

under Section 30/33 made by the respondent/objector raising objections against the award.

2. The parties had entered into a contract for construction of Vivekanand College building. After construction of the building a dispute arose between the parties and an OMP 51/1984 was filed in this Court whereby the petitioner challenged appointment of Shri Swami Dyal as the Sole Arbitrator to decide the dispute. The said petition was compromised and the parties agreed that Shri Swami Dyal should cease to act as Arbitrator and the Vice Chancellor of Delhi University should appoint an independent Arbitrator to adjudicate the dispute. The Vice Chancellor of the Delhi University vide letter dated 15.5.1986 appointed Prof. M.P.Singh as the Arbitrator. Both the parties filed their claims, counter claims before the Arbitrator and ultimately the Arbitrator concluded the hearing and gave an award dated 5.12.1987. The petitioner filed an application under Section 14/17 on 16/27.7.1988 praying that the Court should direct the Arbitrator to file award in the Court and the award should be made Rule of the Court. Notice of the petition was served upon the parties and ultimately the award was got filed in the Court by Delhi University through an advocate and the notice of the award was sent to the parties. It transpires from the record that the Arbitrator after giving the award had sent it to the Vice Chancellor and later on Vice Chancellor told the parties that arrangement was being made for filing of award in the Court. After notice was sent to the parties respondent filed objections against the award and assailed it on the ground that there was an error apparent on the face of the award as the learned Arbitrator had not published the award within the period prescribed under law. The Arbitrator entered reference on 3.5.1986 and the award was purportedly made on 5.4.1989. The other

ground taken was that the Arbitrator had not issued a notice of making and publishing of the award to the parties. The award was not filed in the Court properly, it should have been filed by the Arbitrator but it was got filed through advocate. The other objections taken are regarding those claims which have been allowed by the learned Arbitrator stating that the Arbitrator allowed these claims on the basis of mere conjectures and surmises. The petitioner/contractor never submitted running account bills and the bills were not certified and checked by the architect. The Arbitrator wrongly allowed claim against the additional items, no payment against additional items could have been made by the Objector unless they were certified by the architect. There was no certification of architect in respect of the additional items. The Objector also raised objection against grant of 9% interest by the Arbitrator stating that there was no provision for awarding of interest in the agreement between the parties.

3. A prayer was made that the award be set aside. All the objections raised by the objector were refuted by the petitioner, who supported the award. On the basis of objections and response, following issues was framed by this Court:

1. *Whether the award submitted by Shri M.P.Singh, sole arbitrator, filed in Court on 5.4.1989 is liable to be set aside/modified for the objections raised by the respondent in IA No. 5205/89 ? – OPO*
2. *Whether the objections filed by the respondent are within time? – OPO*
3. *Whether the objections have been signed by a duly authorized person? – OPO*
4. *Relief.*

4. A perusal of award shows that out of nine claims made by the claimant, the learned Arbitrator rejected claim no.2, 3, 6 & 8. Claim no. 5 was waived off by the

claimant himself and was rejected on this ground. The Arbitrator only allowed claim no.1 for Rs.35,377.21, claim no.4 for Rs.11,429.66, claim no.9 to the extent of Rs.15,000/- and claim no.7, regarding interest. The learned Arbitrator held that claimant would be entitled to 9% simple interest from the date amount became due till the amount was paid. The learned Arbitrator ruled that cost of the arbitration shall be borne by both the parties 50% each.

ISSUE No.1

5. It is submitted by the Objector/Respondent that the period of limitation for publishing the award was four months from the date of entering the reference. The award was neither published nor made within this statutory period of four months. None of the parties had asked for extension of time. The proceedings were concluded in October, 1987 however, the award published was on 5.4.1989 therefore, the award was liable to be set aside. It is also argued that the learned Arbitrator did not issue notice of making the award or publishing of the award to the parties and the award was not filed in the Court by the duly authorized person. The other ground for assailing the award is that the learned Arbitrator has not given reasons for allowing claims no. 1, 4, 7 & 9. Claim No.4 was based on some items of work which were outside the terms of the contract, the Objector had never asked the contractor to do these works and never agreed to pay for the same. It is submitted that payment of bills was to be made to the petitioner only after approval/certification of those bills by the architect, no payment was permissible in absence of certificate by the architect. The petitioner never submitted the running account bills in respect of items of work mentioned in claims no. 4 & 9 to the Objector and therefore no payment was liable to be made, the award passed by the Arbitrator

was therefore invalid. It is also stated that the award in respect of claim no.9 was without any basis and was not based on evidence. The petitioner had failed to rectify the defects in the building within the specified period of 15 days and the Objector had to get the defects removed on its own; under these circumstances, the award under claim no. 9 was bad in law.

