

11.09.2025  
Item No. 13.  
Court No.37.  
AB  
(ID 266311)

**F.M.A. 1592 of 2008**

**Kolkata Metropolitan Development Authority  
Vs  
Hilloi Bharadwaj & Ors.**

Mr. Naba Kr. Das,  
Mr. P. B. Banerjee  
Mr. Arindam Banerjee .....For the Appellant.

**Dictated by Arijit Banerjee, J.**

1. This is a very old appeal of 2008. It would appear from the previous orders recorded by us that the respondents have withdrawn from the proceedings. Nonetheless, we had directed service of notice on the respondents. The notices came back “un-served” since two of the respondents have moved from the recorded address and one of the respondents has refused service, which amounts to good service.
2. This appeal is directed against an order dated March 22, 2005, passed by the Court of the 3<sup>rd</sup> Civil Judge (Sr. Division), Alipore, South 24 Parganas, in Title Suit No.41 of 2002 instituted by one of the respondents herein, namely, Himanshu Bharadwaj, against the appellants’ predecessor in interest, Calcutta Metropolitan Water and Sanitation Authority.
3. The brief and relevant facts of the case are that a contract was entered into by and between the predecessor in interest of the appellant (for the

sake of convenience hereinafter referred to as “KMDA”) and the predecessor in interest of the respondents for laying of RCC pipes in bridge and lateral drains in adjoining areas under Tollygunge Stream Drainage Project Scheme. The agreement was dated March 1, 1971. There was a supplementary tender which was submitted by Himjit Construction (predecessor in interest of the respondents) which was for an amount of Rs. 3,787.25. The original contract was for the sum of Rs.6.55 Lacs approximately.

4. The contract between the parties contained an arbitration clause for resolution of disputes between the parties.
5. Disputes arose between the parties in relation to the aforesaid contract. Himjit Construction (claimant) by a letter dated April 9, 1986, addressed to the Chairman of KMDA requested that such dispute be referred to arbitration in terms of the arbitration clause contained in the contract. The dispute was in relation to a sum of Rs.6,78,520.57 along with interest which the claimant contended was payable to it by KMDA.
6. Joint arbitrators were appointed. The arbitrators published their award on December 22, 2000. The award directed the KMDA to pay Rs.6,78,520.57 and Rs.8,01,676.70 to the claimant on account of work done/extra work

done and interest pendente lite respectively. A sum of Rs.10,100/- was also awarded on account of costs.

7. Since the provisions of the Arbitration Act, 1940, governed the arbitration proceeding, the claimant initiated proceedings under Sections 14 and 17 of the 1940 Act for obtaining a judgment and decree in terms of the award that was made in its favour. KMDA filed an objection to such proceeding under Section 30 of the 1940 Act. In such objection, KMDA prayed for setting aside of the said award on various grounds.
8. By the judgment and order impugned herein, the learned Trial Court rejected KMDA's objection and passed a decree in terms of the said award in favour of the claimant. Hence, this appeal at the instance of the KMDA.
9. Mr. Das, learned Counsel representing the KMDA, tells us that Rs.15 lakh was deposited by KMDA in Court in terms of an order dated March 30, 2009, passed by a Coordinate Bench at the time of admission of this appeal.
10. On the merits of the appeal, Mr. Das submitted that the learned Trial Judge failed to appreciate that the award was based on no evidence. No extra work was done by the claimant. The entire dues of the claimant were paid. The claimant received such payment

without any reservation or objection. There was no material on record on the basis of which the arbitrators could have allowed the claim on account of work done/extra work done. Therefore, the question of awarding interest did not arise. This was the crux of the argument of Mr. Das.

11. We have gone through the award as also the order of the learned Trial Court sought to be assailed before us.

12. We deem it appropriate to extract relevant portions of the award hereunder:

*“Issue no.4: Has the Claimant executed and performed any extra work under the contract?”*

*This is also a pure question of facts. We find this issue in the affirmative, in the sense that extra work was indeed done. Himangshu Bharadwaj has deposed in his examination in chief, Q.44, that he had done supplementary work, some of which was indeed paid and the rest not paid. He has withstood cross examination also, and we find no reason to doubt his statement. The evidence of S. N. Ghosh, Respondent’s witness no.4, is not definitive enough to upset this position. Had the original Measurement Books been produced by CMWSA, the same could have thrown much light on this question. However, S. Chatterjee, R.W. 3 has stated, in reply to Q.8 in Chief, that he could not locate either the original final bill, or the original contract, or the Measurement Books or the R/A bills. Frankly, we find it very difficult to accept or believe this bit of evidence.*

