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

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Decision delivered on: 12.01.2024+ **RFA(OS) 41/2019**

PRAMOD GUPTA

..... Appellant

Through: None.

versus

CEMENT CORPORATION OF INDIA & ANR Respondents

Through: Mr Kailash Prashad Pandey, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. Although there is no representation on behalf of the appellant, the record shows that on 24.04.2019, when the coordinate bench issued notice in the appeal, the appellant had indicated to the court that the challenge in the appeal was restricted to claim nos.4, 13 and 14.
2. To be noted, claim no.4 concerns the cost of various items, tools, and tackles (hereafter collectively referred as “material”) left at the subject site upon the termination of the contract obtained between the parties. The record shows that the contract was terminated on 31.07.1989.
- 2.1 Thus, towards material left at the site, the appellant claimed Rs.1,73,838.04.
3. Claim no.13 concerns interest and claim no.14 relates to the costs awarded by the sole arbitrator.
4. The learned Single Judge has reversed the award dated 15.04.2014



with regard to the aforementioned claims, hence the appeal.

5. To be noted, since the award was rendered under the Arbitration Act, 1940 [in short, “the 1940 Act”], the appellant filed a suit under the provisions of Sections 14 and 17 of the said Act. The respondents filed their objections under Sections 30 and 31 of the 1940 Act.

6. The learned Single Judge *via* the impugned judgment, insofar as claim no.4 is concerned, has concluded that the learned sole arbitrator accepted the claim of the appellant *qua* the material left at the site, without any basis, *albeit* after adjusting the material that was used by the respondents.

7. Insofar as the reversal of the award concerning claim nos.13 and 14 is concerned, the learned Single Judge has stated as follows:

“16. **Claim No.13:** Insofar as Claim No.13 is concerned, considering that the Defendant Company is in liquidation and has suffered losses, interest rate is modified to 6% per annum. Interest @ 6% per annum shall also be payable from the date of decree till the date of payment.

17. **Claim No.14:** Insofar as Claim No.14 is concerned, the costs are reduced to Rs.1 Lakh.”

8. We have heard learned counsel for the respondents and perused the record.

9. According to us, insofar as claim no.4 is concerned, the learned sole arbitrator, in our opinion, examined the evidence on record and thereafter arrived at a conclusion. This is evident upon a bare perusal of the following portion of the award:

“109. ... It was also mentioned that contractor is also permitted to take its site office furniture, tools and tackles and inventory will be made of such items. This was subject to the contractor agreeing to participate in joint measurements. The joint measurements were to take place on 04.08.1989. However, the claimant was not permitted to remove all his unusable materials lying at the site. The claimant wrote letter C-129 dated 15.09.1989 that the claimant was not permitted to take away these materials. The claimant again reminded the respondent vide his letter C-130 dated 05.10.1989 and requested for issuance of gate pass so as to enable the



claimant to take away the material. The claimant was however, permitted to remove parts of the goods. This fact is mentioned by the claimant in its letter C-131 dated 24.11.1989. The claimant was allowed to remove the waste materials and office furniture from ground floor but the materials lying at the upper floors of the building and the remaining office furniture was not allowed to be removed. The claimant vide letter C-131A dated 26.11.1989 again made a request for return of his belongings on which the respondent's representative recorded that the removal of material shall be decided at appropriate time. It is thus clear that the claimant was not permitted to remove all his material, tools and office furniture etc. Claimant ultimately made a claim in its final bill in respect of 37 items as against 72 items which were found and checked by M/s Rakesh Sahni & Associates on 08.08.1989. The value of these items comes to Rs.1,73,838.04. It may be mentioned that the respondent admits to have used some of the material and has allowed Rs.43,866.29 on the final bill towards such cost of material for which no secured advance was paid. The amount claimed by the claimant is to be allowed as the items were even duly checked by M/s Rakesh Sahni & Associates. The claimant is entitled to the amount of Rs.1,73,838.04 less 43,866.29 i.e. Rs.1,29,971.75."

[Emphasis is ours]

10. A perusal of the aforesaid portion of the award would show that the appellant had approached the respondents for the removal of material left at the site and, accordingly, made a request for the issuance of a gate pass.

10.1 This request, as per the evidence available on record, was not actioned, which impelled the appellant to include the cost of the material left at the site in the final bill.

