

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.Nos.1099 and 1871 of 2000

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COMMON JUDGMENT:(per Hon'ble Sri Justice M. Seetharama Murti)

These appeals by the Vijayawada Municipal Corporation are filed assailing the common order dated 01.07.1999 of the learned Principal Senior Civil Judge, Vijayawada made in OP.Nos.171 and 191 of 1989.

2. Since both the appeals arise out of a common order, they are heard together and are being disposed of by this common judgment.

3. We have heard the submissions of the learned counsel for the appellants and the learned counsel appearing for the 1st respondent. The 2nd respondent is the learned Arbitrator. We have perused the material record.

4. The parties in these appeals shall hereinafter be referred to as the appellant Corporation and the 1st respondent/Firm for convenience and clarity.

5. The facts necessary for consideration, in brief, are as follows: - 'The first respondent and the appellant herein had entered into an agreement for the work of 'construction of a commercial complex in Arundal Choultry premises front building' under Agreement No.30/79-80/E4, dated 31.01.1979. During the course of the execution of the said work covered by the said agreement, disputes and differences had arisen between the parties to the agreement and therefore, the matter was referred to an Arbitrator as per the terms of the said agreement. The Arbitrator had earlier passed an Award dated 06.08.1989 without

assigning any reasons. Therefore, the civil Court had called upon the learned Arbitrator to assign reasons. Pursuant thereto, the learned Arbitrator had furnished reasons on 10.04.1991 for his Award dated 06.08.1989. Having been aggrieved of the said Award, the appellant had preferred OP.No.171 of 1989 requesting to set aside the award. On the other hand, the 1st respondent had preferred OP.No.191 of 1989 before the Court below under Section 29 of the Act requesting to make the Award the rule of the Court and pass a decree in terms thereof together with interest at 18% per annum simple from the date of the decree. By the impugned common order, the Court below had partly allowed both the petitions filed by the appellant and the 1st respondent. Therefore, the appellant Corporation is before this Court.'

6. The learned counsel for the appellant would contend as follows: - 'The order of the Court below confirming the award of the Arbitrator is unsustainable as the findings of the Arbitrator under claim No.1-A are contrary to the clauses in the agreement between the parties. The Contractor is not entitled to claim compensation on account of the delays and hindrances to work for whatever reason. The findings of the learned Arbitrator concerning item No.1-B is against the spirit of Section 73 of the Contract Act as well as clause 69 of the MDSS. The claim of compensation under various heads is not direct but remote and therefore, the said claims for compensation are unsustainable. The claimant had failed to produce his income tax returns and credible evidence for establishing his various claims and entitlement to the amounts allowed by the Arbitrator. The learned Arbitrator mis-conducted himself during the course of proceedings of arbitration. The interest awarded is on the higher side and the Arbitrator ought not to have allowed interest at the rate of 15%. Therefore, the common order impugned and the award of the Arbitrator are liable to be set aside.'

7. On the other hand, the learned counsel for the 1st respondent would submit that when the Arbitrator was called upon to assign reasons he had furnished reasons for allowing, partly allowing and disallowing the various claims of the contractor and that the cogent reasons assigned by the Arbitrator in support of the award are valid and sustainable and that the court below had discussed the facts accurately and the evidence in right perspective and that the Court below having examined all the claims allowed and the reasons in support of the same found that there are no valid and sufficient grounds made out by the appellant Corporation as required under law for setting aside the Award and therefore, the Court below had accordingly confirmed the Award and made the Award the rule of the Court and had passed appropriate orders in consequence thereof and hence, the present appeals are devoid of merit and are liable to be dismissed.

8. During the course of hearing, the learned counsel for both the sides had fairly submitted that the 1st respondent is a firm of Contractors and that pursuant to the award, the amount was deposited and was withdrawn by the Managing Partner and that the said partner had died and is no more and that another partner of the firm is brought on record to represent the 1st respondent firm.

9. Now the only point for consideration is as to whether valid and sufficient grounds and grounds as required under the facts and the law are made out by the appellant Corporation calling for interference with the common order of the Court below?

10. **POINT:**

10. (a) We have given earnest consideration to the facts and the submissions. We have carefully gone through the Award and the common order which is impugned.

