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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 08, 2016

+ **FAO 67/2007**

BRIJ LAL & SONS

.....Appellant

Through: Mr.Brij Lal, appellant alongwith
Mr. K. Venkataraman, Amicus
Curiae

versus

D.D.A.

..... Respondent

Through: Mr. Pawan Mathur, Standing
Counsel

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

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Vide Award of 6th March, 2003, appellant's claim of ₹3,78,000/- on account of final bill has been negated by observing that claimant has failed to establish the claim beyond final bill of ₹1,49,226/-, and out of the said amount, substantial amount of ₹1,26,708/- has been already paid to appellant under the running account bill No.3, which was duly accepted by appellant without protest and out of the balance amount of ₹22,518/- payable, ₹16,723/- towards the security and ₹451/- towards the statutory income tax have been deducted. In respect of claim No.1 of ₹3.78 lac on account of Final Bill, the Arbitrator grants a sum of ₹5,344/- only to appellant-claimant while disallowing the claim of ₹1,150/- on account of labour report. The next claim for refund of the security deposit

of ₹7,500/- has been rejected on the ground that the security deposit stands forfeited. The third claim of ₹1 lac on account of damages has been also rejected by the Arbitrator while observing that this claim does not stand substantiated. The fourth and the last claim for interest @ 15% per annum on the delayed payment has been considered by the Arbitrator and the interest @ 10% per annum has been given on the Awarded amount of ₹5,344/- only from 5th January, 1994 till the date of discharge or the decree, whichever is earlier.

On receipt of the Award, appellant had filed an application under Section 14 of *the Arbitration Act, 1940* before the trial court while seeking direction to Arbitrator to file the original Award of 6th March, 2003 and the original Award was filed by the respondent on 10th November, 2003 to which objections were filed by the appellant on 16th February, 2004. It is a matter of record that appellant had filed an application under Order 6 Rule 17 of CPC for amending the objections to bring them under *the Arbitration and Conciliation Act, 1996* and the said application was dismissed by the trial court vide order of 26th February, 2005. Trial court vide impugned order has dismissed appellant's objections by holding that the Award was passed on 6th March, 2003 and the objections have been filed after delay of 11 months i.e. on 16th February, 2004 and thus, the objections have been dismissed as time barred. While giving sequence of events, trial court in paragraph No.40 of the impugned order has concluded that appellant was aware about the filing of the Award of 10th November, 2003. However, trial court has also considered the appellant's objections on merits in paragraph No.64 of the

impugned order after taking note of the various decisions. The finding returned in the impugned order is that the objections raised by the appellant are not covered under the old Act and it was held that the Arbitrator has passed a reasoned Award.

The challenge to the impugned order and the Award of 6th March, 2003 by learned Amicus Curiae representing appellant is on the ground that the Limitation Act is not applicable because no application was filed for making the Award '*Rule of the Court*'. It is pointed out that Section 5 of *the Limitation Act* applies to the old Act of 1940 i.e. Arbitration Act, 1940, and in the instant case, the delay of about 11 months ought to have been condoned.

On merits, it is submitted by learned Amicus Curiae for appellant that the Award lacks reason and on the face of it, is not sustainable. Thus, it is submitted that the impugned order as well as the Award of 6th March, 2003 deserves to be set aside and appellant's claim ought to be allowed.

Learned counsel for respondent submits that upon a bare reading of the Award in question it becomes apparent that there is no basis to infer that the Arbitrator had mis-conducted himself. It is pointed out that as per Article 119 (b) of *the Limitation Act, 1963*, the objections have to be filed within 30 days from the service of notice from the date of the filing of the Award. It is further pointed out that the Award in this case was filed in November, 2003 and the objections had been filed in February, 2004 and so, the objections have been rightly dismissed to be time barred. It is also submitted that no application seeking condonation of delay was filed and even on merits, the objections filed do not disclose tangible basis to conclude that the Arbitrator had mis-conducted himself. Thus, it is

submitted that there is no substance in this appeal and it deserves dismissal.

