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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 8th May, 2018

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CS(OS) 2487/2015 & I.A. No.21758/2015

RADICAL BUILDERS

..... Plaintiff

Through: Mr.Arvind Minocha, Adv.

versus

PHARMACEUTICAL EMPLOYEES CORPORATION

..... Defendant

Through: Mr.Dilip Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The above suit has been registered upon the filing of the Supplementary Award dated 4th July, 2014 by the Sole Arbitrator before this Court under Section 14 of the Arbitration Act, 1940 (hereinafter referred to as the 'Act'). The I.A.No.21758/2015 is an application under Sections 30 and 33 of the Act challenging the Supplementary Award.

2. The disputes between the parties relate to the award of work for civil and sanitary works for construction of 300 multi storey flats at Plot no.88, I.P. Extension, Patparganj, New Delhi-110092. The dispute having arisen, the same were referred for adjudication through a Sole Arbitrator appointed by this Court vide order dated 19th October, 2006 passed on an application under Section 20 of the Act. The said arbitration proceedings resulted in an Arbitral Award dated

3rd July, 2009. The petitioner filed an application under Sections 14, 17 and 29 of the Act praying for the said Award to be made a rule of the Court and a decree be passed in terms thereof. This was numbered as CS(OS) No.1339/2009. This Court by its order dated 16th December, 2013 held that the reliance of the Sole Arbitrator on the letter dated 9th December, 1985 addressed by the petitioner to the respondent was ill-founded as the same was succeeded by the agreement dated 14th January, 1986 between the parties, clause 30 whereof expressly *debars* the petitioner from claiming any price variation due to increase in labour wages, cost of materials etc. or any other price variation due to any reason whatsoever.

3. This Court, considering the above facts, vide order dated 16th December, 2013, *inter alia* directed as under:-

11. Having regard to the aforesaid circumstances, both counsels are agreed that the award, to the extent it allows claim no. 1, pertaining to 42nd RA bill, related to civil works, and the 18th RA bill related to sanitary works, will have to be remitted to the learned arbitrator for fresh adjudication. This would also necessarily entail re-working of the interest, if any, payable with respect to the amounts, if any, that the learned arbitrator may determine, which may arise for payment after a re-examination of the matter. Though, I have not varied the award in so far as it pertains to the direction to pay security deposit and earnest money, in respect of civil works and sanitary works; no direction is issued vis-a-vis the said works for payment, at this juncture, as the final quantification can take-place only after the learned arbitrator re-examines the claim in issue, in the light of the directions given hereinabove.

12. It is made clear that the other aspects of the award are not interfered by this court, in particular, the aspect relating to engagement of services of an auditor by the name of M/s Lochan and Co. by the defendant. Accordingly, the

proceedings/ award is remitted to the learned arbitrator for re-examination of the issue and thereafter re-determination of the amounts, if any, payable to RBIPL with regard to 42nd RA bill, pertaining to civil work, and the 18th RA bill, pertaining to sanitary work.

12.1 The learned arbitrator will also examine the aspect of interest, if any, payable to RBIPL. No further directions are called for. The suit and the pending application are, accordingly, disposed of in the above terms.”

4. Pursuant to this order of remand, the Sole Arbitrator has passed the Impugned Supplementary Award dated 4th July, 2014. In the Impugned Award, the Arbitrator has negated the stand of the petitioner that the letter dated 9th December, 1985 was part of the Agreement dated 14th January, 1986 and its terms were acted upon by the parties. The Arbitrator holds that it is the agreement which will prevail and the letter dated 9th December, 1985 was insignificant in this regard. The Arbitrator further, considering the evidence led by the petitioner in support of its claim towards escalation charges, held that though clause 30 of the agreement entitles the petitioner to claim statutory increases in wages, the petitioner has not filed on record any notification with respect to the said increase and, therefore, is not entitled to its claim under this head.

5. Counsel for the petitioner submits that the petitioner had placed reliance on the report of Mr.G.C.Sharma who was the Architect appointed by the respondent and also the report of M/s Lochan & Co., the Chartered Accountant who had audited the bills of the petitioner. He further submits that these reports were sufficient to prove the claim of the petitioner and were wrongly not relied upon by the Sole

Arbitrator.

6. I am unable to agree with the said submission of the learned counsel for the petitioner. The Arbitrator in his Impugned Award records that the Architect or the Chartered Accountant had not been produced as witnesses before the Arbitral Tribunal. These reports, therefore, remained unproved before the Arbitrator. In any case, this being a matter of appreciation of evidence by the Arbitrator, this Court in its powers under Sections 30 and 33 of the Act cannot sit as a Court of appeal to re-appreciate the evidence to arrive at its own conclusion.

7. The Supreme Court in ***M/s Sudarsan Trading Co. V. Government of Kerala and Another***, (1989) 2 SCC has held as under:

“Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.”

8. The Supreme Court further held that

“An award may be set aside on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.”

9. If the decision of the Arbitrator on certain amounts awarded, is

a possible view though perhaps not the only correct view, the award cannot be set aside. It was held that:

“But, in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the decision, the arbitrator had acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. It has to be determined that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy.”

10. In view of the above, I find no infirmity in the Supplementary Award and the application I.A. No.21758/2015 is dismissed.

CS(OS) 2487/2015

As a consequence of dismissal of I.A. No.21758/2015, the Supplementary Award dated 4th July, 2014 is made rule of the Court. Let a decree be drawn in terms thereof.

NAVIN CHAWLA, J

**MAY 08, 2018
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