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

+ **FAO(OS) 454/2009**

**M/S K.C. CHIBBERS AND CO.** ..... Appellant

Through: Mr. K.C. Chibber, in person.

versus

**DELHI DEVELOPMENT AUTHORITY  
NEW DELHI**

..... Respondent

Through: Mr. Dhanesh Relan, Mr. Rajeev Jha  
& Ms. Komal Sarout, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MS. JUSTICE REKHA PALLI**

**ORDER**

**22.04.2019**

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1. The proprietor of the appellant firm Mr. K.C. Chibber is present. He states that he has disengaged Mr. Harish Malhotra, Senior Advocate, as well as Mr. Rajendra Aggarwal, Advocate, who were representing him in the present appeal. He states that he would engage another counsel to advance submissions on behalf of the appellant.

2. We had heard arguments of learned counsels on 04.04.2019. Upon hearing of the appeal, we had made it clear to Mr. Malhotra that we do not find any infirmity with the impugned order passed by the learned Single Judge setting aside the award in favour of the appellant. However, only with a view to save time and effort of the matter being referred to arbitration

again by initiating proceedings under Section 11 of the Arbitration and Conciliation Act, we had adjourned the matter to 10.04.2019 to enable learned counsel for the respondent to take instructions as to whether a fresh Arbitrator could be appointed in these proceedings itself.

3. On the last date, i.e. 10.04.2019, learned counsel for the respondent had no instructions and the matter was adjourned for today.

4. Mr. Relan, on instructions, today states that the respondent is agreeable to the matter being referred to arbitration in terms of the arbitration agreement between the parties which empowers the Vice-Chairman of the DDA to appoint the Arbitrator.

5. The appellant Mr. K.C. Chibber, as aforesaid, seeks to engage a counsel to argue the matter afresh. We are not inclined to re-hear the matter only on account of the fact that the appellant wishes to engage another counsel. We had concluded the arguments on 04.04.2019 itself and made it clear to learned senior counsel for the appellant Mr. Harish Malhotra, in the presence of Mr.K.C. Chibber, that we are not inclined to interfere with the impugned order. The appellant is, however, not agreeable to proceed to arbitration again and invites our decision in the present appeal and we proceed to record our reasons for dismissing the same.

6. The appellant was awarded the work of construction of 936 Janta Houses at Pitampura (Poorvi) Pocket V vide agreement No.48/EE/DD-II/80-81. Disputes arose between the parties in relation to the said agreement, which were referred to arbitration. The learned Arbitrator Mr. O.P. Goel rendered his award dated 30.12.2005 awarding an amount of Rs.32,06,206/- with future interest @ 9% per annum on the amount of Rs.8,72,898/- from

the date of the award till realisation. The learned Arbitrator had grouped the claims into five groups as follows:

- “Group – I Bill payment*  
*Claim nos. 1, 3, 5, 12, 13, 14, 15, 16, 17 and*  
*Additional claim 4.*  
*Counter-claim nos. 1, 2, 3, 4 & 12.*
- Group – II Increase in rate of work/materials*  
*Claim Nos. 4, 7, 8, 9, 10 and Additional claim*  
*no. 3.*
- Group – III Delay claims*  
*Claim nos. 2, 6, 11, 18, 19, 20, 21, 22, 23 and*  
*Additional Claim no. 1 and Additional claim no.*  
*2.*  
*Counter-Claim Nos. 6 and 7.*
- Group – IV Other claims*  
*Counter-claim Nos. 5, 9, 10, and 11.*
- Group – V Interest and costs*  
*Claim no. 24.*  
*Counter – claim no. 8.”*

7. The learned Arbitrator had allowed some of the aforesaid claims while passing the impugned award. The respondent DDA had also raised counter-claims, which were rejected by the learned Arbitrator. To defend the claims of the appellant claimant and support its own counter-claims, the respondent DDA had produced and relied upon a report prepared by an inquiry committee appointed by the Central Building Research Institute, Roorkee (CBRI) to inspect the buildings and structures raised by the appellant and to report with regard to the quality of the work done by him.

Though the impugned award takes note of the said report, the same did not deal with the findings returned in the said report.

8. Pertinently, the appellant claimant had not contested the factum of making of the said report during the arbitration proceedings. It is also pertinent to note that the respondent DDA had repeatedly made endeavours to have the works inspected but orders were not passed by the Arbitrators and, obviously, the appellant did not cooperate and did not want the works executed by him to be inspected.

