

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 33 OF 2014

Union Of India

.. Appellant

Vs.

M/s. Arun Kumar Deedwania & Anr.

.. Respondents

...

Mr. Vinod Joshi for the Appellant.

Mr. Vishwajeet P. Sawant i/b Mr. Prabhakar Jadhav for the
Respondents.

...

CORAM : A.A. SAYED, J.

DATED : 18 JUNE 2015

ORDER:

This Appeal has been filed by the Appellant-Union of India under section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "1996 Act") impugning the order dated 2 May 2014 of the District Court, Pune rejecting the Civil Misc.Application No.450 of 2011 filed by the Appellant seeking to set aside the Arbitration Award dated 5 February 2011,(as modified on 15 March 2011).

2. The only dispute raised in the present proceedings is with regard to unit mentioned in "Item 3 of Schedule A Part VII" of the Contract between the Union of India and the Respondent No.1. Learned Counsel for the Appellant-Union of India submitted that there was a typographical error in the said Item 3 of Schedule A Part VII of the Contract and the unit was erroneously mentioned as "SQM" in the Contract instead of "10 SQM". It is contended that the said Item technically would be required to be "10 SQM" as the other similar corresponding relating items have been correctly mentioned as "10 SQM" and the Respondent No.1 cannot be allowed to take advantage of this typographical error and insist upon increase in payment. It is contended that the learned Arbitrator and the District Court have erroneously rejected the contention of the Appellant and the Appeal be allowed.

3. The learned Arbitrator after considering the documents on record and particularly the terms of the Contract came to the conclusion in paragraph 53.9 of the Award that all provisions are clearly stated and no different meaning can be implied from the one that can be inferred and understood by direct reading of Schedule A Part VII and Unit thereof. The learned Arbitrator did not find any reason for a Tenderer to

consider any other meaning than what is clearly mentioned in tender documents. It is observed by the learned Arbitrator that a Tenderer works out his quotation for the complete Schedule and the working out of lumpsum is based on quantities in the provisional Schedule and the rates are worked out by the Tenderer for each item in arriving at his lumpsum quotation for entire Schedule. The learned Arbitrator has agreed with Respondent No.1's contention that any different interpretation and dealing in a single item in the Schedule with any change shall result in change in basis of overall working of tender and quoted percentage. The learned Arbitrator also agreed that the Respondent No.1's quotation/ rate/ percentage is based on calculation as stated therein and no item can be dealt as individual or independent item as the amount quoted is lump sum, independent of what pre-priced figure is inserted by the Appellant. It was further held that Schedule A description and rate cannot be altered in the add back DO as it shall be against the condition and provision of the Contract affecting quotation of the Contractor.

4. Thus, the issue raised is essentially whether or not there was a typographical error in Item 3 of Schedule A Part VII. The learned Arbitrator after appreciating the material on record has arrived at a pure

finding of fact that the same was not a typographical error. Admittedly, there was no evidence led before the learned Arbitrator to substantiate the contention that there was a typographical error. The Arbitrator is stated to be a high ranking officer of the rank of Chief Engineer and occupying second position in the Engineering Department of the Appellant/Union of India and is an expert in the field. Learned Counsel for Respondent No.1 points out that there was even a revision in rates, but the unit SQM had remained unchanged and if there was a typographical error that would have been rectified by the Appellant.

5. Considering the facts and circumstances of the case, in my view, the District Court has rightly dismissed the Application of the Appellant as it is impermissible for the District Court in its limited jurisdiction under section 34 of the 1996 Act to disturb the findings of facts arrived by the Arbitral Tribunal. Even before this Court, except to contend that there was a typographical mistake, the Counsel for the Appellant-Union of India has not canvassed any other submission so as to warrant interference with the impugned order passed by the District Court. The judgment of the Division Bench of Madras High Court in **M/s.Sree Kamatchi Amman Construction v/s. The Divisional Railway Manager/Works, Palghat Division,Kerala** also supports the

case of the Respondent No.1. The Appellant-Union of India has failed to make out any ground to interfere with the impugned order of the District Court passed under section 34 of the 1996 Act.

6. The Appeal is accordingly dismissed with no order as to costs.

(A.A. SAYED, J.)

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