*Issue no.5: Was the respondent responsible to prepare the final bill of the work done or was it the responsibility of the claimant/contractor?*

*We find that it was indeed the responsibility of the respondent to prepare the final bill. The bill was required to*

*be made on the Respondents' printed form, and there was no scope of the Claimants to get this form. Moreover, the Running Account bills were all prepared by the Respondents. The primary documents such as Measurement Books, Material Accounts etc. are all kept in the custody of the respondents and without these the Final Bill cannot be prepared. Also, S.R. Panja, R.W.2, in answer to Q.12 in Chief did not deny the respondent's duty to prepare the final bill.*

*Issue no.6: Was time of the essence of the contract?*

*We find this issue in the negative. When time is of the essence of the contract the contract becomes voidable at the option of the promise upon expiry of such time. In the instant contract the claimants were allowed to go on with the work far beyond the stipulated date of completion. Such conduct can never be consistent with time being of the essence. This question, incidentally, does not appear to be very material in determining the disputes referred to us, but is being answered because it had been made into one of the issues.*

*Issue no.7: Has the claimant received payment of the work done in full satisfaction?*

*We find this issue in the negative. Any question of receipt of payment to full satisfaction can arise only when the contractor accepts final payment and executes a certificate of full and final satisfaction. It is clear that the claimant signed what he has called an 'incomplete final bill' (Q.20 to Himangshu Bharadwaj) in M.B. no.280 on 12<sup>th</sup> March 1986 under protest, which is the opposite of full satisfaction.*

*Issue no.8: Is the claimant entitled to get any award as prayed for?*

*We find this issue in the affirmative. However, we have carefully gone through all the claimants' claims and do not find all the claims to be admissible. The arbitration process always starts with the raising of disputes and we find that disputes were raised for the first time through the claimant's letter dated 9<sup>th</sup> April 1986 wherein the Claimants demanded of the Chairman, Calcutta Metropolitan Development Authority (who at the time was administering the respondent authority) that the said dispute relating to the amount of Rs.6,78,520.57 together with accrued interest be decided upon by him. What*

*happened subsequent to this did not abridge these disputes in any way. The application u/s 33 of the arbitration Act 1940 was filed not by the claimants but by the respondents, and in the disposal of the application the Ld. Court did not refer any fresh disputes to us. Thus we find that our reference is circumscribed by the disputes raised in the letter dated 9<sup>th</sup> April, 1986, and the other disputes sought to be raised by the claimant through his statement of claims are not to be decided by us. In an alternative view of the matter, even if it is accepted for arguments sake that the disputes other than those voiced in the letter dated 9<sup>th</sup> April 1986 are indeed arbitrable by us, still we would have found that these claims are mere afterthoughts. The material result, in either case is the same. Accordingly we award nothing in respect of the disputes other than those voiced in the letter dated 9<sup>th</sup> April 1986.*

*In respect of the disputes raised in the letter dated 9<sup>th</sup> April 1986, we find that the total claim made therein consists of two parts: the final bill amount of Rs.6,78,520.57 and accrued interest of Rs.13,43,570.92. Bharadwaj has given unequivocal evidence in favour of this amount, and had demanded the amount through the production of a detailed final bill under cover of his letter dated 9<sup>th</sup> April 1986. Production of the R/A bills or original Measurement Books would have clinched the matter. However, S. Chatterjee, R.W.3 had stated, in reply to Q.8 in Chief, that he could not locate either the original final bill, or the original contract, or the Measurement Books or the R/A bills. Frankly, we find it very difficult to accept or believe this bit of evidence. As for the Respondents' evidence, the only person who could have given direct evidence are Sabyasachi Majumdar. R.W.1 and S. N. Ghosh, R.W.4 who were Assistant Engineer and Executive Engineer respectively at the time of execution of the work. The evidence of neither is definitive enough to upset the final bill produced by the claimant.*

