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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18th July, 2019

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O.M.P. 768/2011

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr. Dhanesh Relan, Standing counsel
(M-9910247777)

versus

M/S K.C CHIBBER & CO

..... Respondent

Through: Mr. K.C. Chibber, present in person
(M-981052876)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Respondent ('Contractor') was awarded a contract for construction of 936 Janta Houses at Pitampura (Poorvi), Pocket-V, Delhi, by the DDA. Disputes had arisen between the parties. The contractor had preferred various claims and the DDA had raised its counter claims. The claims of the contractor were allowed and the counter claims were dismissed by the Ld. Sole Arbitrator – Mr. O.P. Goel vide his award dated 30th December, 2005. The said award was challenged before this Court and vide judgment dated 23rd July, 2009, a Ld. Single Judge had set aside the entire award in the following terms:

“17. I consider that in such a case where DDA officials and the contractor are found hand in glove to deprive the common man of his right to live in safe houses, it would have been expected of the Arbitrator that he should have recommended strong action against the contractor and should have recommended that the contractor should be black-listed for future and action should have been recommended against DDA officials,

Instead the Arbitrator took upon himself the job of rewarding corrupt contractor thereby rewarding corrupt DDA officials.

18. I here set aside this award for reasons stated above”

2. The said judgment of the Ld. Single Judge was challenged before the Division Bench and vide order dated 22nd April, 2019, the Ld. Division Bench dismissed the appeal.

3. The submission of Mr. Dhanesh Relan, Ld. counsel is that the DDA, upon the initial setting aside of the award vide judgment dated 23rd July, 2009, sought reference of the counter claims of the DDA which were dismissed, to arbitration. The Ld. Arbitrator – Mr. J.K. Garg, S.E. Arbitration vide award dated 4th July 2010 simply dismissed the counter claims by holding that FAO(OS) 454/2009 was still pending. Thus, the counter claims have not been decided on merits after the setting aside of the initial award. This said award is under challenge before this Court. The short submission of Ld. counsel for the DDA is that the counter claims deserve to be adjudicated on merits in view of the fact that the earlier award was set aside.

4. Mr. Chhibbar who appears in person submits that the DDA was guilty of concealing the fact that the appeal was pending against the judgment dated 23rd July, 2009.

5. A perusal of the judgment dated 23rd July, 2009 shows that the entire award dated 30th December, 2005 was set aside. In the impugned award dated 4th July 2010, the Ld. Arbitrator simply rejects the counter claims in the following terms:

“4. M/s K.C. Chhibbar filed an appeal before the

Hon'ble Division Bench of the High Court of Delhi against order dated 23-7-2009 (in OMP No. 208/06) of the Single Judge of the Hon'ble High Court of Delhi wherein whole of the award has been set aside. The same is still pending in F AO (OS) No. 454/09 in the Hon'ble Division Bench of High Court of Delhi.

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In view of the pending matter in the Double Bench of Hon'ble High Court of Delhi in FAO (OS) No. 454/09, the Arbitrator cannot arbitrate/adjudicate the counter claims of the DDA now termed as claims the DDA without the order of the competent court."*

It is clear that the counter claims of the DDA deserve consideration on merits. Irrespective of whether the appeal against the said judgment was pending or not, the counter claims could not have been dismissed just because of the pendency of the appeal. The Ld. Sole Arbitrator ought to have proceeded to hear and adjudicate the counter claims of the DDA on merits, which he failed to do. Accordingly, the impugned award is set aside. Mr. H.P. Sharma (Retd. ADJ) (M: 9810968693) is appointed as the sole arbitrator to adjudicate the counter claims filed by the DDA.

6. Parties to appear before the Ld. Arbitrator on 5th August, 2019. The fee of the Ld. Arbitrator is fixed at Rs.2 lakhs to be shared equally between the parties. Half of the fees would be payable upon commencement of arbitration and the remaining half shall be paid on the date of pronouncement of award.

7. OMP is disposed of.

PRATHIBA M. SINGH, J.

JULY 18, 2019

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