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

% Judgment delivered on: 10.03.2022

+ **FAO 255/2015**

**LATE SH PRAMOD KUMAR JAIN PROPRIETOR OF M/S JAIN
ENTERPRISES THR HIS LEGAL HEIRS Appellant**

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Dr. Amit George with Mr. Rajeev Kumar, Advocates.

For the Respondent: Mr. Tushar Sannu, Standing Counsel, North DMC with Ms.
Ankita Bhadouriya, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 21.02.2015 whereby the objections filed by the appellant under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act) against the 'Nil' award dated 30.03.2012 have been dismissed.

2. Between 17.11.2000 and 02.01.2001 three work orders were granted to late Sh. P.K.Jain, the husband of appellant No.1 and father of appellant Nos.2 to 4 with the stipulated period of completion being

four months.

3. Late Sh. P.K.Jain requested for handing over of the sites for execution of the work, however, prior to the work to being completed he expired.

4. It is not in dispute that after his demise, his legal heirs i.e. the appellants carried on the work and concluded the work. Appellants sought release of the payments for the executed work.

5. There were certain disputes between the parties with regard to the said works and the payments to be made to the appellants. Accordingly, appellants invoked the arbitration.

6. By order dated 02.04.2009 appellants application under Section 11(6) of the Arbitration Act was allowed and a sole arbitrator was appointed for adjudication of the disputes. The arbitrator passed a 'Nil' award on 30.03.2012 holding the claims to be barred by time.

7. Learned counsel for the appellants submits that on merits the arbitrator found in favour of the appellants, however, passed a 'Nil' award solely on the ground of delay.

8. It is contended that appellants thereafter filed objections to the award under Section 34 of the Arbitration Act which were disposed of by the impugned order.

9. Learned counsel submits that though the challenge to the award was only on the ground of passing of a 'Nil' award because of delay.

However, the Trial Court has proceeded on a completely different premise and dismissed the objections under Section 34 holding that since Late Sh. P.K.Jain had expired before the alleged completion of the work and that there was no fresh award of work to the legal heirs, there was no subsisting contract after the death of late Sh. P.K.Jain which could be enforced by the appellants. Trial Court held that as there was no subsisting contract, appellants had no right in the contract as they were not privy to the contract and thus could not make any claim.

10. Further the Trial Court has held that the award is vitiated, not for the reason that the award is barred by time but on the ground that there was no subsisting contract between the legal heirs and the Corporation which could have been enforced.

11. It is not in dispute that Sh. P.K.Jain expired before the work was completed and the work was executed and also allegedly completed by the appellants after his demise.

12. It is also not in dispute that the Corporation at no point of time raised any objection with regard to the right of the legal heirs to execute the contract and claim payment. The dispute is only with regard to the alleged amount due under the contract.

13. It is an admitted position that the Corporation has never taken any objection that the contract did not survive after the demise of late Sh. P.K.Jain. Even an arbitrator was appointed by this Court under Section 11 of the Arbitration Act on a petition filed by the appellants.

14. Further, in the reply filed by the respondent/Corporation to the objections under section 34 of the Arbitration Act, respondents have stated that they had required the legal heirs i.e. the appellants to approach the department for receiving the amount on producing the certificate of succession and as nobody approached them the amount was not released.

15. Clearly, Trial Court has committed an error in dismissing the objections under Section 34 of the Arbitration Act, on a ground which was neither pleaded nor urged before the Court. The question before the Trial Court was as to whether the claim petition filed by the appellants was within time or not and as to whether the award was liable to be set aside on the grounds mentioned under Section 34 of the Arbitration Act.

16. The Trial Court has not even adverted to the questions raised before it but has proceeded on a completely different premise, which was not even the case of the Respondents. Accordingly, the impugned order is liable to be set aside and the matter remitted to the Trial court for fresh consideration of the objections filed by the appellants under Section 34 of the Arbitration Act.

17. In view of the above, the impugned order dated 21.02.2015 is set aside. The objections filed by the Appellants under section 34 of the Arbitration Act are restored to the file of the Trial Court.

18. Since the award was rendered in the year 2012, the Trial Court is directed to expedite the proceedings and endeavor to conclude the

same preferably within a period of six months from the first date fixed before the Trial Court.

19. Parties shall appear before the concerned Trial Court for directions on 29.03.2022.

20. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either parties and the Trial Court shall consider the objections under Section 34 of the Arbitration Act in accordance with law without being influenced by anything stated herein on merits.

21. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J.

MARCH 10, 2022

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