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

\+ **FAO No. 267/2017**

% **31st May, 2017**

SOUTH DELHI MUNICIPAL CORPORATION THROUGH
EXECUTIVE ENGINEER (PR.) ..... Appellant
Through: Mr. Nikhil Goel, Advocate.

versus

GURSIMRAN SINGH CHADHA ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. Nos. 22117/2017 and 22154/2017 (for exemptions)

Exemptions allowed, subject to all just exceptions.

C.Ms. stand disposed of.

FAO No. 267/2017 and C.M. Appl. No. 22115/2017 (for condonation of delay of 275 days in filing the appeal), C.M. Appl. No. 22116/2017 (for stay)

1. This first appeal filed under Section 37 Arbitration and Conciliation Act, 1996 impugns the judgment of the court below dated 28.5.2016 whereby the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act have been dismissed for

setting aside the claims awarded to the respondent/contractor as per the award dated 2.6.2014.

2. The only issue which is argued before this Court is that the arbitrator as well as the court below has committed a complete illegality and perversity in holding that it is the appellant who is guilty of causing delays although it was the respondent who was guilty of causing delays in the completion of the subject work and which was of making of additional floor of ten pakka classrooms and one hall at Municipal Corporation Primary School, Vasant Vihar, CPWD Colony, South Zone, New Delhi.

3. Before adverting to the issue as regards the findings and conclusions of the appellant being rightly held guilty of causing delays in the completion of the project, it is required to be mentioned that the scope of hearing objections under Section 34 of the Arbitration and Conciliation Act is limited. Courts only interfere when the award is completely illegal or against public policy or findings of the award are completely perverse. Appreciation of evidence falls within the realm of jurisdiction of the arbitrator and courts will not interfere with such findings unless the findings are completely perverse. Once there is evidence to back the findings or the conclusions arrived at by the

arbitrator as also the court below, this Court cannot interfere with the award or the impugned order dismissing the objections under Section 34 of the Act.

4. In order to appreciate that the court below has done a thorough job and also made necessary cross references to relevant observations in the Award holding the appellant guilty of delays in the completion of work, I would seek to reproduce paras 28, 29, 32, 33, 34 and 38 of the impugned judgment and which paras read as under:-

> "28. It is seen that during the arbitration proceedings Ld. Sole Arbitrator had observed that the claimant has attributed the delay in completing the work on the part of respondents by taking the plea that the site was handed over in a piecemeal manner and that drawing/designs were also not handed over by the respondents well in time whereas respondent in their statement of defence had taken the vague plea that site as well as drawings were handed over to the claimant in time and surprisingly RW1 Sh. B.B.Aggarwal, Executive Engineer, examined by the respondent has not stated a single word in his evidence that site was handed over to the claimant free from encumbrance at the time of start of the work. No site order book or the Hindrance register was produced by the respondent to prove the facts as to when the site was handed over to the claimant firm. Normally, complete architectural and structural drawings and specifications are made available at the time of inviting the tenders. The respondents have not produced the drawing and designing register to show that as to when the drawings and designs were made available to the claimant firm. Onus was on the respondents to prove these facts as the same were within their exclusive knowledge within the meaning of Section 106 of Evidence Act.
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> 29. An adverse inference, therefore, can be drawn against the respondents that in case the said register would have been produced, the same would not have supported their case. Consequently, it can be safely held that the respondents failed to handover unencumbered site and drawings and designs well in time.
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> **Claim no.1-** Payment towards final bill to the tune of Rs.5,77,767.12 including the interest @15% p.a.
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> XXXXX XXXXX XXXXX

32. It is observed by Ld. Arbitrator that the respondents have placed on record, letters dated 04.09.2002, 26.12.2002, 20.01.2003, 13.02.2003, 16.12.2003 ex.RW-1/3 to RW-1/7 to show that the work was going at a very slow speed but from the office note dated 25.10.2005 Ex.C-14 brought on record by the claimant which is admitted by the respondents, the said contention of the respondents stands negative and from their own said office note of the respondents it was quite evident that there was no delay on the part of claimant. Apart from that the fact that no penalty was imposed upon the claimant for delaying the work and suo-moto extension of time was granted by the respondents for completion of work clearly suggests that the delay in completing the work was not attributable to the claimant but was attributable to the respondents who by handing over the site in piecemeal manner and by not handing over designs and drawings in time and by not making the payment of the bills for a long time, committed breach of contract.

33. It is further evident from record that claimant firm admitted that it has received all payments in respect of actual work done by it, its claim towards the final bill in respect of actual work done does not survive. When nothing was payable in respect of the final bill, the question of payment of accrued interest thereon does not arise. Therefore, Ld. Sole Arbitrator has rightly rejected the claim no.1 of claimant.

Claim no.2- Payment towards 10% balance security amount to the tune of Rs.96,294.52 including the interest @ 15% p.a.

34. Further claim no.2 of claimant towards balance 10% security deposits. The main plea taken by the claimant was that the respondent had already released 90% of the security deposit, which clearly shows that there was no delay on the part of the claimant, stipulated period of maintenance had already expired and there was no deficiency in the work executed by the claimant. Whereas respondents had taken the plea that the claimant failed to submit the specific final bill within stipulated period as per clause 9 of the Terms and Conditions of the Contract and failed to complete the nodal formalities to enable the respondents to prepare the final bill after scrutinizing the same. As per the cross examination of CW1 Sh. Gursimran Singh Chadha, it is the responsibility of the contractor to prepare the final bill under Clause 9 of the Agreement, but as per the prevailing practice running accounts bills were being accepted by the claimant and that there was no dispute over the correctness of the bills and that final bill was still in the power and possession of the respondents. Hence, I am of the opinion that Ld. Sole Arbitrator has rightly held that claimant firm is entitled for refund of 10% of the security deposit lying with the respondents.

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38. It is evident from the record that respondents have suo-moto extended the time for completion of contract without imposing penalty and when 90% of the security deposit were refunded to the claimant after completion of the work and when it has been specifically mentioned in the office note dated 26.10.2005 Ex.C-14 that there was no delay on the part of

> the contractor, it can be held that the claimant was not responsible for causing delay in completing the work. On the other hand, the respondents by not handing over the site and drawings and designs in time and by keeping the running bills pending for a pretty long time and releasing the payment of first running bill about six months after the expiry of the stipulated period of completion of contract, clearly points out towards their inability to perform their obligations, and resulting into breach of contract and prolonging of completion of work." (underlining added)

5. A reference to the aforesaid paras of the impugned judgment shows that the court below has referred to the evidence led before the arbitrator and which showed that it was the appellant who was guilty of breach of causing delays in the completion of work, otherwise there was no reason for the appellant to extend the time of completion without imposition of liquidated damages in case it was the respondent/contractor guilty of delay in completion of the work. Also, the court below has rightly observed that as much as 90% of the security deposit stood released to the respondent/contractor and which again shows that there was no delay on the part of the respondent/contractor because if there was delay then 90% of the security deposit amount would not have been released. Release of the 90% of the security deposit also shows that the stipulated period of maintenance had expired and there was no deficiency in the work executed by the respondent/contractor.

6. The court below has also rightly observed that an adverse inference should be drawn against the appellant on account of non-production of the relevant documents/books and so observed in paras 28 and 29 of the impugned judgment and which are reproduced above.

7. I do not find that any illegality or perversity whatsoever in the impugned judgment of the court below and which has given valid reasons as also rightly discussed the evidence led before the arbitrator, for dismissing the objections filed by the appellant.

8. There is no merit in this appeal and the same is hereby dismissed.

MAY 31, 2017 **VALMIKI J. MEHTA, J**

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