



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

+ **FAO 318/2018, CM APPL. 27385/2018, CM APPL. 4698/2019**

Reserved on : 08.02.2023

Pronounced on : 02.06.2023

IN THE MATTER OF:

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Namrata Mukim, Standing Counsel with Ms. Garima Jindal, Advocate alongwith Mr. Bhupender Kumar, XEN, Narela and Mr. Sunil Kumar, J.E., Narula Zone.

Versus

SURESH SINGHAL

.....Respondent

Through: Mr. Avadh Kaushik, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been insinuated under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking setting aside of the judgment dated 21.03.2018 whereby objections filed by the appellant were dismissed and the Arbitral Award dated 16.11.2016 was upheld.

2. The underlying dispute between the parties relates to claim filed by the respondent with respect to Notice Inviting Tender (NIT) dated 19.06.2006. The appellant had invited tender for execution of the work of



improvement of *Narela - Alipur Road* by providing RMC (Ready Mix Concrete) in Village *Alipur* (hereinafter referred to as 'RMC Work'). The respondent being the highest bidder was awarded the aforesaid tender vide Work Order dated 19.02.2007 for an estimated amount of Rs.68.77 lacs. On 19.02.2007, an Agreement was executed between the parties. As per the Work Order, the respondent was required to lay 1200 meters length of road with average width of 6.5 meter and average depth of 0.20 meter for laying RMC. Respondent was paid an amount of Rs.45,68,244/- (after necessary deductions) totaling to a gross amount of Rs.50,25,247/-.

3. The respondent invoked arbitration in terms of Clause 25 of the Agreement thereby claiming that the entire work was completed within the stipulated time on 27.06.2007. Respondent's liability for maintenance for one year was over in June 2008 however, neither the balance payment was made nor amount deposited towards the Security deposit was refunded. Respondent also claimed amount towards payment made to Siri Ram Institute for testing charges; interest @ 12% from the date of completion of work till realization alongwith interest for delayed payment of 1st running bill; cost of proceedings; and the escalation difference from date of completion of work till realization.

4. The Arbitral Tribunal passed the Award on 16.11.2016 thereby allowing the respondent's claim towards the refund of security deposit alongwith 9% simple interest from June 2008 till date of award and amount towards the balance payment. The claim towards testing charges was rejected. The Tribunal noted that that there was no bar in the Agreement for paying interest on the amounts claimed/awarded. It allowed 9% simple interest on amount towards the balance payment. The interest @ 9%



simple interest on delayed payment of 1st running bill was awarded for 1 month. Further, though the amount for cost of proceedings was allowed but the claim for amount towards escalation difference was rejected.

Pertinently, while arguing its objections filed under Section 34 of the Act, the appellant restricted its challenge to only two grounds, the first being non-completion of work by the respondent, as the quality of the road including its thickness was not found as per the specifications, and the second being the award of interest as it was not stipulated in the Agreement. While dismissing the first contention, the impugned order recorded that appellant did not lead any evidence in that regard. Insofar as second contention is concerned, it was also rejected on the ground that the Tribunal had awarded only *pendente lite* and future interest @ 11% per annum on failing to make the payment within 3 months of passing of the award.

5. Before proceeding further, let me first deal with the scope of an appeal filed under Section 37 of the Act.

6. There is no gainsaying that the jurisdiction of this Court under Section 37 of the Act is limited in scope. In this regard, it is deemed expedient to advert to the decision in State of Jharkhand and Others v. HSS Integrated SDN and Another reported as (2019) 9 SCC 798, where the Supreme Court observed as follows:-

“7. As held by this Court in a catena of decisions, the award passed by the Arbitral Tribunal can be interfered with in the proceedings under Sections 34 and 37 of the Arbitration Act only in a case where the finding is perverse and/or contrary to the evidence and/or the same is against the public policy. (See Associate Builders v. DDA, etc.) 7.1. In the present case, the categorical findings arrived at by the Arbitral Tribunal are to the effect that the termination of the contract



was illegal and without following due procedure of the provisions of the contract. The findings are on appreciation of evidence considering the relevant provisions and material on record as well as on interpretation of the relevant provisions of the contract, which are neither perverse nor contrary to the evidence in record. Therefore, as such, the first appellate court and the High Court have rightly not interfered with such findings of fact recorded by the learned Arbitral Tribunal.”

