OD-16

ORDER SHEET

AP/224/2009

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

THE STATE OF WEST BENGAL
VS
BIJAN BEHARI CHOWDHURY

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 19th July, 2024.

Appearance:
Mr. Priyankar Saha, Adv.
Mr. Arindam Mandal, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Paritosh Sinha, Adv.
...for the petitioner/State

Mr. Rabindra Kumar Jaiswal, Adv.
Ms. Manjula Paul, Adv.
...for the respondent

The Court: The present challenge under Section 34 of the Arbitration and Conciliation Act, 1996 has been preferred against an award by virtue of which monetary claims of the petitioner have been awarded under different heads.

Learned counsel for the petitioner argues that the award is absolutely devoid of any reason whatsoever.

It is submitted that although the learned Arbitrator framed certain issues, none of the issues were decided ultimately.

It is further argued that the award of monetary amounts granted by the Arbitrator was based on no material and as such, is perverse.

It is contended that the learned Arbitrator passed his findings merely on the basis of the respondent/present petitioner having not adduced any independent evidence through oral witnesses or documentary evidence.

It is argued that it is the claimant which has to stand or fall on its own case on the basis of evidence and materials produced by it. Hence, the premise on which the award was granted, that the respondent/petitioner failed to adduce evidence, is not tenable in the eye of law.

Learned counsel for the petitioner takes the Court through the entire award and seeks to impress upon the Court that the learned Arbitrator failed to attribute any reason or advert to particular evidences in order to substantiate the claim of the claimant. Rather, it is submitted that there was incongruity between the conclusions of the Arbitrator and the prior findings in the award.

Learned counsel appearing for the claimant/respondent submits that there is limited scope of intervention under Section 34 of the 1996 Act. It is contended that the learned Arbitrator placed reliance on several pieces of evidence adduced by the claimant/respondent, both orally and through documents.

It is pointed out that the learned Arbitrator considered the exhibits and upon a careful consideration of the fact that no contra evidence was led by the respondent/petitioner, arrived at his findings.

Insofar as interest and costs are concerned, the components of the award to such extent were well within the discretion of the Arbitrator and ought not to be interfered with.

Learned counsel for the claimant/respondent also seeks to argue that the Section 34 application itself was time barred.

Heard learned counsel for the parties.

As regards the objection as to limitation, the same, as raised by the claimant/respondent for the first time during hearing, is a mixed question of fact and law and since it was never taken at any earlier point of time, either at the inception of the hearing or in the affidavits, this Court does not intend to enter into such question at this final stage of hearing.

Moreover, there is nothing palpable from the records to indicate that the challenge under Section 34 is time-barred.

The argument of the petitioner that the issues framed were not adverted to by the Arbitrator cannot be accepted wholly. The learned Arbitrator, after formulation of the issues, found that all the issues were being taken up together for the sake of brevity and convenience. In the passing, while deciding on each of the claims, the Arbitrator has in fact touched most of the issues so framed. Since the parties addressed their arguments on the issues vis-à-vis the claims, the mere fact that the Arbitrator did not systematically attribute reasons under each of the issues does not vitiate the award as a whole, particularly within the limited context of Section 34 of the 1996 Act.

Insofar as claim no.1 is concerned, the Arbitrator took pains to advert to several pieces of evidence. The assertion of the claimant in the statement of claim regarding its letter dated March 30, 2004 (Exhibit C/13) was taken into consideration, as were several other letters, including those dated April 12,2004 and May 18, 2004 (Exhibits C/14 and C/15 respectively). A letter dated June 28, 2004 (Exhibit C/18) was also taken into consideration, whereby the claimant had lodged protest contemporaneously against drawal of final bill by the respondent/petitioner arbitrarily.

The relevant parts of the deposition of the claimant's witness, appearing in the 25th sitting minutes and the 26th sitting, were also taken into consideration by

the Arbitrator. The learned Arbitrator dealt with specific questions and the answers thereto, including question nos. 68-72 and 73 as well as 74 which were put to the witness as well as the claimant's reference to the inspection of site on June 23, 2004. The Arbitrator also considered that the execution of the work as aforesaid had been verified by the Executive Engineer of the respondent/petitioner from the occupants of the residential building situated at the site of work on the very same day of inspection i.e., June 23, 2004 which has been confirmed in Exhibit C/18.

The claimant's witness, during examination-in-chief, also furnished the break-up in respect of claim no.1 and deposed in support thereof. All discrepancies in the various items were summarized, as contained in Pages 1-5 of Exhibit C/22.

