
(1996) 12 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 101 of 1995

Baij Nath Sachdeva

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 17-12-1996

Acts Referred:

Arbitration Act, 1940 — Section 29, 30, 33
Civil Procedure Code, 1908 (CPC) — Section 34, 80

Citation : (1997) 2 ShimLC 192

Hon'ble Judges : Surinder Sarup, J

Bench : Single Bench

Advocate : Gulzar Rathore, for the Appellant; Ram Murti Bisht, Assistant A.G.,
for the Respondent

Judgement

Surinder Sarup, J.—The facts relevant for the decision of this Arbitration case are that the Controller. Printing and Stationery Department, Himachal Pradesh, Shimla floated a tender in May 1987 for the supply of paper which was required to be submitted alongwith earnest money of Rs. 1,000. There were 34 items in all for which quotations were invited. The applicant Baij Nath Sachdeva (hereinabove to be called Plaintiff-objector) also gave quotations under the tender and the Controller, Printing and Stationery Department accepted the tender of the applicant in the name and style of M/s Sachdeva Paper Mart for five items vide his letter dated 14-9-1987. The Plaintiff-objector was also asked to deposit a sum of Rs. 65,400 as security money representing 10% of the contract value as per item No. 6(ii) of instruction to tenderers. He deposited the said amount vide FDR No. A-2 19892/206087 dated 25-9-1987. No supply order was placed on the applicant till 19-2-1988. Meanwhile, the Respondent-State of Himachal Pradesh floated a fresh tender on 13-11-1987 for 13 items including item Nos. 13 and 16 for which tender had already been accepted. The applicant alongwith other firms gave fresh quotations under the newly floated tender including items Nos. 13 and 16 of the earlier tender. However, the rates quoted by the various parties under the newly floated tender dated 13-11-1987 were

much higher. The Respondent placed supply order dated 20-2-1988 which was personally handed over in Delhi by the Assistant Controller (Stationers) to the applicant-contractor firm on 22-2-1988 for Rs. 8,46,540. The term was also asked to deposit an additional amount of Rs. 19,300 as security money as 10% of the contract value was required to be deposited which amounted to Rs. 84,700 against which the firm already deposited Rs. 65,400 and this amount of Rs. 19,300 represented the difference. The case of the Plaintiff-objector is that he had already informed the Respondent-Defendant vide his letter dated 15-2-1988 that the firm's earlier rates quoted stood cancelled on 13-11-1987. The Plaintiff-objector vide letter dated 26-2-1988 reiterated this stand and also served notice u/s 80. CPC on the Respondent-Defendant. The Respondent-Defendant vide his letter dated 7-3-1988 asked the Plaintiff-objector to execute the order and on the non-compliance of the order by the latter served show cause notice on 17-8-1988 on him, for forfeiting the security money and the earnest money for non-performance of the contract. Not being satisfied by the reply of the Plaintiff-contractor dated 24-8-1988, the Respondent-Defendant forfeited the security amount and earnest money amounting to Rs. 65,400 and Rs. 1,000 respectively vide order 15-9-1988.

2. Since the agreement between the parties arising out of the tender, contained an Arbitration Clause, the Plaintiff objector raised disputes as regards the same. The said disputes were referred for arbitration to Sh. Parminder Hira, Arbitrator (Commissioner-cum-Secretary Printing and Stationery to the Government of H.P.), Shimla. The said Arbitrator entered upon the reference and ultimately gave his award dated 21-11-1992.

3. The award was sent to the Court to be filed in the Court to make the award rule of the Court by the letter of the Financial Commissioner-cum-Secretary (P and S) to the Government of H.P., Shimla vide a letter dated nil of the month of December 1994, alongwith the original award and the arbitration proceedings.

4. After the award had been received in the Court, it was registered as Civil Suit No. 101/95 and notices of the filing of the award were issued to both the parties. Both the parties were served. The Plaintiff-objector filed objections which were registered as O.M.P No. 442 of 1995 in C.S. No. 101 of 1995 under Sections 30 and 33 of the Arbitration Act, 1940 (hereinafter to be called as the "act"). It is these objections which are the subject matter of the present suit.

