

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

+ **FAO(OS) NO. 154/2007**

Date of Decision : November 03, 2009

DIN Cooperative G/H Society Ltd. Appellant
Through : Mr. Anil Nag,
Advocate.
versus

Sh. A.S. Rana Respondent
Through : Mr. B.K. Dewan,
Advocate.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether the Reporters of local papers
may be allowed to see the judgment? NO
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. This appeal challenges the judgment of the learned Single Judge dated 19th February, 2007 by which the learned Single Judge was pleased to dismiss the objections preferred by the appellant to the award dated 24th October, 2005 given by Sh. V.D. Tiwari, the Sole Arbitrator, who was

appointed by this Court, as the appellant had failed to act on the request of the respondent to appoint an Arbitrator.

2. The appellant is a Cooperative Group Housing Society. The admitted case of the parties is that the Society had invited offers from contractors to construct 156 residential flats on the land allotted to the Society. The offer of the respondent was accepted and a formal contract was executed between the parties on 25th February, 1996. The work was to commence on 1st March, 1996 and was to be completed within 24 months. However, disputes arose between the parties and the work remained suspended for a long period of time. Eventually, after negotiations, the respondent was allowed to continue with the work and the work was completed somewhere in the year 2002. The claim of completion of work by the contractor was disputed by the Society and Sh. V.D.Tiwari was appointed by the Court as the sole arbitrator to adjudicate upon the disputes between the parties. The learned Arbitrator vide his award dated 24th October, 2005 awarded a sum of Rs.75,19,230/- to the respondent.

3. The main plea urged by Sh.Nag, the learned counsel for the appellant is that as per Clause 17 of the contract, the appellant was entitled to liquidated damages @ Rs.1 lakh per week for the delay caused in the completion of the work. A perusal of the judgment of the learned Single

Judge shows that this plea has not been dealt with by the learned Single Judge in the judgment. We have asked the learned counsel for the appellant whether this plea was urged before the learned Single Judge, who submitted that this plea was not dealt with by the learned Single Judge. He was then asked to show us the pleading in the memo of appeal and also show that such a plea though urged was not dealt with by the learned Single Judge. Apart from showing the general pleading that the learned Single Judge erred in not appreciating the issue of liquidated damages, the learned counsel for the appellant was unable to demonstrate to us from the memo of appeal that such a plea was raised. Instead, the learned counsel for the appellant submitted that the appellant had filed a 30 page written submission before the learned Single Judge and the issue was contained therein.

4. In our view, if a plea is not addressed before the learned Single Judge, the learned Single Judge is not bound to deal with each and every plea taken in the written submissions before the learned Single Judge. The mere fact that it is taken in the written submissions is of no avail to the appellant, particularly in view of the fact that no specific averment is made on oath before us that the plea urged was raised before the learned Single Judge. Accordingly, we decline to permit the appellant to raise such a plea before us.

5. We have also perused the prolix objections preferred by the appellant before the learned Single Judge as well as equally prolix written submissions. A perusal of the objections and the written submissions shows that the main thrust of the appellant was on the issue of limitation, which issue has not been addressed before us, and the objections pertaining to the rejection of the counter claim though raised in the objection petition were obviously not pressed before the learned Single Judge. Even the objections raised before the learned Single Judge are as follows: -

“5.6 BECAUSE the learned Arbitrator erred in law in overlooking the fact that out of 166 flats, the Respondent completed only 53 flats and 113 flats were left unfinished. Out of the 113 flats the Respondent, under a separate Agreement/Understanding completed 70 flats in 2001 and 43 flats still remained unfinished and the balance work was got done either by the Petitioner Society or the individual flat owner at its/his own cost.”

6. The above averments made before the learned Single Judge itself show that for the completion of the contract, a separate agreement/understanding was required to be entered into. Such an understanding or agreement has not been shown to us and accordingly, reliance by the appellant on the erstwhile Clause 47 of the earlier agreement, even if permitted to be raised is of no avail to the appellant.

7. Accordingly, we find no merit in this appeal and the same stands disposed of. All the pending applications also stand disposed of.

(MUKUL MUDGAL)
JUDGE

(REVA KHETRAPAL)
JUDGE

November 03, 2009
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