7. The scope of Section 37 of the Arbitration Act was further analysed in MMTC Limited v. Vedanta Limited reported as **(2019) 4 SCC 163**, where it was held:-

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

8. Recently, in Haryana Tourism Limited v. Kandhari Beverages Limited reported as **(2022) 3 SCC 237**, the Supreme Court was in seisin of a situation similar to the case at hand. The appellant therein had accepted the tender filed by the respondent however, disputes arose between the parties during pendency of the contract and led to appointment of an Arbitrator. Aggrieved by the Arbitrator’s Award, the respondent filed objections under Section 34 of the Arbitration Act before the concerned ADJ, which was dismissed. The respondent preferred an appeal against the



order of learned ADJ as well as the Award of the learned Arbitrator before the Punjab and Haryana High Court under Section 37 of the Arbitration Act, which was allowed.

Assailing the order of the High Court, the appellant approached the Supreme Court. While setting aside the order of the High Court and restoring the Award of the Arbitrator and order of the learned ADJ, the Supreme Court delineated the scope of Section 37 of the Arbitration Act and observed thus:-

“8. So far as the impugned judgment and order passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act. 9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

9. From a perusal of the judicial dicta cited hereinabove, it is discernible that the scope of interference under Section 37 of the



Arbitration Act is narrow. Before interfering with an Award passed by the Arbitral Tribunal, which in fact has been concurred with by the First Appellate Court, this Court shall circumspect and refrain from reassessment or re-examination of the merits of the case, as though it were a Court of Appeal against the Award.

10. In the present appeal, learned counsel for the appellant while pressing the contention relating to non-completion of work extensively relied upon the Measurement Book (hereafter, referred to as 'MB'). Admittedly, the entire MB was not placed before the learned Tribunal. Though learned counsel while referring to the MB contended that the respondent had accepted the Bill as well as the measurements on 05.11.2007 and again on 11.12.2007, a reading of the said entry would show that the same was a running bill and not the final bill. It is also worthwhile to note that the impugned order records that the appellant failed to lead any evidence before the Tribunal.

Considering the narrow scope of Section 37 of the Act, this Court finds no merit in the contention raised by the appellant and the same is rejected.

11. The power of Arbitral Tribunal to award interest for all the three periods namely, pre-reference, pendente-lite and post award, is settled in terms of the decision of Supreme Court in Reliance Cellulose Products Ltd v. ONGC reported as **(2018) 9 SCC 266**, that interest is compensatory in nature and is parasitic on the principal amount. As noted above, the Tribunal noted that the underlying Agreement did not bar even the parties to claim interest.



In view thereof, the award of interest by the Arbitral Tribunal is neither contrary to the terms of contract nor is in breach of Section 31(7).

12. In view of the above discussions, I do not find any merit in the present appeal. Consequently, the same is dismissed and the impugned Award is upheld. The 75% of the awarded amount deposited by the appellant in terms of the order dated 13.07.2018 passed by this Court alongwith the interest accrued thereupon be released to the appellant. Miscellaneous applications are disposed of as infructuous.

CM APPL. 4698/2019 (under Section 340 Cr.P.C.)

1. By way of the present application, the respondent has sought initiation of proceedings against the appellant.
2. The respondent has contended that the appellant has filed additional pages of MB which were not placed on record before the learned Arbitrator or the Court alongwith its objections filed under Section 34 of the Act. It was alleged that the same have been filed after fabrication and manipulation in the MB. Further, some pages which were filed before the Court alongwith the objections have not been filed in the present appeal. The law on the subject is well settled in terms of the decision of the Supreme Court in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. reported as (2005) 4 SCC 370. It is not the respondent's case that any offence as enumerated in Section 195(b)(ii) of the Act was committed in respect of the MB or any other documents after it has been filed in the Court.
3. The application is accordingly dismissed. The applicant is free to pursue legal remedy against the Appellant, in accordance with law, at the appropriate forum.

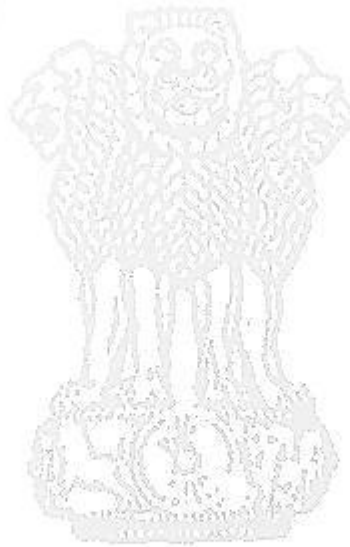


(MANOJ KUMAR OHRI)
JUDGE

JUNE 02, 2023

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HIGH COURT OF DELHI



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