

## Rajasthan Housing Board and Others Vs Ashok Construction Co.

**Court:** RAJASTHAN HIGH COURT (JAIPUR BENCH)

**Date of Decision:** Jan. 14, 2016

**Acts Referred:** Arbitration Act, 1940 - Section 29  
Arbitration and Conciliation Act, 1996 - Section 20  
Civil Procedure Code, 1908 (CPC) - Order 13 Rule 2, Section 151

**Hon'ble Judges:** Mohammad Rafiq, J.

**Bench:** Single Bench

**Advocate:** P.C. Sharma, for the Appellant; Ashok Mehta, Sr. Advocate, Siddharth Jain and Vibhor Kapoor, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Mohammad Rafiq, J.

1. This appeal has been filed by Rajasthan Housing Board against the award dated 20.1.1996 passed by the

Arbitrator and the order dated 30.7.1997 passed by District and Sessions Judge, Jaipur City, Jaipur whereby the aforesaid award dated

20.1.1996 passed by the learned Arbitrator has been made rule of court.

2. Facts of the case are that appellant issued a notice inviting tender for construction of flats in Rajasthan Police Academy. The tender of M/s.

Ashok Construction Company was accepted and the work order was issued on 1.9.1986. The construction work was satisfactory, however, on

16.6.1987, the payment of the firm was stopped by the Rajasthan Housing Board. There was an agreement between the firm and the Rajasthan

Housing Board i.e. agreement No. 44. The work was done by the firm under the direction of the Engineers of Rajasthan Housing Board, but on

16.6.1987, one block of the house in Contract No. 34 was collapsed due to technical mistake of the Rajasthan Housing Board, but its payment

has wrongly been stopped on 17.6.1987 and a sum of Rs. 3,92,072.87 and the security amount of Rs. 62,642 is due with the Rajasthan Housing

Board, which has not been paid to the firm and it is entitled to the aforesaid amount with 18% per annum interest. On application of the

respondent, the learned District Judge appointed Shri Ram Raj Lal Gupta, Advocate as an Arbitrator in the matter. As per clause 28 of the

Contract conditions, for the purpose of appointing the Sole Arbitrator referred to above, the Housing Commissioner on receipt of notice from the

Contractor sent a penal of three names not below the rank of Superintending Engineer of the Public Works Department, Rajasthan Government

who shall all be presently unconnected with the Board's organisation, but the learned District Judge appointed the Arbitrator Shri Ram Raj Lal

Gupta, Advocate. The appellant filed reply to the claim petition and denied all the claims of the respondent firm and it was replied that 12 flats in

Rajasthan Police Academy premises construction by the firm were collapsed due to inferior/sub standard materials used by the firm and also its

negligence. The incident was on 16.6.1997 and the firm run away from the site left the work without any information. The firm has not completed

the work of all the sites which were given to it under different tenders. The work which were left by the firm was got completed by another

contractor as per the agreement on appellants' risk & cost. Due to collapse of the houses, the Board's goodwill and reputation diminishes, which

was irreparable loss to the Board. One labour Smt. Meena also lost her life in the aforesaid incident for which the Board has granted the

compensation. It was further replied that the firm ran way and disappeared from long time leaving all the works at all the sites which were allotted

to it. An enquiry Committee was also constituted in the matter. The Board is entitled to adjust the loss from the due of the firm and also the Board

is entitled to recovery of the sum of Rs. 40,00,000 from the firm.

3. The learned Arbitrator framed the six issues and there was no issue regarding the left over work of the firm from all the sites and also losses to

the Board and the difference of amount for the work which was got completed from another contractor.

4. During the course of arbitration before the learned Arbitrator, the Rajasthan Housing Board submitted the documents regarding the amount

incurred by the Board for getting the work completed which was left incomplete by the respondent firm. The learned Arbitrator returned the same

after perusing it. After hearing the parties, the learned Arbitrator passed an award on 20.1.1996 whereby an amount of Rs. 4,66,986.54 was

awarded with interest @ 18% per annum on the principal amount of Rs. 2,81,996.71 from the date of filing claim i.e. 6.4.1991. The respondent

was also held entitled to receive the arbitration expenses from the appellant. After passing the award, the respondent filed an application to the

District Judge, Jaipur City, Jaipur for declaring the award as rule of the Court. During the course of hearing before the learned District Judge, it

was found by the Advocate of the Board that the learned Arbitrator has not given the findings with regard to the amount incurred by the Rajasthan

Housing Board for completion of the left over work on its risk and cost condition, an application under Order 13 Rule 2 read with Section 151

CPC was filed by the appellant, which was rejected by the learned District Judge. After hearing the parties, the learned District Judge, Jaipur City,

Jaipur passed the judgement and decree dated 30.7.1997 and made the award dated 26.1.1996 as rule of court. Hence this appeal.

