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

+ **FAO(OS) No. 501/2006**

**DDA**

**..... Appellant**

Through: **Mr. Arjun Pant, Adv.**

**versus**

**ANANT RAJ AGENCIES**

**..... Respondent**

Through: **Ms. Biji Rajesh with Mr. Suraj  
Chatterjee, Advs.**

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

**%**

**05.01.2016**

1. The Delhi Development Authority (DDA)—the appellant in this case—is aggrieved by an order of the learned Single Judge dated 06.03.2006 in CS(OS) No. 2149/1997 disposing of its objections under Sections 30 and 33 of the Arbitration Act, 1940.

2. The respondent-contractor was awarded work of construction of MIG houses and 768 flats in various pockets of Rohini under a contract entered into in 1982-83. Upon completion of works, disputes arose with respect to the payment. They were referred to a Sole Arbitrator, who, after considering the pleadings and materials adduced before him, published an award dated 16.09.1997.

3. The DDA felt aggrieved and preferred Objections under Section 30 and 33 of the Arbitration Act which were decided by the impugned judgment. The learned Single Judge recorded contentions on behalf of

the contractor with respect to claims No.5 and 7 and set aside the award to that extent. However, the award related to claim No.3 was upheld. With regard to interest, the Single Judge modified the award-as against the 17% interest awarded, the quantum was reduced to 12% per annum.

4. Mr. Arjun Pant, learned counsel for the appellant, urges that the learned Single Judge fell into error in holding the award towards escalation charges under claim No.3 which were not contemplated in the contract. He relied upon clause 10CC of the contract and stated that only such amounts which the contractor was entitled to under that condition could have been adjudicated upon. The learned Single Judge considered the decision in *Anurodh Constructions vs. Delhi Development Authority* 2005 (84) DRJ 314 and *M.L. Mahajan vs. Delhi Development Authority and Anr* 99 (2002) DLT 512 (DB). These were in respect of periods when the further escalation charges which provided for in later contracts (by way of specific condition, i.e., clause 10CC) were not in existence. The Division Bench Judgment in those cases had ruled that the absence of such conditions meant that those heads of claims not falling within any specific contractual condition or clause would ordinarily have to be adjudicated upon by applying the general principles of damages stemming from Section 73 of the Contract Act.

5. This Court has considered the submissions on behalf of the parties. In *M.L. Mahajan* (supra), it was pertinently observed that the condition clause 10CC “*does not exclude or prohibit claims for increase in prices of material and wages of labour after the stipulated period within the work is to be completed. If this is not to be so, the*

*opening words would be rendered wholly otiose. It is, therefore, plainly obvious that where a contract stretches beyond the stipulated period i.e., the schedule time plus 50% thereof, the claim for escalation in prices is not excluded or barred under Clause 10C”*

6. The above formulation of law was subsequently followed and applied in ***M.L. Mahajan, Contractor Vs. DDA & Anr. 2010 (169) DLT 734*** and was also accepted in ***Anurodh Constructions*** (supra).

7. This Court is not inclined to differ with the said view. Consequently, the Objection as to the award and claim No.3 is held to be unmerited.

8. The second point urged was with respect to the interest. Here, it is submitted that even though the learned Single Judge reduced the rate of interest from 17 ½% to 12%, it is still excessive and that the Court should exercise its discretion to reduce the rate of interest. We are of the opinion that there is no justification to further reduce the amount given the fact that the contract was awarded in 1982 and the award was rendered in 1997.

9. For the above reasons, this appeal is devoid of any merit and is dismissed. The amounts deposited in Court shall be released to the respondent-contractor with the amounts accrued towards interest.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**JANUARY 05, 2016/bg**