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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 230/2015

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Decided on: 17th March, 2015

M/S D K ENGINEERS & BUILDERS

..... Petitioner

Through: Mr. Prashant Kumar Mittal, Advocate.

versus

M/S NATIONAL AGRICULTURE CO-OPERATIVE

MARKETING FEDERATION OF INDIA LTD

(NAFED) & ANR

..... Respondents

Through: Ms. Saroj Bidawat, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The Petitioner was awarded contract for conversion of existing Ice Factory into warehouse and additional construction adjacent thereto at Lawrence Road, New Delhi by the Respondent No.1 which was to be completed within four months upto 4th November, 1993 subject to the physical vacant site and proper drawings of construction and specifications being handed over.

2. It is the case of the Petitioner that due to failure of Respondent No.1 the work could not be completed and disputes arose between the parties. Since Respondent No.1 failed to appoint an Arbitrator, the Petitioner filed an application under Sections 8 and 20 of the Arbitration Act, 1940 (in short 'the Old Act') which was allowed vide order dated 9th January, 1998 and Respondent No.2 was appointed as an Arbitrator. The Respondent No.2 rejected all the claims of the Petitioner by the award dated 22nd December, 2002 on the ground that the Petitioner had issued a receipt for full and final

payment. The Petitioner filed a petition under Sections 16 and 30 of the Old Act against the Arbitral award dated 22nd December, 2000.

3. Before the learned Civil Judge the challenge to the award, inter alia, was that the same was not passed within the statutory period despite specific directions, the Arbitrator exceeded his jurisdiction and did not apply his mind to the fact that the receipt dated 2nd September, 1994 was forged. The learned Civil Court settled the following issues:

- “1. Whether this court has jurisdiction to try this suit, in view of preliminary objection No.1? OPP*
- 2. Whether the Arbitrator has replaced the award? OPP.*
- 3. Whether the Arbitrator has mis-conducted the proceedings? OPD.*
- 4. Whether the receipt dated 02.09.1994 has been tempered with by the defendant No.1? OPD.*
- 5. Whether the plaintiff has accepted amount of Rs.81,361.98/- from respondent No.1 as full and final settlement vide cheque No.727482 dated 02.09.2004 and if so, what are its effect? OPD.*
- 6. Relief.”*

4. Besides an additional issue was also settled:

“Whether the impugned award is liable to be declared as null and void being not passed within statutory period despite specific direction of Court? OPP”

5. The issues that the Arbitrator changed the award or misconducted himself in the proceedings were decided against the Petitioner. Further the

fourth issue with regard to the tempering of the receipt dated 2nd September, 1994 was also decided against the Petitioner. The findings in this regard are as under:

- “34. *The onus of proving this issue was on the plaintiff. However, no evidence whatsoever has been led by the plaintiff on the said issue. The plaintiff has alleged that they had issued the receipt to the defendant on 02.09.1994 “in duress”. However, neither the original, nor the carbon copy of the said receipt has been placed on record. Also, the plaintiff has not placed on record the letter dated 07.06.1994 by which they had refused to accept the payment of Rs.81,361/- as full and final settlement. There is only one letter dated 02.09.1994 by which it was communicated to the defendant that they had received the amount of Rs.81,361/- “in duress”. Again, there is no postal receipt to prove that this letter was sent to the plaintiff.*
35. *The plaintiff has alleged that the arbitrator has changed the tempered receipt with its electrostat copy. However, no evidence of the same has been led. In these circumstances, the court is of the opinion that the plaintiff has miserably failed in proving his allegations. As such, this issue is decided in favour of the defendant and against the plaintiff.”*

6. The learned Trial Court noted that the award under the old Act could be set aside only if the arbitrator misconducted the proceedings or the award was made after the superseding of the arbitrator by any Court or arbitration proceedings having become invalid under Section 35 of the old Act or that the arbitral award was improperly procured. Emphasizing on the finality attached to the decision of the arbitrator, the learned Trial Court held that the

Court would not sit as a Court of appeal and examine the arbitral award on merits and the findings of the arbitral award was neither perverse nor erroneous. The additional issue of the arbitral award being liable to be dismissed as not being passed within the period fixed was also decided against the petitioner. The arbitrator further dealt with the issue of tampered receipt and it was held that the petitioner submitted no evidence/documents in support of their allegation that the receipt dated 2nd September, 1994 was tampered with or obtained in duress. In fact the respondent placed on record a letter dated 10th August, 1994 which was sent to the petitioner containing the draft of the receipt. The learned Trial Court further held that the Plaintiff accepted the amount of Rs.81,361.98 from Respondent No.1 as full and final settlement of the claim and thus dismissed the suit.

7. The appeal filed against the order dated 29th February, 2012 was also dismissed by the learned ADJ vide order dated 14th December, 2012.

8. The only contention of the learned counsel for the Petitioner before this Court is that the receipt dated 2nd September, 1994 had been removed by the Respondent No.1 from the record and despite the affidavit/application of the Petitioner seeking production of the document before the learned Trial Court from the Defendant No.1 the same was not allowed.

9. The affidavit dated 9th October, 2002 placed before the learned Trial Court states that the Petitioner had issued a notice under Order 12 Rule 8 CPC for producing the document mentioned therein to the Defendant No.1 as well as their counsel with the Registered Acknowledgment Due cover and the AD card has been received back. In the said affidavit/application there is no averment that the original receipt was placed before the Arbitrator and the same had been removed.

10. Besides the award there is concurrent finding of the fact against the Petitioner by two Court. The Petitioner had alleged that he had issued receipt to the Defendant on 2nd September, 1994 in duress however, he placed no evidence on record in this regard either before the arbitrator or the learned Trial Court, besides making bald assertions. Hence I find no reason to interfere with the impugned order.

11. Learned counsel for the petitioner relies upon the decision in Bharat Coking Coal Ltd. Vs. Annapurna Construction 2003 (8) SCC 154 wherein the Supreme Court interfered for the reason that the terms of the agreement deed between the parties were wrongly interpreted and thus it was held that the award amounted to misdirection in law. The petitioner has failed to point out any error in the interpretation of the agreement by the arbitrator or the learned Trial Court and the Appellate Court. No evidence has been led that the arbitrator travelled beyond the contract.

12. There being no infirmity in the impugned judgment, the petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 17, 2015
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