

(1959) 05 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 74 of 1956

Amin Chand Bholanath

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-05-1959

Acts Referred:

Arbitration Act, 1940 — Section 14, 33

Interest Act, 1839 — Section 1

Sales of Goods Act, 1930 — Section 61

Citation : AIR 1960 P&H 179

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Judgement

(1) This appeal arises out of the partial acceptance of the objections of the respondent to the award of the umpire to whom the disputes between the parties were referred arising out of two contracts of 2-10-1943 and 29th January 1944 for the supply of milk cans.

(2) It is common ground that the appellant firm supplied part of the goods but the contracts were cancelled with regard to the outstanding quantities on 27-8-1945. The disputes between the parties were referred to two arbitrators who had been appointed under the terms of the contracts, but they failed to give an agreed award and a reference was made to the umpire on 20-5-1950. The validity of the arbitration agreement was challenged by the respondent under S. 33 of the Indian Arbitration Act, but that agreement was upheld by the High Court, on 1-11-1954. The umpire gave his award granting a total sum of Rs. 1,81,912/- to the appellant-firm together with future interest at the rate of 6 per cent annum, if that amount was not paid within 30 days of the award. This amount consisted of the following items:

(1) Rs. 1,07,200/- as damages;

(2) Rs. 63,712/- as interest;

(3) Rs. 6,000/- as storage and godown charges;

and

(4) Rs. 5,000/- as costs of arbitration proceedings.

The umpire presented an application under S. 14 of the Arbitration Act on 22-7-1955 for filing the award on which the respondent preferred objections under S. 30.

(3) Some of the objections were wholly untenable as is clear from the concessions made by the Government Pleader in the Court below. He also agreed that the breach of contract had taken place on the part of the respondent. All the objections failed with the exception of the one relating to interest, which was sustained by the Court. The award was made a rule with the consequential modifications, the items being severable.

(4) The only question which requires determination is whether the umpire could validly award interest to the appellant-firm. It has been contended by Mr. N. C. Chatterji the learned counsel for the firm, that interest had been rightly awarded as a part of the damages or under S. 61 of the Sale of Goods Act on the price. The Court below placed reliance on *Seth Thawardas Pherumal Vs. The Union of India (UOI)*, in which it was observed at pages 477--478-

"Then the arbitrator sets out the amounts awarded under each head of claim. A perusal of them shows that each head relates to a claim for an unliquidated sum. The Interest Act 1939 applies, as interest is not otherwise payable by law in this kind of case (see AIR 1938 67 (Privy Council)) but even if it be assumed that an arbitrator is a "Court" within the meaning of that Act, (a fact that by no means appears to be the case), the following among other conditions must be fulfilled before interest can be awarded under the Act:

(1) there must be a debt or sum certain;

(2) it must be payable at a certain time or otherwise;

(3) these debts or sums must be payable by virtue of some written contract at a certain time;

(4) there must have been a demand in writing stating that interest will be demanded from the date of the demand.

Not one of these elements is present, so the arbitrator erred in law in thinking that he had the power to allow interest simply because he thought the demand was reasonable".

In the Privy Council case relied upon by their Lordships it was laid down that S. 73 of the Contract Act was merely declaratory of the common law as to damages and in the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest for the period prior to the institution of the suit, interest could not be awarded for wrongful detention of

money. It is pointed out by Sir Shadi Lal, who delivered the judgment of the Board, that the law in England had been amended by S. 3, Law Reform (Miscellaneous Provisions) Act, 1934 empowering a Court of Record to award interest on the whole or any part of any debt or damages at such rate as it thinks fit for the whole or any part of the period between the date when the cause of action arises and the date of the judgment. But there has been no such amendment of the law in India and interest could not be awarded in such cases unless the proviso to S. 1 of the Interest Act applied and such circumstances existed as would justify a Court of Equity awarding interest. Mr. Chatterji has laid stress on the statement in Pollock and Mulla's Indian Contract At, 8th edition, at page 477 which may be set out below:

"It has been held that the Privy Council decision only prevents the recovery of interest where there has been more wrongful detention of a debt, and does not preclude the recovery of interest as part of the damages for a breach of the contract". It is submitted that all that the umpire did in the present case is that for the purpose of quantification of damages he has included interest which thus formed a part of the damages (if it be assumed that he has awarded damages and not price together with interest under S. 61 of the Sale of Goods Act which is the alternative contention raised by Mr. Chatterji). The statement of law in Pollock and Mulla's book is based on three decisions- Digbijai Nath Vs. Tirbeni Nath Tewari, Jagat Kishore Pd. Narain Singh Vs. Parmeshwar Singh and Others, and Haji Mohammad Khaja v. Akber Ali (S) AIR 1955 Hyd 150.

In the Allahabad case the plaintiff was a contractor. He entered into an agreement with the defendant whereby he undertook to pay to the latter a certain sum of rights of extraction from the forest. A sum of Rs. 1,001/- was paid as earnest and a sum of Rs. 3,000/- was paid by way of advance. Differences arose with regard to the terms of the contract and no further action was taken in pursuance of it. The plaintiff instituted a suit for the recovery of Rs. 3,000/-. In that connection the learned Judges had to consider whether interest by way of damages could be awarded on the amount of the advance money. After referring to a passage from AIR 1938 67 (Privy Council) it was observed-

"Where payment of money is claimed on a contract interest be allowed except under the provisions of the Interest Act. The position is different where interest is allowed as part of the damages for breach of a contract. We see no objection, therefore, to interest being allowed by the Civil Judge by way of damages on the amount paid by the plaintiff-respondent".