5. Shri P.C. Sharma, learned counsel for the appellants has argued that the learned Arbitrator and the District Judge have failed to consider that the

respondent firm constructed the flats in Rajasthan Police Academy, out of which 12 flats have been collapsed due to negligence and inferior and

substandard materials used by the firm in construction of houses and thereafter the firm ran away from all the sites and left the work incomplete and

therefore the appellants had to engage another contractor to complete the rest work and had to paid him for that. It is contended that there was

lapse on the part of respondent and therefore the award passed by the Arbitrator is not justified and the order of District Judge making it as rule of

court is also illegal and unjustified. It is contended that the rate of interest awarded by the Arbitrator and upheld by the District Judge is on higher

side and therefore the same is unjustified, which deserves to be set aside.

6. Shri P.C. Sharma, learned counsel for the appellants submits that as per clause 28 of the contract, a person not below the rank of

Superintending Engineer of the PWD can only be appointed as Arbitrator. However, in this case a retired District Judge was appointed as

Arbitrator, who has no knowledge about the engineering and construction work. Thus, the appointment of Arbitrator itself is illegal and ultimately

the award passed by him is itself ineffective and illegal.

7. Shri Ashok Mehta, learned Senior Advocate for the respondent opposed the appeal and submits that the respondent has submitted the bills

which shows that Rs. 11,18,599.50 was held due to be paid by the appellant to the respondent. The appellant has failed to prove that the work

done by the respondent has any fault. Even the collapse of the flats was not held to be the fault of the respondent as no sufficient proof thereabout

has been produced by the appellant before the Arbitrator or before the District Judge. Even the certificates issued by the appellants itself proves

that processing, quality of work, maintenance, general behaviour etc. are satisfactory. According to 97 samples collected during work, all of them

were found to be of "A" class. The Arbitrator has found that there was no reason for the appellant to pay at less rate to the respondent than one

Jagmohan, the another contractor. The Arbitrator has found that no evidence has been produced by the respondent to show that the incomplete

work was got done by the appellants through any other contractor. The impugned orders thus does not call for any interference and the appeal

deserves to be dismissed.

8. I have heard the learned counsel for the parties and perused the impugned orders.

9. It is not in dispute that when the appellant did not appoint the Arbitrator as per the contract, the respondent has filed application u/s. 20 of the

Arbitration and Conciliation Act before the Court for appointment of the Arbitrator and on hearing both the parties, the Court by order dated

4.2.1991 has appointed the independent Arbitrator. There is no dispute about it that on failure of the opposite party to appoint Arbitrator, the

applicant has legal right to approach the Court for appointment of the independent Arbitrator as held by number of legal pronouncements. Thus the

contention of the appellant about illegality in appointment of Arbitrator cannot be justified and the argument on this respect is rejected.

10. Even the appellants have not produced any evidence whatsoever worth the name before the learned Arbitrator that they got worked executed

from another contractor at the risk and consequence of the respondent. Neither any measurement books, nor any prove of payment has been

produced. Even no proof has been given as to actually any payment has been made to the contractor. Thus the evidence of the appellant was

rightly not accepted by the learned Arbitrator.

11. As regards the contention of learned counsel for the appellant that exorbitant rate of interest has been awarded by the Arbitrator, which was

upheld by the learned District Judge, the aforesaid order of the District Judge has been challenged by the respondent in S.B. Civil Misc. Appeal

Nos. 947/1998 and 1992/2001 and this Court while setting aside that part of the order, whereby the learned District Judge reduced the rate of

interest awarded by the Arbitrator in favour of the appellant contractor prior to the date of impugned order and respondent was held entitled for

the interest at the rate awarded by the Arbitrator till the date of impugned order i.e. 2.9.1998 and after 2.9.1998, as per Section 29 of the Act of

1940 and this Court has held that it is the discretion of the Court to award interest at the rate which is reasonable. The interest rate of 12% was

thus held to be justified, which does not call for interference. There was no evidence regarding inferior quality of work done by the respondent,

therefore, the respondent was rightly held entitled to payment at par with Jagmohan, the another contractor. It was also not found proved that the

flats collapse due to fault of the respondent. It was rightly held by the District Judge that non-payment of advance to the respondent by the

appellants is violation of the contractor conditions and in such a situation, it is obvious for the respondent not to continue the work and it cannot be

compelled to complete the work. The District Judge has also found no illegality in the approach of the Arbitrator to award interest for the period

prior to reference, for which he has full jurisdiction as per the various pronouncements by Supreme Court.

12. In view of above, I do not find any merit in these appeals, which are accordingly dismissed.