6. There is no doubt that the Arbitrator had not given its award within the period of four months which is the period prescribed for making an award however, the petitioner and the respondent both had been participating in the proceedings before the Arbitrator even after expiry of the prescribed period of four months. It is not the case of Objector that it stopped participating in the proceedings or raised objection before the Arbitrator that four months had expired and it was not prepared to extend the period beyond it. Where the parties keep on participating in the arbitration proceedings without raising any objection of expiry of period of four months, a presumption is there that both the parties have given tacit consent to continue with the proceedings of the arbitration and the period of four months stand extended due to this tacit consent of the parties. The objection regarding delay in giving the award in such case cannot be entertained. I get support for this view from decision given in State of Punjab v. Hardyal (1985) 2 SCC 629. This objection of the respondent/objector is therefore liable to be rejected and is hereby rejected.

7. A perusal of the arbitration proceedings would show that the Arbitrator had given full opportunity to the parties to lead evidence and to place before it all the record. The learned Arbitrator after going through the record and the evidence of both the sides gave its award in respect of each claim. There is no doubt that the award is a

non-speaking award but that cannot be a ground for setting aside of an award. There was no binding on the Arbitrator to give a speaking award. The Arbitrator had given its award based on the evidence. Where the award is a non-speaking award, the Court cannot enter into the mind of the Arbitrator and speculate as to what would have been the reasons with the arbitrator for giving the award and Court cannot determine whether the conclusions are right or wrong. It is not open to the Court to attempt to probe the mental process of the arbitrator by which the arbitrator reached conclusions. Giving of non-speaking award in itself is not a ground for setting aside of the award neither it amounts to misconduct on the part of the Arbitrator. I, therefore find that this objection raised by the respondent/objector is not tenable.

8. This Court while considering the objections raised against an award does not act as a Court of appeal and cannot re-appreciate the evidence adduced before the Arbitrator. The Arbitrator is the final judge of the facts and law and unless it is shown that the Arbitrator mis-conducted himself, the award cannot be set aside. The misconduct should be of such nature as the award was given under extraneous influence or the arbitrator totally ignored the evidence and award was without any basis or he ignored the law of land and passed its award contrary to settled law. It is not the case of the respondent that the arbitrator had not given full opportunity to the respondent of hearing or that the award of the arbitrator was not based on evidence.

9. The plea of the respondent that it had not asked for extra items to be done by the contractor is belied from the agreement entered into between the parties. A perusal of agreement would show that agreement itself provided that the contractor would execute all such extra items as are told to him from time to time and the payment

in respect of extra item would be made at CPWD rates plus profit of the contractor. There is no provision in the contract between the parties that the payment in respect of extra items is not to be made unless it is approved by the architect. The dispute in fact arose only because extra items executed by the contractor at the instance of the architect/respondent were not paid for. The arbitrator has considered the material produced before it and taken a conscious and reasonable decision regarding all the claims. I find no merits in the objections raised by the petitioner on this count. In view of my above discussion the issue is decided in favour of the petitioner and against the objector/respondent.

ISSUE NO.2

10. It is not disputed that notice of filing of the award was directed to be issued by this Court to the parties on 4.5.1989. This notice was received by the Objector on 18.5.1989. The period of 30 days for filing objections expired on 17th June, 1989. The Courts were closed for summer vacation from 29.5.1989 to 1.7.1989. The limitation period was not to run for the purposes of institution of Civil Suits and Criminal Cases during the summer vacation. 2nd July, 1989 was a Sunday and objections were filed on 3.7.1989. The objections filed by the respondent were thus within time. The issue is decided accordingly.

ISSUE NO. 3

11. The objections were filed by the respondent through Mr. J.R.Jindal the then 'Treasure' of respondent college. Under the rules of society and under memorandum of association 'Treasure' of society was a duly authorized person to sign

and verify the proceedings on behalf of the society. The objector proved rules of the society and Memorandum of Association as Exh. RW1/4 and RW1/5. Appointment of Mr. J.R.Jindal who signed the petition as 'Treasurer' was approved by the governing body in its minutes of meeting dated 31.5.1989 (RW1/3). I, therefore, hold that the objections were filed by the authorized person.

12. In view of above discussion I find that this petition under Section 30/33 made by the respondent/objector is liable to be dismissed and is hereby dismissed. The petition made by the petitioner under Section 14/17 of the Arbitration Act is hereby allowed. The award is made rule of the Court. The petitioner shall be entitled to costs of its petition. I consider that respondent has filed frivolous objections against the petition. A cost of Rs.25,000/- is awarded to the petitioner.

April 21, 2009
vn

SHIV NARAYAN DHINGRA, J.