

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15308 of 2015

=====

Niranjan Prasad, son of late Jadunandan Prasad, resident of Moh. Maulabagh,
P.S. Ara Nawada, District Bhojpur

.... Petitioner

Versus

1. M/s Chandhariyavi Construction Pvt. Ltd. having its registered office at Ashiyana Plaza, Budh Marg, Kotwali, through its Managing Director.
2. Niraj Chandhariyavi, son of Sri Nawal Kishore Prasad, Director of M/s Chandhariyavi Construction Pvt. Ltd. resident of 104 Aranav Apartments, Park Road, Kadam Kuan, Patna.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Ranjeet Kumar,
Mr. Mohit Kumar,
Mr. Vijay Kumar, Advocates
For the Resp. No. 1 : Mr. Saket Tiwary,
Mr. Sanjeev Kumar Dubey
Mr. Saket Gupta, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-10-2018

IA. No. 7280 of 2018

This interlocutory application has been filed for amendment of the prayer portion of the writ petition by adding the following prayer:

"1(v) For setting aside the order dated 17.05.2015 passed by the learned sole Arbitrator arising out of Request Case No. 12 of 2012, whereby the application filed by the petitioner under Section 33(4) of the Arbitration and Conciliation Act, 1996 for an additional award has been rejected."

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the same shall be treated to form part of the



writ petition.

CWJC No. 15308 of 2015

3. The main writ petition has been filed under Article 227 of the Constitution of India read with Section 42 of the Arbitration & Conciliation Act, 1996 (for short, "Arbitration Act") by the petitioner who seeks modification in the arbitral award dated 29.03.2015 issued by the sole Arbitrator.

4. Learned counsel for the petitioner submits that in course of arbitration proceeding before the learned Arbitrator, *inter alia*, a claim was raised for award of Rs. 1.25 crores against the respondents as noticed in paragraphs 14 and 15 of the arbitral award. This aspect of the matter however did not form part of the points framed for decision in the arbitral proceeding and consequently, the claim for relief of Rs. 1.25 crores was missed to be adjudicated altogether.

5. Learned counsel invites reference to Section 33(4) of the Arbitration Act which permits a party with notice to the other party, to request for an additional arbitral award as to the claims presented in the arbitral proceeding but omitted from the arbitral award.

6. Learned counsel for the petitioner submits that accordingly, a petition under Section 33(1) and 4 of the Act dated 27.04.2015 (Annexure-8) was duly filed before the learned Arbitrator for passing an additional award, but the same has been rejected by order dated 17.05.2015 (Annexure-4).

7. Despite directions for fresh service of notice by order dated 07.02.2018 served on the respondents soon thereafter, they have not been represented on various dates when the matter was being heard namely, 28.08.2018, 12.09.2018, 17.09.2018 and 03.10.2018. After hearing the petitioner at length on the said dates, the matter was placed under the heading "For Orders" for final disposal today.



8. Learned counsel for the respondents appears and seeks time to file counter affidavit at this belated stage.

9. This Court is not inclined to adjourn the matter in such circumstances.

10. Having heard learned counsel for the petitioner and on consideration of the materials on record, this Court finds that the petitioner had indeed raised a claim for award of Rs. 1.25 crores against the respondents in course of arbitration proceeding before the learned Arbitrator as narrated in para 15(ii) of the arbitral award itself. It appears from the points framed for decision in para 39 of the award that this aspect of the matter appears to have been omitted and hence, no finding or decision in that regard was arrived at by the learned Arbitrator. While disposing of the petitioner's application under Section 33 (1) and (4) of the Act, the learned Arbitrator has treated the same as one "for enhancement of the amount under different head about which award has already been made, and that on additional evidence/documents. It is settled law that at this stage no additional evidence/documents can be taken for consideration. There is no case that any point or issue has been omitted in original arbitral award".

11. As discussed above, the claim for Rs. 1.25 crores was duly raised before the learned Arbitrator which requires to be decided, but has omitted to be so done. The finding of the learned Arbitrator that it was not the case that any point or issue has been omitted in the original arbitral award is thus clearly contrary to record as stated above.

12. In the above circumstances, the order dated 17.05.2015 (Annexure-4) passed by the learned Arbitrator in Request Case No. 12 of 2012 is accordingly set aside and the learned Arbitrator is requested to consider and dispose of the petition under Section 33(1) and (4) of the Act by passing an additional award in accordance



with the provisions of the Act.

13. The writ petition stands allowed.

Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2018
Transmission Date	NA