5. Apart from the other objections taken, it has specifically been pleaded therein that the learned Arbitrator has misconducted himself and the award passed by him is otherwise invalid in so far it disallowed interest amounting to Rs. 40,313 10 paise accrued on the security and earnest money, the reason given by the Arbitrator for disallowing the interest is neither based on the evidence on record nor is it in accordance with Clause 7 of the instructions to the tenderer which is a part of the contract. According to the said objection, the Arbitrator reached at an inconsistent conclusion holding that the objector did not act promptly for claiming the refund of the earnest money and security as per Clause 8 of the

instructions to the tenderer and as has been held by the Arbitrator while deciding the issue No. 3. However, it is contended that it is the duty of the Respondent-Defendant to refund the earnest money to the successful tenderer as soon as the security amount has been deposited. The Arbitrator failed to appreciate that the amount of security is lying in the fixed deposit and the interest was bound to accrue on it, which interest forms the part of the security. The Arbitrator has allowed a sum of Rs. 3,654 to be forfeited in order to compensate the Respondent for non-performance of the contract as such the remaining amount of security alongwith interest should have been refunded to the objector, moreover, the security and interest could only be forfeited as penalty or compensation for non performance of the contract as provided therein and not for any other reason such as given by the Arbitrate for disallowing the interest in the present matter. It has lastly been pleaded that it is pertinent to mention that the security amount was deposited by way of FDR in the name of the Respondent and the interest accrued thereupon was utilized by the Respondent-Defendant, while the objector has been deprived of from utilizing the said amount. This objection has been referred to in detail, for the simple reason that at the time of arguments the learned Counsel for the Plaintiff-objector confined himself only to this objection regarding non-granting of interest. In effect he did not press any other objection or ground.

6. In the reply filed by the Respondent-Defendant to the objection petition through the affidavit of one Sh. J.R. Verma, Controller, Printing and Stationery Department, Himachal Pradesh, Shimla is that the Arbitrator has held objector responsible in the matter and for this reason rightly disallowed the interest accrued on security amount and earnest money. A total amount of Rs. 62,746 has already been refunded to the objector vide Office Order dated 11-3-1993 as per the award announced by the Arbitrator on 21-11-1992. According to the reply, the Plaintiff-contractor did not object to the said refund and received the amount which goes to prove that the award given by the Arbitrator was acceptable to the objector. It was obligatory upon the latter to assail the award at the very outset, but firstly he received the payment of refund as ordered by the Arbitrator and thereafter appealed again on dated 9-12-1993 against the award i.e. after lapse of one year. Therefore, objector is estopped to file these objections by his own acts, deeds, admissions and omissions.

7. Both the parties have filed their evidence by way of affidavits. On behalf of the Plaintiff-contractor the Plaintiff himself i.e. Baij Nath Sachdeva has sworn the affidavit by way of evidence. In the evidence the same respective stand has been taken up in the pleadings, discussed hereabove.

8. On the pleadings of the parties, the following issues were framed:

1. Whether there was a valid contract for the supply of tender items Nos. 11, 13 and 16 between the applicant and Respondent after a fresh tender was floated on these items on 13-11-1987?

2. Whether the applicant Firm was required to perform the supply order dated 20-2-1988 for Rs. 8,46,540 in pursuance of acceptance of tender dated 14-9-1987?

3. Whether the security amount and earnest money was rightfully forfeited by the Respondent?

4. Whether the applicant is entitled to refund of the forfeited security amount and earnest money with interest and costs?

9. The learned Counsel for the parties have been heard and the record of the case has been gone through and with their assistance the findings are as under:

Issues Nos. 1 and 2:

Both the issues are inter-connected and these are disposed of. The main ground of objection against the impugned award is non-payment of interest to the Plaintiff objector. Indeed, at the time of arguments this was the only objection which was pressed as regards the same. It will be seen that the Arbitrator in the impugned award while deciding this aspect of the case, has given reasons, which to the mind of this Court appears to be valid and sound otherwise on the facts of the case. However, it has been vehemently argued by the learned Counsel for the Plaintiff-contractor that as per Clause 7 of the Agreement between the parties interest had to be granted by the Arbitrator. In support of his arguments, he has cited two judgments of the apex Court, namely Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, (Para 14) and Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, .

10. On the other hand, the learned Assistant Advocate General has referred to the findings of the Arbitrator under issues Nos. 2 and 3 in the impugned award. Issue No. 2 was to the effect whether the applicant firm was required to perform the supply order dated 20-2-988 for Rs. 8,46,540 in pursuance of acceptance of tender dated 14-9-1987? Issue No. 3 is to the effect whether the security amount and earnest money was rightfully forfeited by the Respondents. However, issue No. 4 which deals with refund of the forfeited security amount and earnest money with interest and costs.

11. In order to appreciate the respective contentions of both the parties, it would be necessary to go through the findings under issues Nos. 2 and 3 as given by the Arbitrator in the impugned award. Issue No. 2 has been decided by holding that the Plaintiff-objector has failed to perform the contractual obligation of supplying paper against item No. 11 valuing Rs. 36,540. The finding in issue No. 3 is that non-compliance of the order would have made Plaintiff-objector liable to the forfeiture of his security amounting to only 10% of the contractual obligation i.e Rs. 3,654 and not the whole amount of Rs. 65,400. While deciding these two issues, the Arbitrator appears to have given valid and cogent reasons, which are germane to the dispute and issue in hand. No doubt, as submitted by the learned

Counsel for the parties, there is no provision in the agreement between the parties for a reasoned award. Yet, in the present case, the Arbitrator in his wisdom has chosen to give reasons, which this Court feels are unassailable being as they are valid and cogent as well as relevant to the controversies between the parties.