9. The learned Single Judge, while passing the impugned judgment dated 23.07.2009 has found that the Arbitrator has completely ignored and effaced the report prepared by the said inquiry committee of the CBRI. The learned Single Judge has set out in the impugned judgment the serious lacunas found in the works executed by the appellant which, inter alia, showed that the structures raised by the appellant were extremely weak and dangerous since they did not even have the requisite foundations. The following extract from the report of the CBRI were taken note of by the learned Single Judge in the impugned judgment.

*“7. The relevant extracts of report which speak of the quality of work, necessary to pay attention are as under:*

*“All these buildings had been planned as three storey structures with load bearing brick work construction having spread footing foundation and RCC slabs in intermediate floors and roof.*

*xxxxxx xxxxxx*

*In general, it was observed that the depth of foundations were provided as per drawing, **but the widths and profiles of the foundations were not faithfully executed. There were no base concrete***

*projections but the brick masonry walls were started from entire width of base concretes which too instead of 15 cm deep as provided in drawing referred above were only 8 to 10 cm thick. Some typical sections of the foundation showing the anomaly are shown in Figs. 10, 11 and 12. It may be seen that the steps in the foundation masonry have not been correctly provided.*

*xxxxxx xxxxxx*

*In view of this finding, it is suggested that for all such walls where only 34.5 cm thick brick has been provided without any regular steps, the entire foundation masonry wall should be dismantled and proper foundation provided.*

*xxxxxx xxxxxx*

*In the masonry, a large number of brick-bats had been used, the mortar joints were very thick and not properly filled. There was no proper key at the junctions of walls and due to this, separation cracks had developed. It was also seen that there was efflorescence in the masonry walls and substantial percentage of the bricks were showing deterioration; some parts of the wall surfaces were showing powdering effect. The mortar in the joints was very weak and it could be easily removed by finger-touch. A substantial percentage of the walls were out-of-plumb. It was also observed that during one of the inspections, a wall panel fell down due to high wind.*

*xxxxxx xxxxxx*

*It was observed that the quality of concrete was very poor. One cantilever chajja had fallen (Fig.22) and it was noticed that the reinforcement in cantilever portion had not been provided correctly. At number of places there was no cover of concrete to the main reinforcement, it was*

*exposed and getting rusted (Fig.23 to 25). The slab concrete was of poor quality and with the pressure of the foot the whole slab could oscillate. There was a deflection of upto 4 cm in the slabs at mid-span (fig. 26 and 27). There were cracks in the slabs at the wall supports (Fig. 28 and 29). This indicated that no negative reinforcement might have been provided at the supports. A part of the slab was got cut at one of the supports. There was no negative reinforcement seen in the slab (Fig. 30). Lot of honey-combing was observed in the RCC works. This showed that neither adequate care was taken in maintaining the proper grading of the aggregates nor was the concrete properly compacted. It also appeared that even proper curing of the slabs was not done, as there were large number of fine cracks. In one of the beams of verandah slab, there was a sag of about 3 cm (Fig.31).*

xxxxxx xxxxxx

*From this, it may be seen that almost in all the walls, the existing 23 cm thick walls are not safe to bear the loads of three storeys. However, 34.5 cm thick foundation masonry is capable of bearing the load of 101 012 N/m which is more than the accrual maximum load on any walls. Hence, the foundation masonry upto plinth is considered adequate, of course, with some minor repairs and plinth beams as described subsequently under the recommendations.*

*G. However, rebound hammer tests were carried out on the slabs at six points as shown in Fig. 32. It was observed that rebound hammer test readings were between 10 to 12 only. This showed that the strength of concrete of RCC slabs was very much weaker than the required strength M 15. By extrapolation it was seen that the concrete*

*strength may be only 4N/nm<sup>2</sup> or so.”*

8. CBRI gave its conclusions and recommendations as under:

*“The foundations of the load bearing walls of all the blocks be excavated for a part-length of about 1 metre to check the foundation profile. In case, it is found that the foundation masonry has been started with only 34.5 cm thick brick wall as had been noticed in block no.12, **all such foundation masonry walls should be dismantled. Proper excavation should be got done and the entire foundation including base concrete and brick masonry be re-done, keeping the minimum width of the base concrete as given in Table 1 column 6 or the same profile as given in the foundation design drawing of DDA dated 10.1.81 referred to earlier be followed.***

*In case, in any wall, the width of the foundation is found to be less than the minimum width specified in Table-1 column(6) the entire foundation be redone as mentioned in (1) above.*