*In view of the above, and especially in view of the respondent's failure to produce any of the original documents demanded by the claimants, we are inclined to award the full amount claimed by way of final bill, and we award against Claim A of the claimant's Statement of Claims Rs.6,78,520.57 accordingly. In our discretion we do not award any amount against the demanded interest of Rs.13,43,570.92. However, at our discretion against Claim*

*E we allow pendente lite simple interest on the awarded amount of Rs.6,78,520.57 @ 15% p.a. (fifteen per centum per annum) from the date of our entering into reference, i.e. 5<sup>th</sup> February 1993 till the date of this award, i.e. 22<sup>nd</sup> December 2000. The duration is seven years and three hundred and twenty days for which this interest works out to Rs.8,01,676.70 (Rupees Eight Lakhs One Thousand Six Hundred and Seventy six and paise seventy only). Against Claim G the court had already awarded costs of Rs.100, and against Claim H we award costs of Rs.10,000 (Rupees Ten thousand only). We reject all the other claims and award nothing against them.*

*Issue no.9: Is the respondent entitled to get any amount by way of counter claim?*  
*We find that in view of the respondent’s failure to produce the original final bill, or the original contract, or the Measurement Books or the R/A bills, the respondents have been totally unable to prove any of their counter claims. Accordingly we reject all the counter claims, award nothing against them, and find that the respondents are not entitled to their counter claims.*

*Issue no. 10: To what other relief or reliefs the parties are entitled?*  
*The above are the only reliefs the parties are entitled to and they are not entitled to any other reliefs.*  
*We hereby direct the respondents Calcutta Metropolitan Water and Sanitation Authority to pay to the claimants Himjit Construction represented by Himangshu Bharadwaj the following amounts:*

|                  |    |                        |
|------------------|----|------------------------|
| Claimant’s claim | A: | Rs.6,78,520.57         |
| Claimant’s claim | E: | Rs.8,01,676.70         |
| Claimant’s claim | G: | Rs. 100.00             |
| Claimant’s claim | H: | Rs. 10,000.00          |
| <b>T O T A L</b> |    | <b>Rs.14,90,297.27</b> |

*(Rupees Fourteen lakhs Ninety Thousand Two Hundred and Ninety seven and paise twenty seven only)*

*We further direct that the said amount be paid within forty five days of date hereof failing which the awarded amount will carry further interest @ 15% (Fifteen per centum per*

*annum) till the date of payment or the date of decree upon judgment upon the award, whichever is earlier.*

*We further direct that the respondents pay Rs.1,500 (Rupees One thousand five hundred only) to Arbitrator Mr. Tathagata Roy towards his fees for 25<sup>th</sup> July, 17<sup>th</sup> August and 22<sup>nd</sup> December 2000.*

*We make sign and publish this award at Calcutta this day the Twenty second of December, Two Thousand.”*

13. We, therefore, see that the award is based on evidence and is a well reasoned one. It cannot be said that the award was passed on the basis of no evidence at all or that there was no material to support the claim made by the claimant.

14. Coming to the order of the learned Trial Court, again it may be helpful to set out the relevant portion of the order as under:

*“Now let us scrutinize the Award along with the materials on record to see if the Arbitrators have misconducted themselves or not as alleged by the respdt.*

*Upon perusal of the evidence on record it is found from the Exts 51 to 71 and Exts 52 and 53 in particular, that the respdt was responsible to prepare the Final Bill and Mr. Panja’s testimony showed he ultimately made the incomplete Final Bill And evidence substantiates Mr. Bharadwaj’s claim.*

*Exts No 7 to 19 support the claim for extra work done by the contractor. Further, Exts No. 52 to 71 lend credence to the case of Mr. Bhardwaj.*

*On the other hand, the respdt failed to show that the claim of extra work was not genuine by producing cogent*

*evidence and the witnesses testifying for CMW and SA failed to stand the test of cross examination.*

*Upon survey of the aforesaid materials it comes to light that the Arbitrators correctly held the job was done substantially in terms of the work order. On the question of doing any extra work under the contract it is seen that even in the absence of the MBs there is hardly any room to doubt about the extra work being done by the contractor. I find no infirmity in the finding of the Arbitrators and it cannot be said that the Arbitrators had travelled beyond the terms of the contract so as to misconduct themselves.*

