* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) 571/2006

MUNICIPAL CORPORATION OF DELHI ..... Appellant
Through Ms.Smita Shankar, Adv.

versus

J.P. SAINI ..... Respondent
Through Mr.Raman Kapur, Adv.

CORAM:
HON'BLE JUSTICE DR. MUKUNDAKAM SHARMA
HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

% **15.09.2006**

CM 12576/2006

Exemption allowed subject to just exceptions.

CM 12575/2006

By this application the appellant prays for condonation of delay in filing the appeal. For the reasons stated in the application, we allow the same. The delay in filing the appeal stands condoned.

The application stands disposed of.

FAO(OS) 571/2006

This appeal is directed against the judgment and order dated 24th April, 2006 passed by the learned Single Judge dismissing the objection petition filed by the appellant herein

under Section 34 of the Arbitration and Conciliation Act, 1996. Counsel appearing for the appellant has submitted before us that since the contractor did not produce the receipts for depositing the silt at the sanitary land fill site, therefore, the findings recorded by the arbitrator as also by the learned Single Judge are required to be set aside and quashed. In support of the said contention, the counsel has drawn our attention to conditions No.2 & 3 of the contract.

Similar issue raised before the learned Single Judge was considered and dismissed on two grounds. It was first held by the learned Single Judge that the said conditions do not postulate as to who is to give the receipt and, therefore, the said conditions being vague and ambiguous, the said requirement cannot be strictly adhered to. The next count on which the contention raised by the appellant was rejected by the learned Single Judge was that the documents on record clearly establish that the work was actually done and measurement books were produced and, therefore also, there cannot be any controversy in respect of the aforesaid issue.

Since the learned counsel appearing for the appellant has vehemently submitted before us that the aforesaid findings are not correct, we have perused the award dated 12th June, 2005

passed by the learned arbitrator, in the context of the aforesaid submission of the counsel appearing for the appellant. We are tempted to extract the findings recorded by the arbitrator with regard to the claim of the respondent that it dumped silt at the local dumping site. The following findings recorded by the arbitrator would also justify the claim of the respondent in that regard:

> "As far as the dumping of silt at local site by the claimant is concerned, the respondent on my directions filed copies of the measurement books pertaining to eleven of the contracts/work orders. These are certified copies of measurement books which have been brought on record by the respondent itself. There is a specific entry in the measurement book that the silt has been dumped at local site. This fact is clear from record entries made in the measurement books the certified copies thereof are Ex.RW1/1 to Ex.RW 1/11. The measurement books are an authentic record of the respondent which confirms the execution of work. Since the entries have been recorded by concerned J.E.(s) and test checked by the AE(s)/EE(s) concerned, there is no scope to suspect the same. The record entries made in the measurement books are sufficient proof of taking out the silt from nallahs and subsequent removal therefrom and depositing of the same at local dumping sites. Therefore, it is clearly established without any scope of doubt that the silt was dumped by the claimant at local dumping sites and as such the question of furnishing any receipt/acknowledgement by the claimant about dumping of silt as contended on behalf of the respondent does not arise."

The aforesaid findings recorded by the learned arbitrator are in the nature of findings of fact which are also upheld by the

learned Single Judge. Therefore, the first contention of the counsel for the appellant is without any merit.

Counsel appearing for the appellant next submitted that the claim of the respondent in that regard was also barred by limitation. The order of the learned Single judge clearly indicates that the aforesaid issue was not urged before the learned single Judge, for which we may refer to the first sentence in the order of the learned Single Judge wherein he has observed that the only question that was urged before him by the counsel appearing for the appellant in the petition under Section 34 of the Arbitration and Conciliation Act was that the contractor did not produce a receipt for depositing of silt at a site other than sanitary land fill. The issue of limitation was not at all raised before the learned Single Judge and, therefore, we are not really called upon and required to decide the aforesaid issue. But since it is raised before us, we are also considering the said issue which in our considered opinion, also stands concluded by the findings recorded by the learned arbitrator to the following effect:

> "On perusal of the bills cleared for payment I find that the bills were cleared in the period between 3.1.2001 to 8.3.2001. In these circumstances notice dated 29.3.2004 would have been a demand raised beyond the prescribed period of limitation. However, in this case, in the respondents letter No.EE/CASE/IV/02/31 dated 2.4.2002 and EE/CASE/IV/116 dated 1.8.2002,

copies of which were also marked to the Claimant, the dues of the claimant have been acknowledged. Three years limitation would expire on 31.7.05. These letters find mention in the demand notice dated 29.3.04 and have not been refuted by the respondent. I therefore hold that the contention regarding bar of limitation by the respondents has no merit."

The aforesaid findings are also findings of fact and as to how the claim of the respondent is not barred by limitation is clearly explained in the said paragraph. We find no reason to take a different view than that which was taken by the learned arbitrator in that regard, The aforesaid issue is also without any merit. We, therefore, find no merit in this appeal and the same is dismissed

DR. MUKUNDAKAM SHARMA, J

HIMA KOHLI, J

SEPTEMBER 15, 2006
"V"