

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

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APPEAL NO. 585 OF 2019

IN

ARBITRATION PETITION NO. 534 OF 2017

Richa Constructions

....Appellant

V/s.

Union of India

...Respondent

Mr. Ajit Anekar a/w Ms. Madhuri Rawat i/b Auris Legal for Appellant.

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Naveena Kumari for Respondent.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.**

DATED : 25th JANUARY 2023

P.C. :

1. The appeal is impugning an order dated 3rd June 2019 passed by this court in petition that respondent had filed under Section 34 of the Arbitration and Conciliation Act, 1996. Respondent had impugned the arbitral award dated 29th March 2017 and corrected on 19th April 2017 and 1st May 2017 in so far as Claim No.13 and Claim No.20 were concerned. Respondent admittedly have paid the awarded sums to appellant in so far as other claims awarded by the Arbitral Tribunal.

2. In so far as Claim No.13 is concerned, appellant had made claim for interest @ 24% per annum on delayed payment of R.A. Bills. The original claim was in the sum of Rs. 3 Lakhs which was revised to

Rs.7,80,760/-. It was appellant's case that there was delay of more than 7 days for making payment of R.A. Bills by respondent.

3. In paragraph No. 102 of the impugned award, the Arbitral Tribunal has considered seven days as reasonable period for payment of R.A. Bills after submission of such bills by appellant. The arbitrator accordingly awarded simple interest @ 12% per annum for the period of delay as reasonable compensation and the claim was computed at Rs.3,30,250/-. The challenge of respondent in so far as Claim No.13 is concerned was rejected by the learned single Judge.

4. As regards Claim No.20 is concerned, the Arbitral Tribunal allowed the claim towards profit margin on account of prolongation of contract. Appellant had made claim of Rs.29,49,107/-. The Arbitral Tribunal had allowed the claim @ 5% towards profit margin and worked out the claim at Rs.9,83,000/-. This challenge by respondent was upheld by the learned single Judge. The learned single judge proceeded on the basis that the award was contrary to the principles of law laid down by the Hon'ble Apex Court in *Ramnath International Construction Pvt. Ltd. Vs Union of India*¹.

5. It is against this order of the learned single Judge appellant has approached the appellate court.

1 2006 (4) Arbitration L.R. 385 (SC)

6. Mr. Anekar submitted that the interpretation of the law by the learned single Judge as laid down by the Hon'ble Apex Court in *Ramnath International Construction Pvt. Ltd.* (supra) was not correct and the co-ordinate bench of the Hon'ble Apex Court has held that such claims are payable. Mr. Anekar relied upon *Asian Techs Limited Vs Union of India and Others*².

7. We have considered the award with respect to Claim No.20 and also the impugned judgment.

8. In our view even if for a moment we hold that the learned single Judge could not have come to the conclusion arrived at by him relying on the *Ramnath International Construction Pvt. Ltd.* (supra), still in our view award by the Arbitral Tribunal of Rs.9,83,000/- against Claim No.20 should be set aside. This is because there are no reasons given in the award for Claim No.20. It is also not appellant's case that parties had agreed that the Arbitral Tribunal need not give any reasons. The claim as noted earlier was for Rs.29,49,107/- towards loss of business opportunities. In effect appellant was claiming damages that appellant is alleged to have suffered due to the prolongation of work. After recording submissions and the judgments relied upon by appellant, the Arbitral Tribunal has concluded as under :

² (2009) 10 Supreme Court Cases 354

130. *Claimant further stated that he is submitting his detailed break up annexed as Annexure CA-21 and prays the Hon'ble Sole Arbitrator the amount claimed in its favour.*

131. *I have heard, examined and considered the submissions, arguments and pleadings of the parties. I have also perused the court judgments relied upon by Claimant very minutely. I consider 5% profit margin very reasonable in the present era of completion and thus the claim amount works out to Rs.9,83,000.00 for which Claimant has been deprived off.*

132. *In view of above, I award a sum of Rs.9,83,000.00 (Rupees Nine Lakhs Eighty Three Thousand only) in favour of claimant against this claim.*

9. No evidence has been led to prove: (a) any loss or damages was suffered by appellant due to prolongation of work under the contract and (b) the quantum has also not been proved. There is no finding that appellant suffered any loss or damages. The arbitrator has not explained how he has arrived at the figure of Rs.9,83,000/-. There is no discussion why 5% and why not any other sum or what was the present era of completion that prompted him to say 5% profit margin very reasonable. On this ground also the award as regards to Claim No.20 should be set aside.

10. Therefore, we do not see any reason to interfere. Appeal dismissed with cost in the sum of Rs.50,000/- (Rupees Fifty Thousand only). The cost to be paid to respondent within two weeks from today.

(RAJESH S. PATIL, J.)

(K.R. SHRIRAM, J.)