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

Date of Reserve: 12.5.2009  
Date of Order: May 18, 2009

**+ OMP No. 356/2005**  
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**18.05.2009**

**M/s Lal Builder**

**...Petitioner**

Through : Mr. Sukesh Kumar, Advocates

Versus

**Union of India and others**

**...Respondent**

Through: Ms. Geetanjali Mohan, Advocate  
and Ms. Vaishnavi, Advocate

**JUSTICE SHIV NARAYAN DHINGRA**

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

**JUDGMENT**

1. By this petition under Section 34 of Arbitration and Conciliation Act, the Petitioner has assailed an award dated 5<sup>th</sup> July, 2005 passed by the Arbitral Tribunal whereby the Tribunal had partly allowed the claims of the petitioner and partly disallowed the claims of the petitioner.

2. The award has been challenged on the ground that Learned Arbitral Tribunal failed to give reasons for denial of the claims. It is submitted that claim No.1 was denied by the Arbitral Tribunal on the

ground of improper planning and assumption, which shows lack of application of mind by the Arbitral Tribunal. None of the parties had claimed that there was improper planning and assumption. The total work awarded was for Rs.60,46,651/-. There was no evidence that the work was reduced due to improper planning. It is also submitted that the Arbitrators were not experts who could have arrived at a conclusion about the planning in the matter of civil contracts.

3. The other ground of challenging the award is that the Arbitral Tribunal rejected some of the claims of the petitioner on the basis of measurement recorded in the measurement book (MB), while in fact the petitioner had done much more work than all the work shown in the MB. It is submitted that the original work awarded was more than of Rs.60,00,000/- . After the petitioner had left the work remaining work was awarded for a sum of Rs.14,00,000/- only to the subsequent contractor. If the petitioner had not done the work to the extent of Rs.46,00,000/- the remaining work would not have been of Rs.14,00,000/-. Thus, the Arbitral Tribunal should have taken this into consideration and should have reached the conclusion that the MB had not correctly recorded the work done. The petitioner also challenged awarding of Rs.89,449/- by the Arbitral Tribunal to the respondent on the ground that the Arbitral Tribunal lost sight of the fact that the applicant could not have removed any material from the site without prior permission of the authorities concerned.

4. The petitioner assailed the award also on the ground that claim No.3 of the petitioner was rejected without any basis. The

Arbitral Tribunal failed to appreciate the evidence produced by the petitioner. Regarding claim No.4, it is stated by the petitioner that the Arbitral Tribunal did not consider Clause 21.5 in proper prospective. The Arbitral Tribunal should have decided this claim on the basis of work done as claimed by the petitioner. Similarly, regarding claim No.5 it is stated that the Arbitrators did not even pronounce upon the claim of Rs.5,00,000/- made by the petitioner for mental agony and hardship caused to the claimant due to unilateral recession of the contract.

5. A perusal of the award would show that the Learned Arbitral Tribunal had considered the claims of the petitioner and counter-claim of the respondent on the basis of measurement book which records the measurement of the work done. The contention of the petitioner that the measurement book did not reflect the true quantity of work done by the petitioner could not have been considered by the Arbitrators. In any civil contract where measurement book is maintained and the work done is recorded in the measurement book, the contractor cannot lay claim for a work which is not recorded in the measurement book unless during the continuation of work, the contractor had protested to the authorities that a particular work done by him was not recorded in the measurement book. It is not the case of the petitioner that he had protested against non recording of work done by him in the measurement book by the concerned Engineer. Measurement book is the authentic record of the work done. No contractor can claim for a work allegedly done which is not recorded in the measurement book. I, therefore consider that the Learned Arbitral

Tribunal rightly based the award on the measurement book.

6. It is a settled law that under Section 34 of the Arbitration and Conciliation Act, the Court does not act as an Appellate Court and cannot re-appreciate the evidence to arrive at a conclusion different from that of the Arbitrator. An award can be challenged under Section 34 only on one of the grounds as mentioned in Section 34 of the Act. Petitioner in the present case has made challenge to the award on the basis of non-appreciation of evidence and misinterpretation of contract, challenge on such grounds cannot be considered.

7. It is also settled law that an Arbitrator is prisoner of the contract. The Arbitrator cannot travel beyond the contract. The tortuous liabilities or claims for mental agony etc. cannot be raised before the Arbitrator. Only the claims which flow from the contract and which are not tortuous liabilities can be considered by the Arbitrator. The Arbitrator therefore rightly did not touch the claim for mental agony.

8. I find that the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 is not maintainable and is hereby dismissed.

**May 18, 2009**  
**'neeraj'**

**SHIV NARAYAN DHINGRA J.**