12. Since there are reasons in support of the findings of the Arbitrator that the Plaintiff-objector is not entitled to any interest on the refunded amount of security as well as the earnest money, under the settled law enunciated right up to the apex Court, the sufficiency or otherwise of the reasons or their validity cannot be gone into by the Court in the proceedings of present type Reference in this connection may be made to the cases decided by the apex Court and reported in Trustees of The Port of Madras Vs. Engineering Constructions Corporation Limited, ; Puri Construction Pvt. Ltd. Vs. Union of India (UOI), .

13. In view of the above discussion, the failure to grant interest does not vitiate the award and does not amount to misconduct of the proceedings also. However, the learned Counsel for the Plaintiff-contractor has laid great stress on Clause 7 of the agreement which permits grant of interest. Be that as it may, as already stated above, since valid and cogent reasons have been given by the Arbitrator in support of his conclusion that the Plaintiff is not entitled to any interest on the refunded amount of security and earnest money, and the said reasons cannot be gone into in view of the rulings of the apex Court referred to above, Clause 7 is of no avail to the Plaintiff-objector. That clause only permits the award of interest, but does not bar the refusal of interest on valid and cogent grounds, as has been done by the Arbitrator in the impugned award in the present case.

14. On the other hand, the learned Assistant Advocate General is on a strong wicket when he submits that the reasons for refusal of interest being valid and cogent, the Court cannot go into the validity a sufficiency of the same in view of the authority of the apex Court referred to above. Moreover, he has cited Anr. ruling of the apex Court reported as Union of India (UOI) Vs. Jain Associates and Another, . It has been held therein as follows:

4. The first question that arises for consideration is whether the Court could award interest pendente lite. Section 29 of the Act says that insofar as award is, for the payment of money, the Court may in the decree, order interest from the date of the decree at such rate as it deems reasonable, to be paid on the principal sum adjudged by the award and confirmed by the decree. In Srikantia and Co. v. Union of India, it was held that Section 29 carries with it the negative import that it shall not be permissible to the Court to award interest on the principal sum adjudged in the award for a period prior to the date of the passing of the decree. The same principle was reiterated in Ham Singh v. Ram Singh Section 29 of the Act empowers the court, that where the award is for payment of money, to grant reasonable rate of interest on the principal amount adjudged and confirmed in the decree, only from the date of decree. Section 34, CPC empowers the court, where there is a decree for payment of money to grant

interest pendente lite and future, till the date of realization. Since Section 29 of the Act enables the court to grant interest on the principal amount adjudged in the award and confirmed in the decree only from the date of the decree, it carries a negative import with it that the Court has no power to grant interest pendente lite. The High Court, therefore, was not right in granting interest pendente lite, which the arbitrator himself had not granted.

15. The observations contained in the portion of the said authority vide para 4 as reproduced hereabove, fully support the arguments of the learned Assistant Advocate General, that in the facts and circumstances of the case, the Plaintiff-contractor was not entitled to any interest. This is further buttressed by the finding of the Arbitrator in the impugned award. As per the said finding, the Arbitrator has come to the conclusion that the Plaintiff contractor is himself responsible to a large extent for the state of affairs, he did not act promptly for claim of his money after being the successful tenderer and depositing and also ask for refund when the Respondent invited fresh tenders on 13-11-1987. He raised the issue of interest only in February 1988 under which amount deposited came under dispute. In view of these reasons, the case of the Plaintiff-objector to claim interest on the refunded amount of security and earnest money stands completely demolished.

16. No other point has been urged. Consequently, it is held that the award of the Arbitrator is not liable to be set aside on the grounds mentioned in the objection petition. Issue No. 1 is decided accordingly. It is also held that in the circumstances of this case, the Plaintiff-objector is not entitled to the interest as claimed by him in the objection petition. Issue No. 2 is decided accordingly.

Issues Nos. 3 and 4:

In view of the findings under issues Nos. 1 and 2 above, it is held that the security amount and earnest money was rightfully forfeited by the Respondent and this issue is decided accordingly. As regards issue No. 4, in view of the fact that the security amount and earnest money was rightfully forfeited and also in view of the findings under issues Nos. 1 and 2 that the objector was not entitled to interest on the amount of security and earnest money, it is held under this issue that the applicant is not entitled to refund of the forfeited security amount and earnest money with interest and costs. This issue is decided accordingly.

For the reasons recorded above, there is no merit in the objections, the same are hereby dismissed. The award be made a rule of the Court. Decree Sheet be prepared accordingly. There will be no order as to costs.