The facts being very different, the Allahabad case can hardly be of any assistance. The decision of the Patna High Court is entirely distinguishable on the facts, and the observations of Meredith J. were purely obiter as is apparent from what the learned Judge stated in para 20. Ramaswami J., as he then was, doubted the view of Meredith J. and rested his decision on the other ground on which the suit had been dismissed, i. e., of limitation.

The Hyderabad decision was based on the peculiar circumstances obtaining in that case which attracted the equitable jurisdiction of the Court owing to fraud having been proved. Even in *Muhammad Abdul Ghaffur Rowther v. Hamida Beevi Ammal* AIR 1919 Mad. 164, cited by *r. Chatterji* all that was held was that apart from the Interest Act, interest could be awarded on principles of equity, justice and good conscience. That interest can be awarded when money has been retained by fraud has now the imprimatur of the Supreme Court (*Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*). Now, in the present case, the umpire has not awarded interest or could award interest in exercise of equitable jurisdiction nor did any such circumstances exist as would attract the exercise of that jurisdiction.

(5) Another argument which has been pressed by Mr. Chatterji in this connection may be noticed. It has been urged by him that the measure of damages has to be such as to afford full compensation within the meaning of S. 73 of the Indian Contract Act to the party who has been put to loss by reason of default or breach on the part of the other contracting party. He has referred to the inordinate delay in the disposal of the matter owing to the frivolous pleas taken up on behalf of the respondent, and to the findings of the umpire that the breach was solely on the latter's part.

It is indeed unfortunate that owing to the ill-advised course adopted on behalf of the respondent the matter had been needlessly delayed but that could furnish no reason for awarding interest when it was not within the power of the umpire to do so. It is submitted that compensation means complete indemnification and it cannot be less than the *quid pro quo*. Reference was made to *Monogahela Navigation Co. v. United State* (1892) 37 Law Ed 463 in which it was laid down that the compensation for private property taken for public use must under the 5th Amendment of the American Constitution, be a full and perfect equivalent for the property taken. The principle enunciated in *The State of West Bengal Vs. Bela Banerjee and Others*, was also pressed into service and it was urged that compensation means the just equivalent of what the owner has been deprived of. These principles pertain to the branch of law of Eminent Domain and can really be of no help in deciding the present case.

(6) Mr. Chatterji has strenuously contended that the umpire had awarded a sum of Rs. 1,07,200/- as price and not as damages and under S. 61 of the Sale of Goods Act, interest could be awarded and had been rightly awarded by the umpire. My attention has been invited to the statement of claim of the appellant-firm according to which price was claimed and not damages. In the written reply filed on behalf of the respondent in the arbitration proceedings there is no clear averment that the firm was not entitled to the price and if its case was established it would be entitled only to damages for breach of contract. But it appears that when the issues were framed in the arbitration proceedings this question was raised and that is why issue No. 5 originally framed by the arbitrators and adopted by the umpire was as follows:

"To what price or damages, if any, is the plaintiff entitled".

It is stated in the judgment of the Court below that the argument, that the appellant-firm was entitled to price because the property in the manufactured goods had passed to the respondent, was raised but was ultimately not pressed. I have carefully perused the award and it is difficult to differ from the view of the Court below that the sum of Rs. 1,07,200/- was awarded as damages under issue No. 5 and not as price. After awarding the aforesaid amount as damages the umpire proceeded to specifically award interest by way of damages.

There is no indication in the award in which, all the points raised by the parties appear to have been fully examined that the umpire was awarding the aforesaid amount by way of price although he deliberately used the word "damages". It is significant that the word "price" is not used by the umpire anywhere. The question whether the appellant-firm was entitled to the amount claimed as price or by way of damages was for him to decide and the Court cannot speculate with regard to his real intention.

In these circumstances, discussion of the relevant provisions of the Sales of Goods Act relating to the passing of property and the competency of a suit for price reference to which has been made by the learned counsel is wholly unnecessary. The question of passing of property would depend on a number of factors which could be established before the umpire and it is highly doubtful whether it is within the province of the Court deciding objections to the award to determine whether property had, in fact, passed or not.

It is possible to suggest that the umpire did not assess any damages by ascertaining the difference between the contract price and the market price and from this should be concluded that he was awarding price and not damages. The Court below while dismissing another objection on behalf of the respondent has rightly referred to the true legal position with regard to goods which are not marketable and which have been made to order. It would be the price in such cases which furnish the measure of damages.

The mere absence of applying the normal test of assessing damages, viz., difference between contract price and market price, would not militate against the view that the umpire awarded damages for breach of contract and did not award the price of the goods agreed to be supplied. Although the Lordships of the Supreme Court appear to consider in *Seth Thawardas Pherumal Vs. The Union of India (UOI)*, that an arbitrator cannot be regarded to be a Court within the meaning of the Interest Act and the view of the Court below may be correct that only a Court and not an arbitrator or umpire can award interest on the amount of the price as expressly laid down in S. 61(s) of the Sale of Goods Act, the learned counsel for the respondent has argued that even if interest could be awarded by the umpire on the price, it has not been so awarded. I am inclined to agree with this contention. If the amount of Rs. 1,07,200/- was awarded as damages by the umpire, the rule laid down in the above case by the Supreme

Court in the passage cited before will undoubtedly apply and interest by way of damages could not be awarded on the aforesaid amount by the umpire.

(7) No other point was pressed before me.

(8) In the result, this appeal fails and is dismissed. Considering the entire circumstances of the case. I leave the parties to bear their own costs in this Court.

(9) Appeal dismissed.