

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

ARBITRATION PETITION NO.697 OF 2012

Mahanagar Telephone Nigam Ltd	.. Petitioner
vs	
M/s Ramesh Constructions	.. Respondent

Ms.S.I.Shah I/b M/s S.I.Shah & Co for Petitioner
Mr.Ajit Anekar with Mr.Thomas James I/b M/s Auris Legal
for Respondent.

Coram : S.C.GUPTE J
Date : 24 NOVEMBER, 2018

P.C

Heard learned counsel for the parties.

2. The arbitration petition challenges an award passed by a sole arbitrator in a reference arising out of a construction contract. The respondent, who was the original claimant before the sole arbitrator, was appointed a contractor by the petitioner for construction of a hostel building at plot No.C at Powai, in Mumbai. The original period of completion of work, as stipulated in the contract, was admittedly extended by the petitioner. It is the case of the petitioner that despite such extension of time, the work was not completed by the respondent and therefore, the petitioner rescinded

the contract. The respondent's final bill in respect of the work done was not fully paid by the petitioner. The petitioner also withheld the amounts representing the performance guarantee, which had expired and not extended by the respondent to enable the petitioner to invoke the same. The petitioner had also withheld the refund of EMD and ASD. The respondent, in the premises, raised a dispute and invoked the arbitration agreement forming part of the construction contract. The learned arbitrator, in his impugned award, granted claim nos. 1,2,6,7,8 and 9 from out of the total nine claims raised by the respondent.

3. This part of the award has been challenged by the petitioner mainly on the ground that the arbitrator, whilst allowing the claim, travelled beyond the terms and conditions of the contract and that the award was contrary to such terms and conditions. The learned arbitrator, after interpreting the terms and conditions of the contract between the parties, and after taking into account the fact that the final bill prepared by the respondent amounting to Rs.3,23,424/- was accepted by the petitioner and yet only a part payment of Rs.1,84,093/- was made, allowed the claim. The learned arbitrator held that it was the petitioner who was responsible for the delay that ensued. The learned arbitrator held that a portion of the site was not made available to the respondent even after more than two months after the stipulated date of completion of the work. The

learned arbitrator held that the extension up to 31.12.2004 was unilateral and that there was no reason for not granting any further extension. The learned arbitrator also observed that though the respondent was permitted to continue the work without levy of liquidated damages until 31.12.2004, for the entire period of extension up to the date when the contract was rescinded by the petitioner, liquidated damages were levied arbitrarily by the petitioner. The learned arbitrator held that the respondent was not responsible for the delay and was entitled to extension of time not only up to 31.12.2004 but even beyond 31.12.2004 without levy of compensation. The learned arbitrator cited two reasons for this conclusion, the first being that the site was still not available by the time the extended period for completion of work had expired and that decisions to pay extra item were taken on 21.9.2005, i.e. a date after the purported decision of the contract. The learned arbitrator, in the premises, held that the respondent was entitled to payment of the balance amount of its final bill and the petitioner was not entitled to make any deduction from the bill. For all these reasons, the learned arbitrator also held that the petitioner was not entitled to deduct any sum towards encashment of performance guarantee as well as withhold refund of EMD or ASD. The learned arbitrator also granted interest on the amounts of unpaid final bill as well as on the amounts deducted towards performance guarantee, and EMD and ASD. The arbitrator's views on all these matters are possible views.

The learned arbitrator has construed the terms and conditions of the contract in a permissible manner. No part of the award can be demonstrated either as perverse or impossible or such as would shock the conscience of the Court.

4. In the premises, there is no infirmity in the impugned award within the available grounds of challenge under section 34 of the Arbitration and Conciliation Act, 1996.

5. There is, accordingly, no merit in the petition. The petitioner shall pay to the respondent costs quantified at Rs.25,000/- on this arbitration petition.

(S.C.GUPTE, J)