10. (b) The claims made by the 1st respondent Firm and the claims allowed either in full or part and the claims disallowed by the learned Arbitrator are as under:

The claim no.I(A) is towards reimbursement of extra expenditure incurred due to suspension of work etcetera. The said claim for Rs.3,88,000/- was allowed and awarded.

The claim under claim I(B) is for Rs.6,56,575/- towards compensation for the losses sustained from the date the amount fell due up to 04.07.1988. The said claim was allowed partly and a sum of Rs.2,79,400/- was awarded determining the rate at 12% in stead of 24%.

The claim No.II(A) was for a sum of Rs.1,18,400/- towards extra over head charges. The said claim was allowed partly and Rs.93,000/- was awarded.

The claim No.II(B) was for Rs.1,72,627/- towards losses sustained from the date the amount fell due up to 04.07.1988. The said claim was allowed partly and a sum of Rs.67,000/- was awarded determining the rate at 12% per annum.

The claim No.III(A) was for Rs.1,95,550/- towards reimbursement of loss sustained due to keeping machinery, equipment and labour idle. The said claim was allowed partly and Rs.1,55,000/- was awarded.

The claim No.III(B) was for Rs.3,53,858/- towards losses sustained from the date the amount fell due up to 04.07.1988. The claim was allowed partly and Rs.1,30,200/- was awarded determining the rate at 12% in stead of 24%.

The claim no.IV(A) was for Rs.1,69,200/- towards reimbursement for loss sustained by way of advance paid to labour but could not be recovered. This claim was allowed partly and Rs.1,00,000/- was awarded.

The claim No.IV(B) was for Rs.3,10,036/- towards compensation for the losses sustained from the date the amount fell due up to 04.07.1988. This claim was allowed partly and Rs.84,000/- was awarded.

The claim No.V and VI were respectively for Rs.1,02,000/- towards loss sustained due to delay in realization of E.M.D and W.H.A and Rs.21,354/- towards reimbursement of loss caused by the delay in the release of full rates for

supplemental items of work. The claims which are considered together were partly allowed and Rs.50,000/- was awarded.

The claim No.VII which was for Rs.12,91,716/- towards damages for gains prevented (loss of prospective profits) was rejected.

The 1st respondent Firm also claimed for award of interest at 24% per annum on the amount to be awarded from the date of the reference to the date of actual payment or the date of the decree of the Court whichever is earlier. The learned Arbitrator awarded interest at 18% per annum on the amounts awarded.

10. (c) We have carefully gone through the reasons assigned for allowing/ partly allowing the claims which are referred to supra.

The learned Arbitrator while considering the claim under I(A) had referred the documents particularly the letters dated 04.01.1980, 14.05.1980, 22.05.1980 and 21.07.1980. Under the said letters the appellant had directed the 1st respondent to first stop the further construction work on the plea that the Government had directed the appellant to do so; the appellant later, i.e., after about four months ten days, had again directed the 1st respondent to resume the work; and again within seven days thereafter the appellant had once again stopped the work and had again directed on 21.07.1980 to proceed with the work.

The Arbitrator had considered that due to the directions in regard to the stoppage and resumption of the work as above there was not only inconvenience but also dislocation of work and also loss of precious working period. The learned Arbitrator further noted that in the meanwhile the market prices of materials and labour etcetera had increased considerably resulting in the increase in the cost of the execution of the work. The learned Arbitrator had also noted that the 1st respondent Firm had addressed letters dated 28.05.1980, 24.06.1980 and 14.07.1980 and other letters informing the appellant that the resumption

of work was subject to the conditions that their claims would be settled satisfactorily and that the 1st respondent firm would be entitled to enhanced rates for the balance work and that no further obstacles would be placed in the execution of the work. It is also observed by the learned Arbitrator that the appellant was under an obligation to supply in time steel and cement of the required quantities to the 1st respondent Firm and that even in fulfilling that obligation there was undue delay on the part of the appellant. He had further considered the calculations furnished in the exhibit A3 in regard to this claim and had also recorded a finding that the correctness of the calculations is not in dispute. Having thus examined this claim in detail, the claim was allowed. Similarly, the claim under I(B) is only a compensation for the loss sustained due to undue delay in payment of the amount due under claim no.I(A) and this claim was made by adopting rate at 24% per annum from the date the amount fell due and should have been paid. Even for this claim, the 1st respondent Firm had furnished details in a statement. Considering that the rate at 24% is on the higher side, the award is restricted to the amount allowed by adopting the rate at 12%.

