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

+ **FAO(OS) No. 534/2012 and FAO(OS) No. 535/2012**

HARCHARAN DASS GUPTA

..... Appellant

Through: Mr. Harish Malhotra, Senior
Advocate along with Mr. R.K. Modi,
Advocate.

versus

MUNICIPAL CORPORATION OF DELHI
(NORTH)

..... Respondent

Through: Mr. H.S. Phoolka, Senior Advocate
along with Ms. Mini Pushkarna &
Mr. Gursimran Singh, Advocates.

CORAM:

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE VIPIN SANGHI**

ORDER
08.11.2012

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1. Admit.
2. Learned counsel for the respondent accepts notice..
3. At request of learned counsel for the parties, the appeals are taken up for final disposal.
4. The present appeals have been filed by the appellant/contractor under

Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) aggrieved by the impugned orders of the learned Single Judge dated 21.08.2012 setting aside the impugned awards in favour of the contractor. The impugned orders are predicated only on the plea of the claims being barred by time, and the other objections of the respondent/MCD under Section 34 of the said Act have not been analysed. This plea of limitation was never taken before the Arbitral Tribunal till the stage of filing of synopsis after arguments, where the respondent sought to slip-in the said plea by including it as a part of the written synopsis. However, the learned Arbitrator has dealt with the said plea on merits and rejected the same.

5. The submission of learned counsel for the appellant, thus, is that a plea of limitation cannot be permitted to be slipped-in in this manner even though the Arbitral Tribunal has dealt with this plea on merits, as the appellant got no opportunity to produce the relevant material to rebut such a claim of bar of limitation.

6. We may notice that the present case pertains to an old dispute where the work was completed on 18.09.1992 in FAO(OS) No. 534/2012 and on 17.08.1992 in the FAO(OS) No. 535/2012. In both the appeals, the last payment was made in 1995 while the appellant issued notice invoking the arbitration clause on 11.02.2003. It is relevant to note that the final bill was still not prepared by the respondent but was produced, once again at the stage of final arguments, before the Arbitrator. This is stated to be at the behest of the Arbitrator.

7. Learned senior counsel for the appellants has also pointed out that even as per this final bill prepared, there is due to the appellants albeit a

small amount apart from the balance 10% of the total security amount which has not been refunded as yet. These two factual positions are not disputed by the respondent.

8. The impugned judgment is based on appreciation of a distinction between the limitation for invocation of arbitration and for lodgement of a claim. It has analysed certain documents forming part of the Arbitral Tribunal as also various judgments to come to this conclusion.

9. We are of the view that the manner in which the respondents sought to slip-in this plea of bar of limitation cannot be appreciated. We are conscious that a plea of limitation can be raised at any stage but given the situation, it was a mixed question of law and fact. It should have been specifically pleaded giving an opportunity to the appellant to respond to that plea and the parties ought to have been given opportunity to produce the material in support of this plea. We are not inclined to disturb the findings of the Arbitrator qua the other aspects, especially when they have not been dealt with by the learned Single Judge. We are, thus, of the view that the appellant must get full opportunity to meet this plea and, thus, the impugned order dated 21.08.2012 is set aside.

10. The specific plea of limitation setting out the relevant facts will be filed by the respondent before the learned Arbitrator within four weeks from today with supporting documents and the appellant will respond to the same with relevant documents within four weeks thereafter. The matter is remanded to the Arbitrator for decision on this limited issue and, in case, the finding is adverse to the respondent, it will naturally be open to the respondent to challenge the said finding as also the finding on merits, as the learned Single Judge has not dealt with the objections on merits filed by the

respondent.

11. The record of the Arbitrator, which is lying in the Court, be remitted back to the Arbitrator. It is agreed that the record will be collected by the learned counsel for the respondent in a sealed cover to be handed over to the Arbitrator.

12. We make it clear that the adjudication by the Arbitrator on this limitation issue will be uninfluenced by any observations made in the impugned order, which is being set aside. The appeals are, according, allowed to the aforesaid extent leaving the parties to bear their own Costs.


SANJAY KISHAN KAUL, J.


VIPIN SANGHI, J.

NOVEMBER 08, 2012
'BSR'