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

ARBITRATION PETITION NO. 1532 OF 2015

M/s.Lokhandwala Infrastructure Pvt.Ltd. …Petitioner
vs
Deepak Rao,
Proprietor of M/s.Accanoor Associates ...Respondent

Mr.Ajit N. Jakhadi with Amol A. Chile for Petitioner.
Mr.Owen Menezes I/b. R.S. Tripathi for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 28 JANUARY 2019

P.C. :

This arbitration petition challenges an award by a sole arbitrator in a reference arising out of a Memorandum of Understanding executed between the parties.

2 The Respondent, who was the original developer of a slum rehabilitation project, had been granted slum redevelopment rights by an agreement dated 17 May 2003 executed in his favour by a proposed society of slum dwellers. Since the Respondent was unable to develop the property for a long time, the agreement was terminated by the society by a resolution of its managing committee, followed by a resolution passed by the general body of slum dwellers. The proposed society of slum dwellers thereupon entered into a development agreement and power of attorney, both dated 15 September 2005, in favour of the Petitioner herein. A writ petition was thereupon filed by the Respondent against SRA and others, being Writ Petition No.2761/2005. During the pendency of that writ

petition, a reference application was also preferred against SRA and others under Section 3K of Chapter 1-A of Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 before the State Government. Another writ petition was filed by the proposed society of slum dwellers against the State for accepting the proposal of the Petitioner herein. The Respondent had filed one more petition against SRA and others for issuance of Annexure II in its favour for development of the suit property. The matters were carried right upto the Supreme Court. The Supreme Court had passed an order directing this court to decide the petitions expeditiously. In the backdrop of these facts, the parties agreed to amicably settle their disputes and on 22 November 2006, the Respondent herein unconditionally withdrew his writ Petition (Writ Petition No.1882/2006). On 1 December 2006, a Memorandum of Understanding was executed between the parties. Under this memorandum, as and by way of amicable settlement, the Petitioner agreed to pay to the Respondent a total consideration of Rs.7 crores. The consideration was payable in three instalments. The first instalment of Rupees One crore was to be paid on or before the execution of the MOU. There is no dispute between the parties that this payment was made by the Petitioner. The second instalment of Rupees One crore was to be paid on receipt of Annexure II in favour of the society's nominee, whilst the third instalment of Rs.5 crores was payable on receipt of commencement certificate for the sale component of the project. The disputes between the parties pertain to non-payment of the second instalment. These disputes were referred to arbitration. It was the case of the Respondent before the learned arbitrator that the second instalment was very much due and payable as Annexure II in favour of the Petitioner was received on 23 November 2011. It was, on the other hand, the

Petitioner's case that the instalment was not payable, as, by an order passed by the Chief Minister of the State, the Petitioner was restrained from acting upon or in pursuance of Annexure II. (This order was passed by the Chief Minister on 29 February 2012, i.e. at least three months after the receipt of Annexure II by the society's nominee, i.e. the Petitioner herein.) The learned arbitrator, after hearing the parties, framed issues and proposed to hear evidence. But before he could do so, an application was moved by the Respondent herein under Order 12 Rule 6 of the CPC or principles analogous thereto, requesting the learned arbitrator to pass an award on admissions of the Petitioner. It was submitted by the Respondent that in its pleading the Petitioner did not dispute its liability to make payment of the second instalment on receipt of Annexure II, though according to it, since it was prevented for the time being from making use of Annexure II, the second instalment was not due as yet; it did not have to pay the second instalment as long as the stay granted by the Chief Minister in respect of Annexure II was in place. The learned arbitrator considered the rival submissions of the parties on the subject and accepted the Respondent's case that the second instalment had fallen due. The impugned award, accordingly, directs the Petitioner to pay Rupees One crore to the Respondent with interest at the rate of 9% per annum from 23 November 2011 till payment or realisation.

