

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

ARBITRATION PETITION NO. 960 OF 2013

Mustaque Qutbuddin Bhilavade	...Petitioner
vs	
Union of India	...Respondent

Mr.Hasmit Trivedi I/b. Priyanka Pawar for Petitioner.

CORAM : S.C.GUPTE, J.

DATE : 15 JANUARY 2019

P.C. :

The present petition challenges an award passed by a sole arbitrator in a reference arising out of a contract for repairs to brick lining of the railway tunnel at Mumbra. The work order of the Respondent Railways dated 15 November 2001 along with the Petitioner's tender and the railways counter-offer forms part of the contract. One of the items of work under the contract was for providing and applying non-re-emulsified polymer modified mortar ('PMM') pointing of the specifications given in the schedule of the contract (Serial No.1 of the schedule). It was the case of the Petitioner (claimant before the arbitral forum) that this work was not paid for by the Respondent Railways. The other claims were for refund of security deposit, compensation towards withholding and non-payment of dues, and interest and costs.

2 The arbitrator, in his impugned award, has not awarded compensation under claim no.1, which was for non-payment of work done, referred to above. The arbitrator held that this item fell within the excepted matters under Clause 22(5) of General Conditions of Contract,

since it related to measurement of works, which was subject to an appeal to the Chief Engineer. The parties were directed to resolve this issue as per provisions of Clause 22(5) within 60 days of declaration of the award. Insofar as claim No.2, i.e. claim for refund of security deposit of Rs.58,000/- is concerned, the arbitrator held that since there was no completion certificate, the security deposit could not be released. The claim, accordingly, could not be awarded. This claim evidently depends on Claim No.1 since non-completion of the work can only be attributed to Item No.1, referred to above.

3 It is the case of the Petitioner that the item covered by claim No.1 did not fall within the excepted matters, since it was not pertaining to measurement. The Petitioner's case is that the dispute neither related to quantity of work nor measurement, but interpretation of the particular item involved. Even, according to the Respondent Railways, this item does not fall within the excepted matters. By their letter dated 17 July 2013, the Railways had, in fact, made an application under Section 33 of the Act to the learned arbitrator to determine this claim judicially after appreciating the evidence on record and giving further opportunities of hearing to both parties. There has been no response on the part of the arbitrator. Since, according to both parties, the item does not fall within excepted matters, and claim no.2 being dependent on award of claim no.1, the impugned award is set aside to the extent of claim nos.1 and 2 on the ground that the same is *ex-facie* contrary to the agreement between the parties. Since claim no.5 is for post-award interest, it would also hinge on the consideration of claim nos.1 and 2. Accordingly, even the award on Claim no.5 is set aside.

4 Claim No.3 seeks compensation for withholding of dues and is in the nature of interest. The arbitrator has rejected this claim on an interpretation of Clause 64(5) of General Conditions of Contract, which prohibits award of any interest on the whole or any part of the principal monetary claim, where the arbitral award is for payment of money. Since this is a possible view of the contract, there is no merit in the challenge.

5 Claim No.4 seeks compensation towards loss of profit. This claim is rejected by the learned arbitrator on the ground that no material was placed in support of the Petitioner's case of loss of profit. Even this is a possible view and does not merit any interference under Section 34 of the Act.

6 The arbitration petition is disposed of accordingly.

(S.C. GUPTE, J.)