That apart, the Arbitrator also took into consideration the amounts demanded originally under the claim and arrived at his findings on the basis of several pieces of evidence as well as the oral evidence adduced by the claimant.

It may very well be that this Court is not entirely *ad idem* with the mode in which the evidence was appreciated by the Arbitrator. However, it is well-settled that under Section 34 of the 1996 Act, the Court is not sitting in judgment, as in a regular first appeal, over the award. The specific window of interference under Section 34 has to be in line with the yardsticks and parameters as stipulated in the said Section itself, particularly in the light of Section 5 of the 1996 Act which provides that there would not be any judicial interference in arbitral matters except to the extent as provided in the statute itself.

Insofar as claim no.2 is concerned, I do not find any irregularity in the Arbitrator having directed refund of the security deposit and having held that the work was done as long back as on February 28, 2004 but the

respondent/petitioner, despite admitting such claim, failed to explain the delay in refunding the same.

Thus, I do not find any irregularity or scope of interference insofar as claim nos.1 and 2 are concerned. Since claim no.3 was not awarded, the Court need not look into the same.

However, in claim nos.4, 5, 6 and 7, the claimant/present respondent has sought for compensation under various heads, including on account of prolongation of the job beyond the agreed period for reasons attributable allegedly to the department.

The learned Arbitrator, despite holding that the delay could not be attributable exclusively to one party, granted compensation to the claimant arbitrarily without any material basis whatsoever. Similarly, the claimant failed to substantiate, on the anvil of the tests as stipulated in Section 73 of the Contract Act, as to the claimant having suffered any loss or damage on account of business loss and/or on account of the amount payable in respect of works executed under various items in excess of the 20% quantity incorporated in the scheduled works of the contract.

Awarding compensation to the claimant/respondent for excess work done by him over and above the dues therefor as well as on account of business loss, without any substantiation of such claims by any cogent material, is perverse and, as such, contrary to the fundamental policy of Indian law.

Even without going into any detailed review or appreciation of evidence, it is palpable on the face of the award that the sums granted by the learned Arbitrator on account of claim nos.3 to 6 are perverse.

Claim no.7 was not awarded.

Claim no.8 was the claim of the claimant for interest.

Learned counsel for the respondent/petitioner rightly points out from the abstract of amounts awarded that the award comprised primarily of return of several pay orders to the claimant.

Since the return of pay orders does not involve any investment or blocking of any amount of the claimant at any point of time, there is no justification for interest having been granted by the Arbitrator. As such, although otherwise the Arbitrator was well within his powers to grant interest, in the present case, in view of the peculiarity that the award comprised primarily of return of pay orders on claim no.2, I do not find any justification to grant interest on the said claim. Since the other claims, apart from claim no.1, have been turned down, there is also no question of any interest being awarded on the said claims.

Insofar as the costs of arbitration are concerned, although there is no specific basis for assessing the amount, since it was within the discretion of the learned Arbitrator, this Court chooses not to interfere with the costs of the arbitration proceedings under the limited scope of Section 34 of the 1996 Act.

In respect of the interest component, since claim no.1 has been held in favour of the claimant, as has been claim no.2, and the award under the head of claim no.1 comprised of payment of a sum of money and not mere return of pay orders, the claimant is held to be entitled to interest at the rate as granted by the learned Arbitrator, that is, at the rate of 15% from the date as granted by the learned Arbitrator till the date of the payment of such amount to the claimant.

In view of the above observations, the impugned award is set aside, except for the amounts awarded under claim no.1 to the tune of Rs.7,52,071/-, claim no.2 to the tune of Rs.1,10,876/- as well as the costs of arbitration proceedings and the interest to be paid on the amount payable under claim no.1.

Inasmuch as claim no.2 is concerned, the present petitioner shall return the pay orders in terms of the arbitral award to the claimant/present respondent within eight weeks from date.

The amount directed under claim no.1, that is, Rs.7,52,071/- along with interest at the rate of 15% per annum thereon till the date of payment, shall also be paid by the respondent/petitioner to the claimant/respondent within eight weeks from date.

That apart, the arbitral cots to the tune of Rs.3,20,000/- shall be paid as well by the present petitioner to the claimant/respondent within the self-same period, i.e., within eight weeks from date.

Hence, the impugned arbitral award is partially set aside, apart from the specific exceptions as indicated above.

AP/224/2009 is accordingly allowed in part.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

bp/R.Bhar