11. Since the respondents had used a part of the material lying at the site, it sanctioned payments amounting to Rs.43,866.29; a component which formed a part of the final bill.

11.1 More particularly, the amount claimed by the appellant concerning the material lying at the site was duly checked by Rakesh Sahni & Associates, the architect appointed under the contract.

12. Given this position, we are of the view that the learned Single Judge has incorrectly reversed the conclusion arrived at by the learned sole



arbitrator since it was based on the evidence appraised by him. It is well-established that appreciation of evidence, both in terms of quality and quantity, falls within the ken of the arbitrator.

13. The arbitrator, while granting monetary relief under claim no.4, made adjustments for the amounts already paid, i.e., Rs.43,866.29, and, accordingly, after adjusting the said amount from the claim value, i.e., Rs.1,73,838.04, directed the payment of Rs.1,29,971.75.

14. In our opinion, the value of the claim did not appear to be an issue as the respondent had honored a part of the claim. The respondent's stance both before the learned arbitrator and before us is that the appellant could have removed the unutilized material which was lying at the site after the contract was terminated. As noticed above, the learned arbitrator ruled otherwise based on the evidence produced before him.

15. As far as claim no.13 is concerned, the learned Single Judge has not only scaled down the rate of interest from 9% per annum to 6% per annum but also altered the period for which interest is to be paid. The record shows that after taking into account *inter alia*, the judgment of the constitution bench of the Supreme Court in **Secretary, Irrigation.. vs G.C. Roy** AIR 1992 SC 732, the learned arbitrator concluded that the reasonable rate of interest would be 9% per annum, both for *pendente lite* and future period, as against 18% per annum claimed by the appellant. The rationale with regard to the same is provided in paragraph 143 of the award. For convenience, paragraph 143 of the arbitral award is extracted hereafter:

“The claimant can be entitled to a reasonable rate of interest and that too pendent lite and future interest. Claimant has claimed interest @ 18% per annum. Even respondent claimed interest @ 18% for its counter claims. However, I consider that the reasonable rate of interest would be 9% per annum. The claimant invokes arbitration clause of the contract vide their



letter no. C-136 dated 09.07.1990. The claimant filed petition under section 8 and 20 of the Arbitration Act, 1940 which was registered as I.A. No. 3004/99 and was disposed of by Delhi High Court and the arbitrator. Mr Yashpal came to appointed as arbitrator. The first hearing was on 19.10.2000. Hence pendent lite interest @ 9% per annum is awarded from 19.10.2000 till date and on the allowed amount of Rs.15,74,338.80 comes to Rs. 17,00,286/-."

[Emphasis is ours]

16. The learned Single Judge has altered, as indicated above, both the rate and the period for which the interest would run, apparently on the basis that the respondent was a sick company. Learned counsel who appears on behalf of the respondent was not able to bring to our attention any material which would establish that the respondent was a sick company. Therefore, we see no reason as to why the learned Single Judge proceeded to modify the relief granted by the sole arbitrator, both with regard to the rate of interest and the period. In any event, according to us, the grant of interest at the rate of 9% was neither excessive nor exorbitant.

17. Likewise, the award of cost, which was the subject matter of claim no.14, need not have been pared down from Rs.2,00,000/- to Rs.1,00,000/- by the learned Single Judge. As a matter of fact, no reasons have been given for the reduction of cost.

18. A perusal of the record shows that the appellant had claimed Rs. 3,36,200/- towards costs incurred for prosecuting the arbitral proceedings. The said costs included fees paid to the counsel and the arbitrator. Out of Rs.3,36,200/-, the appellant claimed Rs.1,76,700 as legal fee, while the remaining sum claimed i.e., Rs.1,59,500 was paid to the learned arbitrator. The learned arbitrator, after examining the claim and taking into account the fact that initially under this head the appellant had claimed Rs.1,50,000/-,



concluded that the reasonable sum to be awarded towards costs would be Rs.2,00,000.

19. As would be evident, the fee paid to the arbitrator alone was Rs.1,59,500. Therefore, the award of the cost of Rs 2,00,000 by the learned arbitrator was not excessive, hence, ought not to have been reduced by the learned Single Judge, without providing any rationale in support of her conclusion.

20. Thus, for the foregoing reasons, we allow the appeal. The impugned judgment is set aside.

21. The Registry will dispatch a copy of this judgment to the appellant.

22. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 12, 2024

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