Under claim no.II(A) the 1st respondent Firm brought out the fact that the execution of the work was delayed due to several delays caused by the appellant and that therefore, the 1st respondent had to continue the work much beyond the agreed period of completion and had to incur extra expenditure over supervisory staff, agents, watchman, operators for mixtures etcetera employed by them and that therefore, they are entitled to extra over head charges incurred by them. This claim was not even specifically denied in the counter except by a bald denial. The 1st respondent had also filed rejoinder in respect of this claim. The fresh points raised during the course of the hearing were also considered by the Arbitrator. In view of the answer to the claim no.I and the fact that

the appellant was responsible for the delays having had frequently stopped the work and given directions for resumption of the work, the Arbitrator allowed this claim in part and also the claim no.II(B) towards compensation for losses sustained by the 1st respondent due to undue delay in payments on this count by determining the rate at 12% in stead of 24% as claimed by the 1st respondent.

While considering the claim under III, the Arbitrator kept in view the reasons assigned under the claim nos.I and II and had further accurately considered the relevant facts. He had noted that the 1st respondent had made all arrangements for completion of work within 30 months and that the 1st respondent had invested large amounts towards procuring labour, transport of machinery, equipment etcetera and that there was delay in supply of designs and drawings by the appellant and that the work had commenced only in April, 1979 and that thereafter there was sudden stoppage of work on several occasions and that therefore, the men, material, machinery and equipment etcetera were kept idle. The Arbitrator had also considered the fact that when the work was in full swing and after 30% of the work had been done, the work was suddenly stopped in December 1979 without assigning any reasons and that during that period labour and machinery with crew etcetera were kept idle besides centering materials for no fault of the 1st respondent. Having assigned such valid reasons, this claim was partly allowed. Further, with regard to the claim under III(B) towards compensation for losses sustained by the 1st respondent due to undue delay in payments on this count, by determining the rate at 12% in stead of 24% as claimed by the 1st respondent, the Arbitrator had allowed partly the claim III(B) also.

For the reasons assigned under the above claims and also considering the contents of the letters dated 10.01.1980-exhibit C3,

20.02.1980-exhibit C4, 28.05.1980-exhibit C7, 14.07.1980-exhibit C9 etcetera where under the difficulties of the 1st respondent were highlighted, the learned Arbitrator found that there was no proper response from the appellant and had therefore, allowed the claim IV (A) in part and also the claim IV(B) in part which is a claim towards compensation for the losses sustained due to abnormal delay in payment of the amount due under the claim under IV(A).

Under claims nos.V and VI which were considered together, the aspects of delay, defaults and breaches of the contract on the part of the appellant and the prolongation of work beyond the stipulated period for completion for no fault of the 1st respondent and the delays in realization of EMD and withheld amounts were also considered and these claims were partly allowed.

As already noted, claim VII was rejected.

11. We have thus analytically examined the Award and also the reasons assigned by the court below in the common order impugned. Though it was sought to be contended that the Arbitrator mis-conducted himself during the course of arbitral proceedings, no material was brought on record in support of the said contentions. PW1 who is the Assistant Engineer at the relevant time did not speak in his evidence about any misconduct of the Arbitrator. No instances of misconduct are pointed out either in the pleadings or during the course of arguments and therefore, the appellant could not show that the Award was improperly procured. Though PW2 was examined he had categorically stated that he had no personal knowledge about the proceedings conducted before the Arbitrator. The appellant has not adduced any evidence (oral and documentary) before the Arbitrator to establish that the claims which are allowed partly by the Arbitrator are either vexatious claims or not allowable under the terms of the agreement. Except contending that the

claims are made contrary to the terms of the contract, the appellants could not point out any terms of the contract which are violated by the Arbitrator while allowing the claims of the 1st respondent. The appellant could not show that there is misreading or mis-appreciation of evidence and improper application of the evidence to the facts. Therefore, the evidence brought on record also does not support any of the contentions now raised before this Court. The reasons assigned also could not be shown to be faulty. No grounds based on facts much less required statutory grounds were made out and therefore, none of the grounds urged merit consideration.

12. Viewed thus, we find that there are no valid and sufficient grounds calling for interference with the common orders impugned.

13. In the result, both the appeals are dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these appeals, shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

18.02.2015

Vjl