1.1988 as against 100 samples. There is no doubt that the work was done by claimant during months after the stipulated date. The claimant informed the Consultant that the expenses would be more and wanted escalation charges. This claim for escalation was to be considered as promised by Consultants after the completion of work. I hold that the claimant is entitled to escalation. The manufacturing of most of the furniture was completed by September, 1988. I have already found that the delay is attributable to Respondent. The respondent is the defaulting party.

I have considered over the amount of claim for prolongation of the contract and I estimate that a sum of Rs.1,00,000/- is awardable to claimant.”

“The claim No.10 is disallowed.

Claim No.11 : Claim for Rs.2,48,352.54P for running hired workshop for manufacture of the at C-166 Okhla Industrial Area, Phase I.

Claim No.12 : Claim for Rs.2,56,184.14 for hiring of godown for storage of furniture.

I am taking up the items together treating the claims for compensation for default of Respondent in not providing the claimant with space for storage and space for temporary workshop at the site under the agreement of contract. There is no doubt that the Respondent was bound to give space for storage and space for workshop at the site and the Respondent failed to provide the space for storage and workshop at the site. The Respondent however permitted the storage of

furniture in the currency chest. But the space was insufficient and the major part of furniture had to be stored in a godown. The Respondent were at fault in not providing any space for workshop and storage. As said by learned counsel for claimant that it was a breach of contract. I think the claimant is entitled for compensation. I have heard arguments of the counsel for the parties. It was urged by the counsel of respondent that as the lessors were relation of Dayal Motwane the leases produced were bogus and no payment was made. The witness produced by the respondent and by a representative of Consultants did admit of the hired workshop at Okhla and the hired godown.

I am not impressed by the above argument. As I am estimating the compensation I need not concern myself with the actual payment as pleaded by Claimant. On a consideration of the circumstances I estimate the compensation at Rs. 2,50,000/-.

I award Rs. 2,50,000/- as compensation.”

6. We thus find that the learned Single Judge may not be right even on this ground as certain reasons in support of the conclusions have been given in the award though the same may not be as elaborate. The judgments in **Bank of Baroda v. B.J.Bhambani and another, 1988 (Supp.) SCC 785** and **Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. and another, 1989 Vol.1 SCC 532** may be usefully referred to that even if the Award has to be a reasoned Award even then the reasons may not be very elaborate and all that is required is that the reasons disclosed the mind of the Arbitrator. Even if it is to be assumed that the reasons were to be given, though not so required by the Contractual Clause, it is amply clear that since some reasons are given we do not feel that the Award warrants interference. Besides that we cannot lose sight of the fact that the Arbitrator is a technical person and is sufficiently experienced to estimate the amount in a fair manner.

7. Accordingly, we set aside the judgment of the learned Single Judge. Mr.

Kishore, the learned counsel for the respondent further pleaded that the interest of 15% per annum on the award amount works against the respondent in view of the fact that the award was passed long back on 24<sup>th</sup> December, 1993. There is substance in the plea of counsel for the respondents and after taking into account the period of time elapsed from the date of the award and the current rate of interest, and in accordance with the recent judgments of the SC in *Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others*, 2005 (6) SCC 678, *McDermott International Inc. v. Burn Standard Co. Ltd. and others*, 2006 (11) SCC 181, *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.*, (2006) 7 SCC 700 & *Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra*, 2007 (2) SCC 720, the interest of justice would be sufficiently met if the award is sustained, but, interest granted by the Award is reduced to 12% per annum and further in case the respondents makes the payment within four weeks from today then the interest would be at stand reduced to 9% per annum .

Dasti.

**MUKUL MUDGAL,J**

**VALMIKI J. MEHTA, J**

**APRIL 22, 2009**  
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