

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 30th January, 2019

+ FAO(OS) 22/2019, CM Nos. 4414-4417/2019
VINAY HEAVY EQUIPMENT & FOUNDATIONS
PVT LTD Appellant

Through: Mr. S. Gowthaman and
Ms. M. Venmani, Advs.

versus

ORIENTAL STRUCTURAL ENGINEERS PVT LTD
& ANR Respondents

Through:

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM. No. 4417/2019 (for exemption)

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

CM No. 4415/2019 (for delay)

This is an application filed by the appellant seeking condonation of 13 days delay in filing the present appeal.

For the reasons stated in the application, the delay of 13 days in filing the appeal is condoned, application stands disposed of.

FAO(OS) 22/2019

1. This appeal has been filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the order dated 20th November, 2018 of the learned Single Judge whereby the learned Single Judge had disposed of the petition under Section 34 of the Arbitration Act. The only challenge made by the appellant to the said order and also contended by the learned counsel for the appellant is that the finding of the learned Single Judge that the appellant did not stay even for a period of 4 days at site despite mobilisation charges and advance having been paid by the respondent is a perverse finding.

2. Suffice it to state that the learned Arbitrator has allowed the claim of the respondent herein, which was claim for a sum of Rs. 17,11,250/- being the advance payment. It is the submission of the learned counsel for the appellant that the appellant had entered the site in the month of March, 2008 and left the site only in the month of June, 2008. According to him, the appellant did mobilize the plant and machinery, work force and other resources. It is because of non-performance of the obligation on the part of the respondent that the work remained incomplete. Suffice it to state that in Para 2.10 of the Award, there is a finding of fact by the learned Arbitrator on the following terms:

“I have carefully gone through the documentary evidence adduced by the parties. I have also seen the contract provisions in this regard and I heard the learned counsel for the parties at length.

The undisputed facts are that the Contract was a time-bound work and initially time was essence of the Contract; the Respondent failed to adequately mobilize plants and machinery, work force and other resources required for timely completion of the work and abandoned the work without completing the same. Thus, the Respondent is responsible for its failure to meet its obligations of full mobilization AND demobilization after receipt of Mobilization Charge of Rs.10,00,000/- and additionally contributed to the inability of the Claimants to meet their obligation, in turn to its Employers in respect of timely completion of its Contract.

Accordingly, I find sufficient merit in Claim No.1 and fit to be admitted only for Rs.12,78,072/- as per details, shown in my conclusions, supplied by the claimants and not objected to by the Respondent.”

3. Even otherwise, we are unable to agree with the said submission made by the learned counsel for the appellant for the simple reason as against the value of work of Rs.1,52,25,000/- the appellant could do the work for an amount of Rs.4,33,178/- which amount was granted in favour of the appellant for the work done and the same suggest that the appellant had left the site without completing the work. So it is obvious, as held by the learned Arbitrator and also agreed by the learned Single Judge that the appellant had failed to mobilise plant and machinery, work force and other resources on

time and accordingly, the learned Arbitrator had allowed the claim of the respondent for recovery of the amount of mobilisation advance made by the respondent herein. This being the only submission made by the learned Counsel for the appellant, we do not see any reason to interfere with the impugned order, more so, while exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996.

The appeal is dismissed.

CM Nos. 4414/2019 and 4416/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

JANUARY 30, 2019/jg