*Since the joints in the plinth masonry have not been filled in properly, raking of mortar to a depth of 30mm should be done in the masonry from ground level to plinth level on both faces and cement-sand mortar 1:4 should be filled in and the masonry be cured for a week.*

***Even if it is considered to rake mortar joints and refill with 1:4 cement-sand mortar, the existing walls not being properly bonded and out-of-plumb, the required strength of the masonry cannot be achieved. In view of this, the walls of all the blocks including block nos. 1 & 6, where RCC slab of the ground floor roof had been laid be dismantled above plinth level.***

*Since the foundation masonry is having some*

*irregularities in respect of proper stepping, to transfer the superstructure load uniformly, it is recommended that a RCC plinth band on all the load bearing walls at plinth level should be provided (Fig. 33). Before laying this plinth band, top three courses of brick masonry of 34.5 cm thick walls at plinth level should be removed. Two courses should be re-laid with bricks of 7.5 N/nm<sup>2</sup> with 1:6 cement sand mortar.*

***There was lot of honey-combing in the concrete and the entire slab oscillated even on walking over it. There was a deflection of 4 cm which is about 1/10 of the span. This deflection may be due to not only poor concrete, but even adequate reinforcement may not have been provided. Further, there was no negative reinforcement provided at the wall supports. The rebound hammer test indicated a very low compressive strength of concrete-only 4N/nm<sup>2</sup> . On account of such low strength concrete, excessive sagging, inadequate cover to the main reinforcement and no negative reinforcement at required place, even if any strengthening measures are to be provided, these will amount to almost providing a new slab. In view of all these points, the RCC slabs of both blocks 1 and 6 are to be dismantled. ””***

10. The defence of the respondent DDA was that the works carried out by the appellant, till they were discontinued, were so poor in quality and workmanship, and also in such violation of the drawings, that the entire work had to be re-done from scratch.

11. In the light of the aforesaid, the learned Single Judge set aside the impugned award in its entirety. We may set out the extract from the impugned judgment which records the findings of the learned Single Judge

premised upon the report prepared by the CBRI. The same reads as follows:

*“9. It is apparent from a perusal of the defects and the weaknesses mentioned by CBRI and the recommendations of CBRI that there was no manner of salvaging the existing structure. CBRI had recommended excavation of all foundations including base concrete and recommended re-doing of brick masonry and concrete work. The foundation of any building cannot be redone without demolishing the building. The second recommendation was again for re-laying the foundation. The other recommendations regarding walls were such that the walls had to be dismantled. Recommendation regarding RCC slabs was that the quality of RCC slab was also very poor and the same had to be demolished. The CBRI, in view of irregularity in respect of foundation recommended providing of RCC plinth, on all load bearing walls. The RCC slabs already constructed oscillated even on walking and there was deflection of about 1/10th of the span so CBRI recommended demolition of all these RCC slabs. Looking into these recommendations of CBRI no course was left with DDA but to demolish the entire structure. The annexed along with the report of the CBRI are photographs and sketches showing deviations made by the contractor in connivance with DDA Engineers, in providing a weak and inadequate foundation. It is certain that if further construction had been permitted over this structure having weak foundations, shaky and unsafe slabs and walls, (which came down with the flow of wind) the persons to whom these flats had been allotted would have been thrown into a death trap.”*

12. The submission of learned senior counsel for the appellant was that the report prepared by CBRI was an ex-parte report and the appellant contractor was not associated in its preparation. We find that even before the learned Arbitrator no such plea was raised by the appellant. As noticed above, the appellant also did not show any willingness to have the site

inspected by the Arbitral Tribunal despite the respondent DDA asking for the same.

13. In our view, the appellant could not be heard at such late stage to raise a doubt with regard to the report of the CBRI on the ground that it was ex-parte. Pertinently, CBRI is an independent institution and it had no reason to furnish either an incorrect, or a biased report against the appellant. Its report shows that it was founded upon the facts which it found at the site upon its inspection.

14. Mr. Malhotra further argued that the learned Single Judge had proceeded on the basis that there was corruption in the making of the impugned award and there was no basis for such a finding to be returned by the learned Single Judge. Even if we were to accept this submission, the impugned order does not call for interference. The findings returned by the learned Single Judge on the said aspect were only incidental keeping in view the fact that the impugned award was clearly erroneous and made in complete ignorance of the report of the CBRI.

15. In view of the aforesaid, we find no merit in the present appeal and dismiss the same.

**VIPIN SANGHI, J**

**REKHA PALLI, J**

**APRIL 22, 2019**

*B.S. Rohella*