

raised 9th running account bill upon the respondent. On 24th June, 1992 the respondent terminated the contract since according to the respondent the petitioner had abandoned the work under the contract. Alongwith 9th RA bill dated 26th May, 1992, the petitioner had also submitted the last joint measurement which was signed by both the parties.

4 It is the case of the petitioner that the respondent by its letter dated 7th September, 1992 called upon the petitioner to commence and complete the work in contradiction to the respondent's case that they had terminated the contract on 24th June, 1992. During the arbitration proceedings, the petitioner incorporated a bill terming it as bill no.9A. It is the case of the petitioner that they submitted RA bill no.9A and also submitted the final bill dated 17th July, 1996. It is the case of the petitioner that despite repeated reminders the respondent did not pay the amounts.

5 The petitioner lodged a claim in the sum of Rs.1,50,75,318/- and the abstract of compensation claim is at page 136 of the petition. The respondent also made a counter claim. The Arbitrator in its award, which is impugned in this petition, allowed a sum of Rs.3,74,944.33/- to the petitioner with simple interest @ 8%

p.a. on the awarded amount from 6th February, 2013 till the date of payment and also rejected the counter claims of the respondent.

6 The respondent has accepted the award and by its letter dated 21st August, 2015 forwarded to the petitioner a cheque for Rs.4,50,056.47/- (Rs.3,74,944.33 + simple interest @ 8% p.a. from 6th February, 2013 till 20th August, 2015) in full and final settlement of the Arbitration award. The petitioner accepted this cheque.

7 The counsel for the respondent submitted that the petitioner having accepted the cheque should be deemed to have accepted the award and cannot, at the same time, also challenge the award. The counsel for the petitioner submitted that the cheque though received on 21st August, 2015 was encashed only after the petition was filed and the petitioner by its letter dated 4th November, 2015 has informed the respondent that they were encashing the cheque without prejudice to their rights and contentions.

In my view this is one more reason why the petition should be rejected. The petitioner, if they wanted to challenge the award should not have accepted the cheque. Having accepted they should have returned the cheque. They should not have encashed the cheque. By accepting and later encashing the cheque, in my view, the

petitioner had accepted the award.

8 The grounds on which the Arbitrator awarded only Rs.3,74,944.33/- was because the petitioner's claim was time barred. At the same time, the Arbitrator has also gone ahead to deal with the claim of the claimants on its merits and has rejected all the claims. The amount which the Arbitrator has directed the respondent to pay is primarily the retention money, income tax deductions and penalty which the respondent had levied on the petitioner, which the Arbitrator felt was not correct.

9 The counsel for the petitioner submitted that the Arbitrator's conclusions that the claim was barred by limitation was incorrect and perverse because even though the respondent claimed to have terminated the contract on 24th June, 1992, the respondent by a letter dated 7th September, 1992 asked the petitioner to commence the balance job which was completed in 1996 and as the Arbitrator entered into reference in October, 1997, the claim was within limitation and the Arbitrator had not considered this letter dated 7th September, 1992.

10 It is true that the Arbitrator while deciding the issue of limitation, has not considered this letter dated 7th September, 1992. There is absolutely no discussion in the award about this letter. There is no explanation also whatsoever from the respondent as to what they meant by stating in the letter “once again we request you to commence the balance job and this letter may be treated as the final request letter immediately commencing the job.”. Considering this letter it looks like the contract was still on or after termination the contract was restored. At the same time the counsel for the petitioner submits that the final bill was submitted on 17th July, 1996, which I do not find anywhere.

11 The counsel for the petitioner submitted that the final bill is at page 43 of the petition and enclosed to a letter dated 17th July, 1996. I have considered the document to which there are no enclosures. The figures mentioned therein are not even reflected in the particulars of claim except the interest loss on security deposits. I cannot considered this document as a final bill. This document also does not say it is the final bill. Moreover, even if I proceed on the basis that the work order was continuing in view of the letter dated 7th September, 1992, still the reference to arbitration was only on

8th October, 1997. Even then the claim will be barred by limitation. The counsel for the petitioner give lot of emphasis on a document calling 10th RA bill dated 7th May, 1993. That document, if one considers, is not even a bill but only a measurement sheet and the final measurement sheet. Even if the measurements have been done on 7th May, 1993, still the claim will be time barred.

12 Let us go a step further and hold that the claim was still within limitation. The Arbitrator has also dealt with all the claims on its merits. The same could be found in paragraph 16 of the award. During the course of the arbitration it appears that the petitioners brought in running bill no.9A which had not found place in the statement of claim as filed. The Arbitrator has taken into account even that document and has come to a conclusion that that particular document does not exist and cannot be considered for payment. The Arbitrator has given his reasons why it cannot be considered in paragraph 16(i) and (ii) of the award. The Arbitrator has stated that the petitioners have not been able to produce any document to show that the said bill no.9A was ever submitted to the respondents. The Arbitrator has also held that the said bill was not even accompanied by the joint measurement sheet which was required under the

contract. The Arbitrator also analysed the measurement sheet enclosed to running bill no.9 and the final measurement sheet dated 7th May, 1993 and has come to a conclusion that it cannot be accepted that any work was done for which amount is claimed under the claimed running bill no.9A.

13 As regards the claims listed in the abstract of compensation at page 136 of the paper book, the Arbitrator has stated that the claimants have not submitted any proof for the claims. Each heads of claim has been dealt with and rejected as the claimants have not substantiated the claim. The Arbitrator has also considered the various correspondence exchanged between the parties as listed in paragraph 12 of the award to come to a conclusion that the claimants was responsible for the delay and not entitled to any compensation.

The counsel also did not show any document to explain why the Arbitrator was not correct in dealing with alleged bill no.9A and the other heads of claim, the way he did.

14 It is settled law that interference under Section 34 of the Arbitration and Conciliation Act, 1996 is permissible only when findings of arbitrator are arbitrary, capricious or perverse, or when

conscience of court is shocked, or when illegality is not trivial but goes to the root of the matter not when merely another view is possible. The arbitrator being ultimate master of quantity and quality of evidence while drawing arbitral award, award based on little evidence or on evidence which does not measure up in quality to a trained legal mind cannot be held invalid. The award can be set aside when it is contrary to public policy and it would be contrary to public policy when findings of the arbitrator are arbitrary, capricious or perverse.

15 I have gone through the grounds raised by the petitioner, the award dated 9th July, 2015 and also heard the counsels. I do not find the award arbitrary or capricious or perverse. The Arbitrator has given reasons as to why according to him the claim was time barred. Yes, the Arbitrator has not dealt with the letter dated 7th September, 1992 when he came to a conclusion as to why the award is time barred.

16 In my view, however, it makes no difference because even otherwise the Arbitrator has gone ahead and given his findings even on merits with reasons. Even if I hold that the Arbitrator was not correct in coming to a conclusion that the claim was time barred, still

on merits the Arbitrator has come to a conclusion, with reasons, that the petitioner has not substantiated any of the claim. Moreover, the petitioner has also accepted the cheque issued by the respondent, which the respondent in its letter dated 21st August, 2015 forwarded in full and final satisfaction of the arbitration award.

Taking into consideration all these factors, I cannot gather myself to conclude that the award was arbitrary or capricious or perverse. I am of the view that no interference is called for.

17 Therefore, the petition stands dismissed. No order as to costs.

(K.R.SHRIRAM,J)