

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

% *Judgment Reserved on : 16.04.2013*
Judgment Delivered on : 30.04.2013

+ **FAO(OS) No.335/2011**

M/S CHUGH KATHURIA ENGINEERS (P) LTD. ...Appellant
Through: **Mr.Sandeep Sharma and**
Mr.Vikas Sharma, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR. ...Respondents.
Through: **Mr.Suraj Agarwal and Mr.Sunil**
Mahlotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The claimant M/s Chugh Kathuria Engineers (P) Ltd. was awarded a work of construction of 96, Type-III, 96 Type-II and 140 Scooter Garage in Block-B, Janak Puri, New Delhi in terms of an agreement with the respondent/DDA vide agreement No.41/EE/HD/VI/DDA/81-82. The work was to commence on 20.8.1991. It was to be completed on or before 19.5.1982. It, however,

continued up to 1985; it still remain uncompleted and was ultimately abandoned.

2 Disputes arose interse the parties. In terms of the arbitration clause contained in the agreement the disputes were referred to the sole arbitration of M.S.Talang, who was the Engineer Member of the respondent. Eleven claims have been raised by the claimant which included the quotient of interest which was Claim No.11. Four additional claims were thereafter raised. The respondent had raised two counter claims. On the basis of the pleadings and evidence led before him he pronounced his Award on 31.01.1994.

3 This Award was challenged by the respondent by filing objections under Section 30 of the Arbitration Act, 1940 (hereinafter referred to as 'the said Act'). A detailed order was passed on 01.8.2006. Claim No.1 and Claim No.4 wherein a sum of Rs.7,11,348.18 had been awarded to the claimant had been upheld. Objections against Claims No.2 to 7 were also dismissed. Counter Claim No.1 of the respondent awarding him a sum of Rs.26,52,79.56 had been upheld. Qua Claim No.3, additional Claim No.3 of the claimant and the Counter Claim No.2 of the respondent the Award was set aside. Learned single Judge was of the view that the document Ex.R-2 which was a letter dated 01.8.1985 bearing the signatures of the claimant was alleged by the claimant to have been obtained from him under duress and coercion but no finding was returned on this count. Accordingly the finding of the Arbitrator pertaining to Claim No.3, Additional Claim No.3 and Counter Claim

No.2 was set aside due to non-consideration of Ex.R-2. The remaining Award was upheld; decree was directed to be drawn up qua this part of the Award with interest at 8% per annum.

4 While remitting the matter for a fresh arbitration Justice R.C. Chopra (retired) was appointed as an Arbitrator to adjudicate upon Claim No.3, Additional Claim No.3 as well as DDA's Counter Claim No.2. There was a further direction that no further evidence shall be recorded but the aforesaid claims shall be decided on the basis of the existing evidence. The fresh Award was pronounced on 19.3.2009. Detailed arguments were addressed before the second Arbitrator as is evident from this Award dated 19.3.2009 running into almost 16 pages. The details of the claims which were the subject matter of adjudication before the Arbitrator both in the factual context as also on the legal propositions were examined. Ex.R-2 was scrutinized and the submission and counter submission made by the parties qua the aforementioned document were also discussed. The learned Arbitrator thought it fit to decide whether Ex. R-2 was a voluntary and a genuine admission or whether it had been obtained from the claimant under duress and coercion. The letters exchanged between the parties i.e. letters Ex.C-2 to Ex. C-9, Ex.C-13, Ex. C-17, Ex. C-19, Ex.C-21 and Ex. C-23 were scrutinized. On the basis of the aforementioned evidence, the learned Arbitrator was of the view that the very fact that a three year extension had been granted by the respondent to the claimant from 1982 to 1985 to go ahead with the work was by itself sufficient to show that the delay in

