

THE HON'BLE SRI JUSTICE K.C.BHANU
AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.30 OF 2004

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JUDGMENT: (per Hon'ble Sri Justice K.C.Bhanu)

This Civil Miscellaneous Appeal, under Section 39 of the Arbitration Act, 1940 (for short, 'the Act') is directed against the order and decree, dated 14.10.2003, in Arbitration Original Petition No.52 of 1995 passed by the Principal Senior Civil Judge, Tirupati.

2. The brief facts that are necessary for disposal of the appeal may be stated as follows:

Originally, there was an agreement between the appellant herein and respondent No.1 herein for construction of staff quarters at Tirupati; that thereafter, work was allotted to the appellant vide letter, dated 19.03.1985; that as per the terms of agreement, the work shall be completed within ten (10) months i.e., by 02.02.1986; that as the site was not handed over and no boundary markings were fixed by respondent No.1, there was delay of two months in completing the work; that as the site was not in conformity with the approved plan, there was a delay of another four months; that because of delay, the cost of labour and other material has been increased and in that regard, there were exchange of letters between the appellant and respondent No.1; that in the month of February, 1987, Junior Engineer asked the appellant to dismantle the lofts, for which the appellant protested; that a show cause notice was issued to the appellant on 23.03.1987, for which he gave reply and hence, the appellant filed the Arbitration Original Petition under Section 30 of the Act to set aside the award, dated 27.01.1995, in Case No.ARB/SSJ/608 passed by respondent No.2 and to appoint

a new Arbitrator, either a retired District Judge or a retired Chief Engineer (other than C.P.W), to conduct arbitration proceedings.

3. Respondent No.1 herein filed counter stating that in spite of several reminders to speed up the work, the appellant completed only 65% of the work by the end of June, 1986; that as there was no substantial progress of the work, a final notice was issued informing the appellant that the Security Deposit and Earnest Money Deposit would be forfeited; that in spite of the same, there was no response from the appellant, hence, he prays to dismiss the petition.

4. Basing on the above pleadings, the following points have been framed for consideration:

“1) Whether there are grounds to set aside the award dated 27.01.1985 or not and if so whether new Arbitrator is to be appointed?

2) To what relief?”

5. To substantiate the case of appellant, P.W.1 was examined. On behalf of respondent No.1, R.W.1 was examined. No documents were marked on behalf of either side.

6. The learned Senior Civil Judge, Tirupati after considering the evidence on record, dismissed the Arbitration Original Petition. Hence, this appeal.

7. Learned counsel for the appellant contended that the appellant is entitled to Security Deposit and Earnest Money Deposit, which were given at the time of entering into the agreement with respondent No.1; that the appellant is entitled to money for the work done carried out by him in terms of agreement and the same has not been taken into consideration by the trial Court; that he kept the cement bags in the godown; that due to long delay in using the

cement, the cement became useless; that respondent No.1 ought to have been paid the cost of material used and wages to labour due to escalation of prices for the delayed period and hence, he prays to allow the appeal.

8. On the other hand, learned Assistant Solicitor General appearing for respondent No.1 contended that in spite of issuing a show cause and several reminders to complete the work, the appellant has not completed the work within the stipulated time; that even though respondent No.1 issued a notice to forfeit the Security Deposit and Earnest Money Deposit if work has not been completed in time, there was no change in the attitude of the appellant; that as no claim was made with regard to Earnest Money Deposit and Security Deposit, the arbitrator rightly disallowed the same; that the Department incurred further expenditure by entrusting the work to another contractor because of laches committed by the appellant and hence, he prays to dismiss the appeal.

9. Under Section 30 of the Act, the appellant has to establish that his case falls under any one of the clauses as mentioned below for setting aside the award.

“30. Grounds for setting aside the 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 after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;
- (c) that an award has been improperly procured or is otherwise invalid.”

Unless it is shown that the arbitrator acted in *ultra petita*, ordinarily this Court would not interfere with the award passed by the arbitrator. Mere error apparent on the face of the record is not a

ground for setting aside the award. It must be shown that the arbitrator exceeds his jurisdiction or acted contrary to the terms and conditions of agreement.

10. The first contention of the learned counsel for the appellant is with regard to refund of Earnest Money Deposit and Security Deposit. On that aspect, a categorical finding has been recorded by the arbitrator in the award, which reads as follows:

“Counter Claim No.14: The Respondent-Contractor claims return of security Deposit and Earnest Money Deposit.... (Amount claimed not specified).

AWARD: The Respondent has not indicated the amount of this Counter claim. Nothing is, therefore, awarded in favour of the respondent against this counter claim.”

The said finding is not shown to be perverse or not based upon any material on record. When the amount is not specified in the claim, the arbitrator cannot presume the amount and pass an award. The said finding has become final.

11. The second contention of the learned counsel for the appellant is with regard to counter claim No.2, which is relating to final bill amount of Rs.1,17,403.35 ps and the same has not been accepted by the appellant. Basing on the material available on record, the arbitrator passed an award in Counter Claim No.2, which reads as follows:

“AWARD:
The respondents stated that the final bill amount prepared by the claimants is not acceptable to him but no details have been filed by him. The Counter Claim is, therefore, held to be not substantiated. Nothing is, therefore, awarded in favour

of Respondent against this Counter Claim.”

In the absence of any material, the arbitrator cannot adjudicate the claim with regard to the final bill. Therefore, the said finding is not shown to be based upon any record. No material is filed before the trial Court to show that the appellant is entitled to amount for the final bill. Therefore, the trial Court rightly dismissed the Arbitration Original Petition as the appellant failed to establish that his case falls under any one of the clauses mentioned in Section 30 of the Act. The contentions raised by the learned counsel for the appellant are not even shown to be error of fact apparent on the face of record and that order needs no interference by this Court.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

FEBRUARY 04, 2015

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DATE: 04.02.2015

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