After having heard learned counsel for the parties at length and on perusal of impugned order, the Award in question and the material on record, this Court finds that as per Article 119 (b) of *the Limitation Act, 1963*, the period of limitation begins from the date of service of the notice of making of the Award. It is matter of record that no application for making the Award in question the '*Rule of the Court*' was filed and so, it cannot be said that the objections filed were time barred. The finding of the trial court on this aspect is apparently unsustainable and is accordingly set aside. However, I find that the objections filed by the appellant are quite incoherent as they do not deal with the findings contained in the arbitration Award. To illustrate the substratum of the objections filed by the appellant, the same are reproduced as under: -

"That the Arbitrator in relation to claim No.1

- (a) Consists many parts where in the petitioner had claimed to produced the original levels duly signed by the claimant under protest but fail to produce the same & further, ten points, were raised on 10-02-03 during proceeding, other alternative by pit measurement till today not accepted by the Respondent as well as Arbitrator, which is as per the agreement clause -11 and specification vide Ex.C-54 (I & II).
- (b) The respondent unable to produce the M.A.S. Account of M/s. Bansal Enterprises, which was transferred the hard rock to him.
- (c) The respondent unable to produce the filing levels where these soft rock/ disintegrate rock was disposed of.
- (d) The respondent unable to produce the Income Tax

deducted in the bill and deposit the same in the Income Tax Department as well as no certificate was issued. Then how the Arbitrator allow their claim without any reason, which is face of the award.

(e) The respondent unable to reply either in the High Court vide Suit No.292/94 nor during the proceeding how they have deducted Rs.16,723/- as security, when the work was closed on 20-11-1989. Then how the arbitrator allow to deduct the security. The Arbitrator failed to give his reasons even order by the Delhi High Court in suit No.292/94. It is face on the award.

(f) The quantity in the cross section from page 55-59/Lb-49 has not taken in their final bill quantity, while verifying the quantify Page No.60-94 / Lb 49. The respondent accepted the same, during the proceeding. Then how the Arbitrator has not taken on record. In the award published by him?

(g) The respondent did not produce all the record concern with this mater vide their letter F-61 (1156) SWD-I, D.D.A./88-89/104 dated 05.02.2003 but they threaten the climate as “respondent would not like to consent for adjudication of hearing”. By his threat, whatever the record the climate conclude the case to avoid litigation.

(h) The 3rd running bill was unaccepted vide Ex.C-10 (10.11.1989) the Cheque was well issued one day before the Diwali Festival by the respondent. The protest or not protest come on the final bill, not in the running bill.

(i) The respondent denied to verify at site even today to measure by pit measurement vide their letter number F-61 (115) SWD-I/DDA/118 dated 11-02-2003 at Page No.4, instated of grounds levels not produced by the respondent which sign by the claimant. The Arbitrator has not given any reason how our amount Rs.5,15,092.54 is not acceptable,

which come to seven times more at the time of publish of award on the basis of labour rate.

(j) The previous arbitrator has accepted Ex. C-54 (I) at page of award published, in which mentioned the pit measurement, why the learned arbitrator not order for pit measurement?”

Even during the course of the hearing, nothing worthwhile was pointed out as to how the claim of ₹3.78 lacs on account of final bill is made out. It was also not shown as to how forfeiture of the security deposit of ₹7,500/- was bad. The basis of the claim for damages of ₹1 lac is neither spelt out in the objections filed nor was it shown as to how this claim is payable. The grant of interest @ 10% per annum appears to be justified. Trial court has rightly concluded that the objections filed by the appellant could be considered under the old Arbitration Act, 1940 and not under the new *Arbitration and Conciliation Act, 1996*.

Consequently, in the considered opinion of this Court, there is no basis for this Court to opine that the Arbitrator had mis-conducted himself in rendering the Award in question. It can be said without any hesitation that the objections filed do not and cannot render the Award in question unsustainable. Consequently, finding no substance in this appeal, it is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

SEPTEMBER 08, 2016

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