the work was not attributable to the appellant and he was not to be blamed for the same. The inspections carried out by the respondent in this interregnum period had also been noted; till May 1984 on inspection it was noted that only about 62% of the work had been completed and since no action has been taken against the claimant on this count it was an indicator that the respondent was satisfied that the claimant was not to be blamed for this delay. In fact the Superintendent Engineer had granted a compensation of Rs.8,51,839/-; even after the contract had been rescinded by the respondent on 11.10.1985; payments under 10 CC of the contract for escalation of cost of labour and material were also made to the claimant thereafter. In the eventuality that the claimant had accepted that he had caused delay vide Ex. R-2 (dated 1.8.1985) there would have been no occasion for the respondent to allow this escalation and to make payment subsequently. In conclusion the Arbitrator was of the view that the delay in the project was attributable to the respondent who had not adhered to the time schedule; it was not attributable to the claimant.

5 The relevant extract of finding of the learned Arbitrator on this point reads as under:

“18. In the light of the aforesaid facts and circumstances and the evidence on record, it can be safely held that right from the beginning, the respondent was not adhering to the time schedule for completion of the work and did not provide the site free from hindrances to the claimant contractor. It had also defaulted in supplying the requisite drawings and the material to the claimant promptly and as such delay was attributable to the respondent. Throughout the period of subsistence of the

contractual relationship between the parties, the claimant had been continuously writing to the respondent that it was not responsible for the delay in the project. It is not understandable as to why all of a sudden on 1st August, 1985, the claimant should have taken a U-turn and written Ex.R2, which was absolutely self-damaging, contrary to its stand and exonerated the respondent of all its defaults. The claimant has been contending before the previous Arbitrator also that Ex.P2 was obtained from him by the Engineers of the respondent in the wake of a Parliament Question to save their skin. The respondent has not been able to suggest even as to why the claimant should have been written such a self-damaging letter Ex.R2 without any rhyme and reason. It is also noticed that all other letters by the claimant were on the letterheads of the claimant whereas Ex.P2 was on a plain paper, which indicates that it was not sent from the office of the claimant but was written at the other place. This fact supports the stand of the claimant that it was obtained from him under pressure and coercion and it had no reason to write such a self-damaging letter when its disputes with the respondent were still pending and its accounts had not been settled. The judgment cited by Ld. Counsel for the respondent is not applicable to the facts of the present case as it is not pleaded that Ex. R2 was obtained for releasing payments. I therefore have no hesitation in holding that EX.R2 is a procured and false document and cannot be relied upon to hold that claimant was liable for delay in the project.

19. *Having come to the conclusion that the delays and defaults in the completion of the project were on account of the lapses on the part of the respondent only, the Claim No.3, Additional Claim No.3 and respondent's Counter Claim No.2 are adjudicated upon as under on the basis of the material placed on record."*

6 On this premise after having noted that the delay in the project was attributable to the claimant, Claim No.3, Additional Claim No.3 of

the claimant and Counter Claim No.2 of the respondent were decided. This Award was pronounced on 19.3.2009.

7 Learned Single Judge vide the impugned order was of the view that the Arbitrator had mis-conducted himself in adopting a course wherein he sought to examine in detail the oral plea of coercion and duress raised by the claimant which was only founded on an oral submission and there being no basis for such a plea in the pleadings before the Arbitrator, the Arbitrator had over stepped his jurisdiction. He could not have been examined this oral defence raised by the claimant; this amounted to a mis-conduct and a patent error on the face of the record. The learned single Judge accordingly set aside the findings of the Arbitrator on Claim No.3 as also the amount awarded to the respondent under its Counter Claim No.2. The Award made by the Arbitrator on Additional Claim No.3 was however made rule of court and a partial decree in terms of the Additional Claim No.3 was passed. The Award made on Claim No.3 and Counter Claim No.2 requiring fresh consideration, another Arbitrator had been appointed. It is this judgment which is the subject matter of appeal before this Court.

8 The appeal was admitted on 24.10.2011 and was directed to be listed on the Regular Board. It was called out on 11.4.2013 when arguments were heard in part on behalf of the appellant; respondent was also duly represented. The matter was renotified for 12.4.2013 as a part heard matter and has since remained on the Board. It has been called out on 16.04.2013. None has appeared for the parties. This Court,

therefore, had no option but to reserve the matter for judgment. Parties were also granted opportunity to file written synopsis. Appellant has filed his written submissions.