*On the point of issue of 7 also the Arbitrators were quite justified to hold that the claimant did not receive payment in full satisfaction. Accordingly, they very judiciously found the claimant was entitled to receive further amount. It is clearly explained why the Arbitrators were inclined to award the full amount claimed by way of final bill, as against claim A. It is interesting to note in this context that the Arbitrators did not allow each and every claim made by Mr. Bhardwaj, the claimant. They were also correct in rejecting the counter claim of the respdt as understandably the respdt failed to prove the same.*

*Under the circumstances, it is very hard to hold that no extra work was done and even if done, the claimant had nothing to substantiate the same. Ld. Counsel argued since the claimant failed to show any evidence in this regard and P.W.1 admitted to have maintained MB but that was not in terms of the Agreement dated 1<sup>st</sup> March, 1971 and therefore he urged that there was no application of mind by the Arbitrators. But it is found from evidence that the claimant did the job substantially as per the contract and also did certain extra work.*

*It is pointed out that the claimant has already got Rs.9 lacs although the work order was for Rs.6 lacs and there was no ground for demanding any further amount particularly when there was no sanction for any such extra work, as reflected in the Site Inspection Book.*

*Having regard to the contentions as made above, I find the Arbitrators have clearly given sufficient reasons about their*

*opinion which do not appear to be unjust and are not arbitrary. Evidence as produced were properly analysed. Relevant MB books were not produced for which the Arbitrators were compelled to decide in favour of the claimant.*

*It is to be noted that the settled position of law is that in a proceeding for setting aside an Award by the Arbitrator, the Courts of law are not to sit in Judgment on the Arbitrators and the decision of the Arbitrators cannot be shown to be wrong on merits. Since it is not open to this Court to reappreciate the evidence unless there is an error apparent on the face of the record which makes the Award unsustainable, it will not be proper to interfere with the Award under challenge in this suit.*

*It is no denying the fact that the Arbitrators were competent to decide questions both of law and fact which were referred to them and in the instant case it has been discussed above that there appears no mistake and/or error on the face of the Award. It is more than clear from the analysis made hereinabove that the instant Award does not fall within any of the grounds mentioned in the section 30 of the Arbitration Act and the words 'no Award shall be set aside' as used in the language of the section are imperative and take away the jurisdiction of the Court to set aside an Award on any ground other than those specified in the section 30 of the Act.*

*From the detailed analysis and survey of the evidence it has come to light that the Arbitrators remained within the scope of their authority and did not travel beyond the contract. In my considered view in the instant case the Arbitrators did not fail to take evidence produced by the parties into consideration, nor the respdt could establish that the Arbitrators misconducted themselves. Therefore, at the end of this lengthy discussion it is found that the Award passed by the Arbitrators is not liable to be set aside and I find no ground to set aside the Award passed by the Ld. Arbitrators Sri Tathagata Roy and Sri Ashok Kr. Das as of the appln filed by the respdt CMW and SA does not stand. The application u/s. 30 is, therefore, rejected on contest. The grounds of objection taken against the Award appear to be devoid of any merits and I find that the Award being*

*justified and reasoned one there is no scope to interfere with the same in any manner whatsoever. For that I am also not inclined to agree with the submission of the claimant as regards matters relating to interest as made before this Court.*

*In that view of the matter, upon consideration, the application made by the claimant for passing a decree on the basis of the Award and in terms of the said Award is entitled to be allowed. In accordance with the provisions of section 17 of the Arbitration Act, since there is no cause to set aside the Award, the present suit can be disposed of according to the Award.”*

15. A bare perusal of the aforesaid portion of the order impugned would show that the learned Trial Judge applied the correct principles of law. The learned Judge rightly observed that he was not sitting in appeal over the award. He noted that the grounds for challenging an arbitration award are limited.

16. After scanning the award the learned Trial Judge came to the conclusion, and in our view rightly so, that there is no error apparent on the face of the award. The learned Judge correctly observed that he was not to judge the quantity or quality of evidence that was there before the arbitrators. The learned Judge found nothing perverse in the award.

17. Having read both the award and the impugned order, we are in complete agreement with the learned Trial Court. We do not find any such perversity either in the order of the Trial

Court or in the arbitral award as would persuade us to interfere. One must bear in mind that an arbitral award is not to be lightly interfered with.

18. The order under appeal does not warrant any interference. Accordingly, the appeal is dismissed.

19. There shall be no order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

**(Om Narayan Rai , J.)**

**(Arijit Banerjee, J.)**