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

+ **FAO 295/2005**

Decided on 27th October, 2014

MCD

..... Appellant

Through : Mr. Parvinder Chauhan, Adv.

versus

M/S VINOD KUMAR & SONS

..... Respondent

Through : Mr. Avinash Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

1. By the judgment impugned in this appeal, learned Additional District Judge, Delhi has dismissed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act" for short) of the appellant.

2. Briefly stated facts are that Government of N.C.T. of Delhi proposed to construct multipurpose community centres and halls in different villages within the territory of Delhi. The work of construction was assigned to appellant as the executing agency. Executive Engineer (Project) Rural of appellant invited tenders for execution of different works, in anticipation of

administrative approval of expenditure sanction and on assurance of site to be handed over by the Block Development Officers to the executing agency. Respondent responded to invitation of tender in respect of multi-storey community centre at Village Bakhatawarpur and submitted its offer. Respondent, being lowest tenderer, was awarded work for construction vide work order dated 8th July, 1995. Subsequently, a formal contract was executed between the respondent and appellant on 8th December, 1995. It appears that site was not handed over, thus, work was not executed. However, respondent mobilised its resources for executing the work.

3. Disputes arose between the parties regarding payment in respect of the awarded work, which were referred to the Sole Arbitrator Mr. C.M. Vij, who entered upon the reference and after affording opportunity to the parties to file pleadings and lead evidence, vide award dated 31st July, 2002 held that respondent was entitled to ₹27,000/- against claim no. 1; ₹30,000/- towards claim no. 2; ₹40,000/- towards claim no. 3; ₹1,20,000/- against claim no. 5 (iv); interest @12% per annum on ₹2,17,000/- with effect from 1st April, 1996 against claim no. 6 and ₹20,000/- along with interest @ 12% per annum towards claim no. 8. As regards claim nos. 4, 5(i) to 5(iii) and 7 are concerned, same were rejected. Learned Arbitrator has passed a

speaking Award giving reasons for awarding the amounts against claim nos. 1, 2, 3, 5(iv), 6 and 8. Appellant filed objections under Section 34 of the Act before the trial court, which have been dismissed by the judgment impugned in this appeal.

4. Trial court has held that findings of the Arbitrator on the factual matrix cannot be interfered with as the Court does not sit in appeal and the Courts have to refrain from re-appreciating or re-evaluating the evidence or the material before the Arbitrator to substantiate its view. Unless perversity is writ large on the face of the award or the award suffers from the vice of jurisdictional error, sanctity of award should always be maintained. Reliance has been placed on M/s. Bharat Heavy Electricals Limited vs. M/s. Globe Hi-Fabs Limited, 112 (2004) DLT 205 and M/s. MSJ Construction Pvt. Limited vs. DDA 2013 (2) Arbitration Law Report 432 (Delhi). Trial court has also considered the finding of learned Arbitrator on each claim and has held that there was no perversity in the view taken by the Arbitrator. Claim no. 1 was for the loss of profit amounting to ₹3,25,215/-; whereas Arbitrator awarded ₹27,000/-. Trial court held that finding of Arbitrator cannot be termed as perverse in this regard. Appellant had taken a plea that respondent himself showed his desire to abandon the work vide letter dated

20th July, 1995, and requested for refund of security amount, thus, was not entitled to any claim. Learned trial court has held that this letter was of no consequence since subsequent thereto a contract was executed between the appellant and respondent on 8th December, 1995. Meaning thereby, respondent was keen to execute the work, inasmuch as appellant had entered into a written contract subsequent to letter dated 20th July, 1995. Trial court has noted that vide letter dated 8th July, 1995 appellant asked the respondent to commence the work at once and thereafter entered into a written formal contract indicating desire of respondent to execute the work. Trial court has noted that though respondent claimed 15% loss of profit amounting to ₹3,25,215/- on the tender amount of ₹2,16,81,000/-, however, only ₹27,000/- was awarded in view of the fact that cement and steel valuing ₹7,95,743/- was to be supplied by the appellant. Duration of the work was six months. Accordingly, Arbitrator has rightly held that respondent was liable to have reserve of ₹3,00,000/- for execution of work for a period of six months. Loss of profit was calculated @ 18% per annum on ₹3,00,000/- and not on the total value of work. Trial court has held that no perversity can be found in the approach adopted by the Arbitrator. I do not find the view taken by the trial court to be perverse or contrary to law. The award on

this point cannot be said to be beyond jurisdiction or contrary to the agreement entered into between the parties. Claim no. 2 was with regard to the reimbursement of amounts paid by the respondent to the labourers. Respondent had placed on record the bills evidencing payment to labour contractors. No contrary evidence was adduced by the appellant, inasmuch as claim was supported by the documentary evidence and was accepted by the learned Arbitrator. Trial court has rightly held that no perversity can be found in the approach adopted by the learned Arbitrator. As regards claim no. 3 of ₹40,000/- is concerned, same was also duly supported by the documentary evidence. Respondent had placed on record vouchers to substantiate this claim. Trial court has rightly held that no perversity could be found in awarding the said amount as well, which was based on the documentary evidence. Claim no. 5(iv) amounting to ₹1,20,000/- was also supported by the documentary evidence in the shape of vouchers. Respondent had claimed ₹1,75,000/- but had produced vouchers amounting to ₹1,20,000/- with regard to hire charges of machinery steel plates of centering, shattering, ballies challies etc. Accordingly, trial court has rightly held that no perversity could be found in awarding the said claim as well. Appellant has also failed to point out any of the grounds as envisaged under

Section 34 of the Act so as to claim setting aside of the award on such grounds.

5. It is trite law that civil court does not sit in appeal against the award and the power of the court when award is challenged is rather limited. The award of the arbitrator is ordinarily final and conclusive as long as the arbitrator has acted within the authority and according to the principle of fair play. If the dispute is within the scope of the arbitration clause it is no part of the province of the court to enter into the merits of the dispute. If the award goes beyond the reference or there is an error apparent on the face of the award it would certainly open to the court to interfere with such an award and not otherwise. In *Delhi Development Authority vs. R.S. Sharma and Co.*, New Delhi, JT 2008 (9) SC 362, Supreme Court has held thus:

“From the above decisions, the following principles emerge:

- (a) An Award, which is
 - (i) contrary to substantive provisions of law ; or
 - (ii) the provisions of the Arbitration and Conciliation Act, 1996 ; or
 - (iii) against the terms of the respective contract ; or
 - (iv) patently illegal, or
 - (v) prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the

Act.

(b) Award could be set aside if it is contrary to :

(a) fundamental policy of Indian Law; or

(b) the interest of India; or

(c) justice or morality;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.”

6. The claim before the learned Arbitrator is based on appreciation of evidence, more particularly the documentary evidence. It cannot be said that the award is based on no evidence or is against the public policy. It is not the case that Arbitrator has misconducted the proceedings or had gone beyond the terms of contract.

7. Appeal is, accordingly, dismissed.

A.K. PATHAK, J.

OCTOBER 27, 2014

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