3 In this challenge to the impugned award, it is mainly submitted by learned Counsel for the Petitioner that having framed issues and called for evidence of the parties, it was not permissible to the learned arbitrator to proceed to pass a decree on admission. Learned Counsel also submits that, on the arbitrator's own showing, there was no admission on

the part of the Petitioner in so many words to pay to the Respondent a sum of Rupees One crore. Learned Counsel submits that despite finding expressly in his award that the Petitioner had nowhere affirmatively stated that it admitted its liability for payment of Rupees One crore, the learned arbitrator had proceeded to pass the impugned award directing payment of Rupees One crore with interest. Learned Counsel, secondly, objects to the award of interest. Learned Counsel submits that the subject contract makes no provision for payment of interest.

4 The learned arbitrator had before him the terms of MOU executed between the parties. The terms by themselves were not a matter of dispute. The payment term contained in para 3(b) of the MOU required the Petitioner to pay the second instalment of Rupees One crore 'on receipt of Annexure II in favour of the society's nominees'. The pleadings *inter alia* filed by the Petitioner before the learned arbitrator contain the following statements:

> (i) The Respondent (i.e. the Petitioner herein) denies that the Respondent refused to pay the said sum of Rs.1 Crore to the Claimant (i.e. the Respondent herein) and/or intentionally avoided to disclose whether the Respondent had in fact obtained Annexure II on 23.11.2011 or not, as alleged (para 14 of the statement of defence);
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> (ii) This Respondent states that as mentioned in the said letter dated 24th May, 2013, this Respondent had no intention of causing any losses to the Claimant and that the Respondent shall be in a position

to fulfil their obligations once the stay granted by the Chief Minister on 29th February, 2012 is vacated and Annexure II is finally confirmed (para 15 of the statement of defence).

What is important to note is that the Petitioner never questioned its liability under the MOU or the fact that Annexure II, which is admittedly the milestone to which payment of the second instalment was linked, was received by it on 23 November 2011. What was claimed before the learned arbitrator was that since there was stay granted by the Chief Minister on 29 February 2012 in respect of Annexure II that “Annexure II was not finally confirmed”. The arbitrator appears to have relied on two admissions of the Petitioner, namely, its admission of liability under the MOU to make payment of the second instalment (which was said to be due upon receipt of Annexure-II) and of receipt of Annexure II. The arbitrator did not find substance in the Petitioner's submission that because there was stay in respect of Annexure II, the milestone for payment of the second instalment had not reached. The arbitrator was of the view that stay granted by the Chief Minister affected the Petitioner's ability to commence the project; it did not imply that the second instalment, i.e. payment upon receipt of Annexure II by the society's nominee, was not due.

5 The arbitrator's approach and his conclusions are clearly reasonable. They indeed exhibit possible views. The conclusions are based on evidence. The award cannot be said to be based on no evidence. The conclusions are not such as no fair or judiciously minded person could have arrived at. There is nothing in them which would shock the conscience of the court. Accordingly, in accordance with the law stated by the Supreme

Court in the case of **Associate Builders vs. Delhi Development Authority**[1], the award merits no interference under Section 34 of the Arbitration and Conciliation Act, 1996.

6 Learned Counsel for the Petitioner objects to award of interest. Learned Counsel submits that there is no stipulation in the contract for payment of interest. Provision of interest is not always an *inter partes* arrangement or a matter of contractual stipulation. It is a matter of law, provided for in Sub-section (7) of Section 31 of the Arbitration and Conciliation Act, 1996. The arbitrator has found the second instalment of Rupees One crore to be due and payable by the Petitioner to the Respondent upon receipt of Annexure II, i.e. on 23 November 2011. Having found no justification for delaying this payment, it was well within the powers of the arbitrator to award interest. The rate of interest awarded by the arbitrator is pre-eminently reasonable and merits no interference.

7 There is, accordingly, no merit in the arbitration petition. The arbitration petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)

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1 **AIR 2015 SC 620**