9 The thrust of the argument of the learned counsel for the appellant was that learned single Judge has assumed the role of an appellate body which is not its jurisdiction while hearing objections under Section 30 of the said Act; the scope of objections under Section 30 are limited and can in no manner be enlarged. Learned single Judge has re-examined and re-appreciated the evidence which is not permissible; the impugned order is liable to be set aside.

10 Learned counsel for the respondent although not having filed a separate appeal is also aggrieved by the fact that the amount awarded under Counter Claim No.2 has been aside; submission being reiterated that the scope of objections under Section 30 is a limited scope.

11 At the outset we may note that on 01.08.2006 while remanding the matter to the second Arbitrator learned single Judge had specifically noted that the minutes of the meetings recorded by the respondent evidenced the submission of the claimant that Ex.R-2 dated 01.8.1985 had been obtained under duress and coercion; this letter having been written two years after the last letter Ex.C-24, was completely out of context and was not in consonance with the other communication exchanged between the parties all of which clearly evidenced that it was the respondent who was responsible for the delay in the project and the

claimant had no role in the same. Learned single Judge had noted that no finding had been returned by the first Arbitrator on this aspect as to whether the letter Ex.R-2 had been obtained from the claimant under duress. Claim No.3, Additional Claim No.3 of the claimant as also Counter Claim No.2 of the respondent had accordingly been set aside.

12 It was in this background that the second Arbitrator had examined the oral plea made by the claimant that Ex C-2 had been obtained under duress and coercion. Apart from the fact that order dated 01.8.2006 had specified that the second Arbitrator would examine Ex.R-2 in the aforementioned light; the learned single Judge has also noted that the written minutes recorded by the department had evidenced this submission of the claimant. Thus, the learned single Judge holding that the Arbitrator was proceeding only on an oral submission is not correct.

13 That apart the Award dated 19.3.2009 has examined and scrutinized in detail and depth the pleadings and the evidence which was filed by the respective parties and it was in that light and context that Ex. R-2 was also scrutinized and after examining this evidence learned Arbitrator had returned a finding that Ex. R-2 had been obtained under duress and coercion. This was in the backing ground of earlier letters exchanged between the parties and as noted supra. Fact findings were positively returned by the learned Arbitrator. These fact findings were delivered on cogent reasoning based on the record of the case. Learned

single Judge by interfering in these fact findings has gone beyond the scope of what is permissible under Section 30 of the said Act.

14 The scheme of Section 30 of the said Act is to limit judicial intervention in Arbitral Proceedings. An Award can be set aside only on the ground enumerated therein. For proper appreciation of this provision it would be relevant to extract Section 30 of the said Act, which reads as under:

“30. Grounds for setting aside award.— An award shall not be set aside except on one or more of the following grounds, namely

- (a) that an arbitrator or umpire has misconducted himself or the proceedings;*
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Sec. 35;*
- (c) that an award has been improperly procured or is otherwise invalid.*

15 The Award cannot be challenged on the ground that the Arbitrator had arrived at a wrong conclusion or that the evidence had been appreciated in a manner different from that in which the appellate court would have appreciated it. In fact the Arbitrator has given his Award referring to the evidence oral and written available on record. This court is not an appellate body. The scope of objections under Section 30 of the Act are limited; where a reasoned Award has been passed by the Arbitrator there is little scope for interference as the Arbitral Tribunal is the sole judge of the quality as also quantity of the evidence and it is not for the court to take upon itself the task of being a judge on the evidence

which has been adduced before the Arbitrator. Unless and until there is an error apparent on the face of the Award, the Award may not be interfered with.

16 The Award dated 19.3.2009 is upheld and the impugned order is set aside. Appeal is allowed. Parties are left to bear their own costs.

INDERMEET KAUR, J.

SANJAY KISHAN KAUL, J.

APRIL 30, 2013
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