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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 26, 2009
Date of Order: May 29, 2009

+OMP 301/2009

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M/s Sukumar Chand Jain

Through : Mr. Sandeep Sharma, Advocate

29.05.2009

...Petitioner

Versus

Municipal Corporation of Delhi

Through:

...Respondent

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 the Arbitration & Conciliation Act, 1996 (for short, "the Act"), the petitioner has assailed the award dated 12th March 2009.

2. A perusal of award shows that the petitioner had raised claims in respect of three work orders viz. 373/12, 369/20, 368/28 on the ground that the petitioner had not been made payment in terms of the contract and the security amount of the petitioner to the tune of 25% has been withheld. The petitioner also claimed interest on the withheld amount and late payment of 75 of the security amount. The petitioner also claimed damages.

3. During pendency of the arbitration proceedings before the learned Arbitrator Justice K.S. Gupta (retired), the parties entered into an agreement

in respect of the claims raised by the petitioner. The respondent filed this agreement before the learned Arbitrator and in the letter respondent gave terms of settlement arrived at between the parties. As per the terms of settlement, the petitioner was to be paid by respondent all due amounts against final bills in three work orders as per the measurement recorded in the measurement books subject to final calculations. The respondent also agreed to pay the balance security amount of 25%. The petitioner had given up claim of damages while arriving at this settlement. Interest on outstanding payments under final bills and the balance security amount of 25% was not payable as per the understanding arrived at between the parties.

4. Both the parties represented to the learned arbitrator that the matter has been settled and the award should be passed in terms of settlement. The petitioner, however, raised the issue that the petitioner was liable to have interest on late payment of security amount. Learned Arbitrator after considering the agreement arrived at between the parties and the claim of the petitioner on account of interest passed an award in terms of the compromise, however, he allowed 10% interest per annum on the sum of Rs.11,88,937/-, Rs.5,86,561.73 and Rs.1,58,718.30 from 1st October 2002 till realization. He also allowed interest on other amounts which were mentioned in the award.

5. It is contended by learned counsel for petitioner that petitioner had not given up his claim for damages and the learned arbitrator should have determined damages.

6. In my view, the challenge made by the petitioner to the award must

fail. Where an award is passed on the basis of compromise between the parties by the learned Arbitrator, later on neither party can be allowed to turn around and say that the award be set aside.

7. I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

May 29, 2009
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SHIV NARAYAN DHINGRA J.