

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

+ FAO No. 422/2012

% 15th April, 2014

A.R.BUILDERS Appellant

Through: None.

VERSUS

MUNICIPAL CORPORATION OF DELHI & ANR. Respondents

**Through: Ms. Tejasni Shetty, Adv. for Ms.
Shyel Trehan, Adv.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') impugning the judgment of the court below dated 11.6.2012 by which the objections filed by the appellant/objector under Section 34 of the Act, were dismissed.

2. The facts of the case are that the appellant-claimant was awarded the work of construction of 13 numbers of class-rooms, one hall, one office, one store and two laboratory blocks in MC Primary School, Pocket-B, Phase-1, Metro Vihar, Holambi Kalan by the respondent no.1

herein i.e Municipal Corporation of Delhi (MCD). Disputes and differences arose after completion of work which resulted in arbitration proceedings. Arbitration proceedings stood concluded on passing of the Award dated 5.2.2010, and by which Award while certain claims of the appellant were rejected but some were allowed and an Award was passed in appellant's favour for a sum of Rs.4,76,456/-alongwith interest at 9% per annum simple.

3. Appellant-objector challenged the Award on the ground that the appellant-objector is entitled to the new rates quoted and which aspect has been exhaustively dealt with by the arbitrator and the court below against the appellant by holding that the appellant no doubt had quoted new rates, however the entire contract was performed by the appellant at the old rates and therefore after conclusion of the work, appellant-objector cannot claim new rates merely because certain letters were given for claiming new rates before the contract was entered into. It is rightly noted by the arbitrator and the court below that admittedly the contract was entered into at the lower rates, and therefore, the stand of the appellant for higher rates was accordingly rejected by the arbitrator and the court below.

4. So far as the rejection of claim nos.2 and 7 are concerned, these claims were dismissed because the arbitrator holds that no evidence

whatsoever was led by the appellant. This aspect has been considered by the court below rightly in para-2 of the impugned judgment alongwith the aspect of challenge to the rate of interest and with which reasoning I agree with.

Para-2 of the impugned judgment reads as under:-

“2. After going through the reply and the award passed by Ld. Arbitrator, I find that Ld. Arbitrator has thoroughly gone through the evidence and material placed on record. While denying the claim of the petitioner for an amount 30% over and above the quoted rates on the gross amount, Ld. Arbitrator has considered the various letters sent by the petitioner to the respondent and also the letter of award of work of a similar nature with same schedule and specification but has declined the relief in this regard on the ground that even after the demand of 30% extra rates over and above the quoted rates, the respondent had executed the agreement with the respondents/MCD on 08.06.04 at their original rates i.e. 7.66% below the estimated rates at their own sweet will. Considering that petitioner despite demand on 30% extra rate above the quoted rates vide their letter themselves entered into agreement at the old quotations leads to inference that they had waived the condition imposed vide their letters and thus it can not be said that Id arbitrator has not considered the documents and material placed on record. Thus there is no ground to set aside the finding on issue no. 2. Further, while declining the claim no.6, Ld. Arbitrator after considering the evidence on record has given the finding the claimants have not supplied the exact quality of material theoretically required and actually consumed at sight to show that there was actually wastage due to re-cartage of material by the tractors. The claimants have failed to substantiate their claim conclusively. This court is not sitting in appeal against the award passed by the Ld. Arbitrator and re-appreciate the evidence placed on record. Perusal of list of documents filed alongwith the statement of claim also reveals that vide annexure E, the petitioner has just filed a statement

with regard to cost of material wasted in re-carting, re-handing, loading, unloading etc. due to uneven road and no documentary evidence has been placed on record. With regard to decision of claim no. 7 also, Ld. Arbitrator has declined the relief for want of evidence. It has been observed that though the claimants have filed a claim of Rs.41,300/- towards the staff engaged with effect from 20.06.05 to 25.11.05 due to delay in the completion of work, however, no supporting document had been filed in support of the said claim. From the documents placed on record also, it is revealed that no such documents have been placed on record by the petitioner in respect of the loss caused to petitioner due to delay in completion of the work. The claimants claim with regard to cost of proceedings on the ground that respondent had dragged the petitioner into litigation has also been declined and parties are left to bear their own cost of litigation. Considering the Section 31(8) of Arbitration and Conciliation Act provides that unless and otherwise agreed by parties, the costs of an arbitration shall be fixed by arbitral tribunal who shall specify the party entitled to cost, the party who shall pay cost, amount of cost and manner in which cost shall be paid. There are no guidelines for fixing the cost and discretion has been given to arbitrator to fix the cost. Thus there is no reason to interfere in the discretion of the arbitrator to fix the cost.

It has also been prayed to increase the interest from 9% per annum to 18% per annum as awarded by Id Arbitrator. Section 31 (7) of Arbitration and Conciliation Act provides unless otherwise agreed by the parties where in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which award is made interest, as such rate as it deems reasonable, on the whole or any part of money, for the whole or any part of period between the date on which cause of action arose and the date which the award is passed. Since there is no agreement between the parties with regard to payment of interest on delayed payment, the arbitrator in its discretion can award reasonable interest. I do not find any unreasonableness in awarding 9% of interest. Though, it has been argued that award passed by Ld. Arbitrator is against

public policy, considering that Ld. Arbitrator has passed the award on the basis of the agreement between the parties and law, I do not find the same to be against the public policy.’’
(underlining added)

5. The scope of hearing objections to an Award under Section 34 of the Act is limited. Courts do not sit as an appellate court while hearing objections under Section 34. Once the arbitrator takes one possible and plausible view, courts cannot interfere merely because another view is possible. In the present case, besides the fact that arbitrator could have taken one possible view, arbitrator has in fact taken the correct view and which has been accepted by the court below. If the scope of hearing objections to an Award is limited, then the appeal filed against the judgment dismissing the objections has further limited scope.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

APRIL 15, 2014
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VALMIKI J. MEHTA, J.