(2001) 12 DEL CK 0147

Delhi High Court

Case No: Suit No. 278 of 1993

Vasudev		APPELLANT
	Vs	
Delhi Development Authority		RESPONDENT

Date of Decision: Dec. 12, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 30

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: B.K. Dewan, for the Appellant; Ajay Verma, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.
In pursuance of the Award having been filed by the Arbitrator, objections have been preferred by the Delhi Development Authority (hereinafter described as "the Objector"). Notice of the objections, as such, had been issued and in the reply filed, Shri Vasudev (for short "the claimant") has contested the same alleging that the objections are barred by time, the award has been passed after giving full opportunity to the parties and there is no ground to set aside the award.

2. From these basic pleadings of the parties, this Court, on 4.1.1996, had framed the following issues:

1. Whether the objections are barred by time?

2. Whether the award is liable to be set aside for the reasons stated in the objection petition?

3. Relief.

It was also directed that there was no need to lead evidence and the parties could reply on the record of the arbitrator at the time of arguments.

ISSUE NO. 1:

3. During the course of arguments, the said issue was not pressed and, Therefore, is decided against the applicant.

ISSUE NO. 2:-

4. The main controversy in this regard was as to whether with respect to the claims regarding which the objections have been filed, the award is liable to be set aside or not. Learned counsel for the Delhi Development Authority also subsequently made the submissions.

5. The principle of law as to under what circumstances, the award can be set aside, is not the subject-matter of much controversy. It will be unnecessary to ponder further with all the precedents but suffice it to refer to the decision of the Supreme Court in the case of M/s. Arosan Enterprises Ltd. Vs. Union of India and Another, The Supreme Court summed up the principle of law in this regard and held:

36. Be it noted that by reason of a long catena of cases, it is now a well settled principle of law that reappraisal of evidence by the Court is not permissible and as a matter of fact exercise of power by the Court to reappraise the evidence is unknown to a proceeding u/s 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the Court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law: In the event however two views are possible on a question of law as well, the Court would not be justified in interfering with the award.

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of the documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is possible view the award or the reasoning contained therein cannot be examined. .....

6. More recently, in the decision rendered in the case of SIKKIM SUBBA ASSOCIATES v. STATE OF SIKKIM (2000) 5 SCC 629 once again the Supreme Court observed that the courts of law are under a duty to maintain purity of standard and inspire confidence in alternate dispute redressal method of arbitration. It was held that if there are two equally possible or plausible view the arbitrator could accept one and court would not interfere unless it is shown that it is based on a proposition of law, which is totally untenable, absurd or unreasonable. Paragraph 14 in this regard reads:

"It is also, by now, well settled that an arbitrator is not a conciliator and his duty is to decide the disputes submitted to him according to the legal rights of the parties and

not according to what he may consider to be fair and reasonable. An arbitrator was held not entitled to ignore the law or misapply it and he cannot also act arbitrarily, irrationally, capriciously or independently of the contract (see Rajasthan State Mines and Minerals Ltd. v. Eastern Engg. Enterprises). If there are two equally possible or plausible views or interpretations, it was considered to be legitimate for the arbitrator to accept one or the other of the available interpretations. It would be difficult for the courts to either exhaustively define the word "misconduct" or likewise enumerate the line of cases in which alone interference either could maintain purity of standards and preserve full faith and credit as well as to inspire confidence in alternate dispute redressal method of arbitration, when on the face of the award it is shown to be based upon a proposition of law which is unsound or findings recorded which are absurd or so unreasonable and irrational that no reasonable or right-thinking person or authority could have reasonably come to such a conclusion on the basis of the materials on record or the governing position of the law to interfere.....

7. In other words, the court would ordinarily not interfere in findings of fact as if it was a court of appeal. The arbitrator is appointed with the consent of the parties or as per the agreements and, Therefore, his findings would ordinarily be binding. The court would only interfere if there is no other plausible view which can be taken or is permissible.

