



IN THE HIGH COURT OF SIKKIM

Arb.Appeal No. 1 of 2000

1. Union of India
through the Defence Secretary,
Government of India,
New Delhi.
2. The Commander Works Engineer,
H.Q. 136 WE, C/O 99 A.P.O.
3. The Engineer-in-Chief B.R. (E-8),
Army Headquarters, Kashmir House,
DGQ, P.O. New Delhi - 11.
4. The Chief Engineer, Siliguri Zone,
Sevoke Road, P.O.Salugara,
Distt : Jalpaiguri, W.B.
5. The Garrison Engineer (Project),
New Cantt. Gangtok, Sikkim. ... Appellants.

Versus

Mishri Lall Thakur,
Government Contractor,
Development Area,
P.O.Gangtok, East Sikkim. ... Respondent.

Date of Decision : 25th August, 2000

Coram:

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.
The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Mr. U. P. Sharma, Additional Central
Government Standing Counsel for the
appellants.

Mr. T. B. Thapa, Advocate for the
respondent.

M. Singh



JUDGMENT

Dayal C.J.

This appeal is directed against the judgment and decree dated 30-10-1999 by the Court of District Judge, East and North at Gangtok in C.M.C. No.3 of 1995 (Arbitration).


2. In respect of contract work, namely, provision of Married Accommodation for officers at New Cantonment, Gangtok under contract agreement No.CESZ/136-WE/11 of 85-86, some disputes and differences arose between the parties and were referred to Shri Manjit Singh, Arbitrator who made an award dated 27-1-1995. The appellants filed an application under Sections 30 and 33 of the Arbitration Act, 1940 with respect to claim No.6. The application was rejected by the learned trial Court and, therefore, the impugned decree followed.

3. Claim No.6 is "for reconstruction two times of slided retaining wall behind storage accommodation." The Arbitrator allowed a sum of Rs.75,400/- in respect of this claim, stating the following reasons :-

"6. This is a fact that the retaining wall constructed by the contractor collapsed during heavy rains in 1986. It was reconstructed by the contractor but it again collapsed in rainy season of 1987. This was reconstructed again by the contractor and it stood thereafter. There was no drg of the retaining wall in CA and the contractor built the same as per requirement of U of I. After two collapses, the design was changed by U of I and there was no collapse thereafter. Contractor cannot be held responsible for the collapse due to weak design. I therefore award Rs.75,400/- against this claim."


4 The learned counsel for the appellants submits that the


Manjit Singh



amount was awarded by the Arbitrator on the ground that the retaining wall constructed by the contractor had collapsed twice because of the weak design and after the design was changed subsequent to the two collapses, the retaining wall constructed thereafter, has stood; but no such plea was taken by the contractor in the claim submitted before the Arbitrator. On the other hand, learned counsel for the respondent submits that no such plea was taken by the appellants before the learned trial Judge in the application filed under Sections 30 and 33 of the Arbitration Act. Learned counsel for the appellants has not been able to show that in the application under Sections 30 and 33 of the Arbitration Act any such plea was taken. As such, it is not open to the appellants to raise this plea before us in the appeal. So, we see no merit in the appeal.

In the result, the appeal is dismissed. However, in the circumstances, there shall be no order as to costs.


(A. Deb)
Judge
25.8.2000


25.08.2000
(R. Dayal)
Chief Justice
25.8.2000

rsr/