

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO.27 OF 2015
WITH
ARBITRATION APPEAL NO.28 OF 2015

M/s Bharat Constructions Appellant
(Ori. Claimant)
Vs.

The Maharashtra Krishna Valley Development Corporation, through The Executive Engineer, Ujani Canal. Respondent

Mr. Abhijeet A. Desai, Advocate for the Appellant.
Mr. N.N. Singh, Advocate for the Respondent.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 14th October, 2016

P.C.:

1 Admit. By consent taken up forthwith for hearing
Heard the advocates.

2 This is the common order on the above two appeals preferred under Section 37 of the Arbitration and Conciliation Act (Arbitration Act). The orders impugned in the appeals are identical orders passed by the District Court, Solapur in its jurisdiction under Section 34 of the Arbitration Act modifying the

arbitral award. The appellant herein was awarded contract for “construction of VRB at Ch.94/660 and super passage at Ch. 95/100 and balance earthwork km. No.96 from 95/600 to 95/680 and km. No.97 at Ch. 96/660 to 97/000 and C.C. lining of km. Nos. 94,95,96,97 of Ujani Right Bank Canal”. In the year 1996-1997, the estimated cost of work under the tender was Rs.1,03,74,000. It's stipulated period of completion was 24 calendar months. This stipulated date of completion was extended from time to time with the last extension granted upto 31st March, 2007. Subsequently a number of differences and disputes arose between the appellant and the respondent, leading to appellant's invoking arbitration agreement in the contract. In it's statement of claim, the appellant had referred to 18 claims for adjudication and decision. The arbitrator by his detailed award dtd. 28th December, 2009 allowed 10 claims out of the 18 claims made. He also awarded interest @18% per annum against the claims. Being aggrieved by the award, both the sides i.e. the appellant and the respondent filed applications under Section 34 of the Arbitration Act to the District Court, Solapur being Civil Miscellaneous Applications No. 160 of 2010 and 161 of 2010. By it's order dtd. 18th August, 2014, the District Court partly allowed the application and modified the awards impugned before it to the extent of denying the claim of the appellant for compensation towards losses of overhead and compensation due to loss of business profit. The District Court also reduced the future rate of interest from 18% per annum to 9% per annum.

3 Mr. Desai, the learned advocate for the appellant points out that by the impugned order the District Court has clearly traversed its jurisdiction under Section 34 of the Arbitration Act. He points out that within the limited jurisdiction of Section 34 of the Arbitration Act, there is no scope for modification of the award by the District Court because re-appreciation of the evidence unlike in the appellate jurisdiction is not permitted under the jurisdiction under Section 34 of the Arbitration Act.

4 Bare perusal of the impugned order is sufficient to see that the learned Judge has treated the same as an appeal. On re-appreciation of the evidence, he has set aside the finding of fact of the arbitrator that the respondent is solely responsible for the delay in execution of the contract. The reason stated for setting aside the finding is that extensions for completion of the work had been sought by the appellant from time to time. With this finding, it has denies the appellant's claim for damages for loss of overhead and loss of business profit. Similarly as regards the interest, the District Court has disapproved observation of the learned Arbitrator that the irrigation is not a commercial activity of the government, and held that the activity to provide water to the agriculturists is of public service and utility. It has reduced the rate of interest from 18% per annum to 9% per annum.

5 The orders of the District Court clearly being beyond the jurisdiction of Section 34 of the Arbitration Act cannot be sustained. Hence, the appeals are allowed. The orders dtd. 18th August, 2014 of the District Court, Solapur are set aside and the arbitral award is confirmed.

(Smt. R.P. SondurBaldota, J.)