8. With this back drop, one can revert back to the objections.

9. The objections filed pertain firstly to claim No. 1, which was for refund of the earnest money of Rs. 20,000/-. The arbitrator went into the evidence and held that the claimant had deposited earnest money of Rs. 20,000/-. There is no breach on the part of the claimant and, Therefore, the objectors were liable to refund the said amount. The objection in this regard is that the objectors had preferred a counter-claim and, Therefore, the earnest money was not liable to be refunded. As would be seen hereinafter, even the counter-claim was not sustainable and, Therefore, the findings of the arbitrator in this regard are basically one of fact which require no interference.

10. Learned counsel for the objector vehemently urged that the arbitrator was totally in error in ignoring the documents filed by the objector and thereafter returning the finding that there was no fault on the part of the claimant. According to him on the basis of the material on record, no other view was possible. This contention has simply to be stated to be rejected. The arbitrator has gone into the relevant documents. It is not necessary that each document has to be considered. He found as to fact that when the claimant was asked for cement and programme of execution of the work, proper decisions were not taken. In fact the decisions are stated to have not been conveyed. The work, Therefore, could not be executed. The conclusion is always arrived at on basis of the over-all view. Therefore, if such a conclusion has been arrived at, it can not be termed that no other view was

possible. The contention, Therefore, must be held to be devoid of any merit.

11. Claim No. 4 of the claimant was for Rs. 45,300/- on account of staff salary. The arbitrator looked into the documents on record and found that an amount of Rs. 8,400/- towards the wages for the chowkidars for a period of seven months is justified. Besides that availability of Head Mistry at the site and his salary was Rs. 1500/- per month for seven months and the award was made, Therefore, of Rs. 18,900/- in this regard. It is alleged in the objections that the figure has been arrived at without there being any iota of evidence in this regard. The contention has simply to be stated to be rejected. This is for the reason that once a Mistry was found to be available or the chowkidar was at the site, necessarily the arbitrator could arrive at a reasonable figure and this finding of fact, Therefore, can not be termed to be totally erroneous to permit the court to interfere.

12. The objections have further been raised with respect to Claim No. 6. It was for a sum of Rs. 11,000/- on account of cost of material at site. The arbitrator had found that it was the objector who committed breach and wrongfully rescinded the contract. Therefore, the amount of Rs. 7,819/- was allowed with respect to quantity of material, as admitted by the objector at site. The objection is that the arbitrator has failed to give any reasons for accepting the rates, claimed by the claimant. Once again it has to be repeated that this is finding basically of fact and the arbitrator has chosen to take one view rejecting the rates of the objector. There is no scope, Therefore, for interference because when two views are possible, there is little scope for interference by the Court.

13. In addition to that with respect to claim No. 9 the arbitrator had awarded Rs. 4,000/- in favor of the claimant. The claim was raised for Rs. 5,500/- on account of rolling shutters including door cover. The arbitrator noted that claimant had offered to remove the rolling shutter and subsequently, the claimant was not permitted to remove the shutters. It was not of ISI mark, Therefore, only Rs. 4000/- was allowed. This is a reasoned conclusion arrived at and there is no error apparent on the face of the record. The contention of the objector must be rejected.

14. Lastly, the claim was for Rs. 2,40,000/- on account of loss of profit. The arbitrator awarded Rs. 1,77,352/-. As a apparent, from the conclusions arrived at, the arbitrator had recorded that it was the objector who had committed breach in discharge of their obligation. There was no fault on the part of the claimant and, Therefore, liable to pay the damages. This is to be repeated that this is a finding of fact, which is not erroneous.

15. The counter-claim had been laid by the objector for Rs. 1.00 lakh on account of forfeiture of security deposit, Rs. 4.50 lakhs on account of work executed at the risk and cost of the claimant, Rs. 1,35,752/- as compensation and Rs. 21.00 lakhs as damages. Indeed, since the finding of fact has already been recorded that it was the objector who was responsible for breach of the contract and there was no fault of

the petitioner, there was no ground to allow any of the counter-claims. It was rightly disallowed.

16. Keeping in view the aforesaid, indeed, the objections must be held to be without merit. They are, Therefore, dismissed. The award is made a rule of the court and a decree in terms of the award is passed. The applicant would be entitled to future interest from the date of the judgment @ 12% p.a. on the principal amount, till the final payment is made.