
(2011) 05 P&H CK 0291
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2509 of 2010

Chandigarh Housing Board

APPELLANT

Vs

JMK Associates and Another

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Arbitration Act, 1940 — Section 29, 31(7)
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Interest Act, 1978 — Section 3

Citation : (2011) 05 P&H CK 0291

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.N. Jindal, J.—This petition is directed against the judgment and decree dated 28.11.2007 passed by the learned Additional District Judge, Chandigarh dismissing the appeal against the order dated 29.4.2006 passed by the Civil Judge (Jr. Division), Chandigarh.

2. The main dispute which is the subject of controversy in this case is the awarding of interest.

3. The factual background of the case is that the Respondent No. 1-Petitioner before the trial court (herein referred as, "the Respondent No. 1") entered into a contract with the Petitioner -Respondent No. 1 before the trial court (herein referred as, "the Petitioner") for moulding and burning of bricks for the Petitioner. The Petitioner was to supply first grade coal to the Respondent No. 1 at fixed price and in that event Respondent No. 1 was to be paid an agreed sum for the bricks supplied by the Petitioner. The allegations are that the Petitioner supplied third grade washry instead of that of first grade coal without disclosing its quality and charged the price of first grade coal and paid the fixed price of the bricks as if the Petitioner had supplied first grade coal. After completion of the contract, dispute and differences arose on account of supply of third grade

washry instead of first grade coal to the Respondent No. 1, which was referred to the Superintending Engineer of Chandigarh Housing Board, who announced the award, but it was not acceptable to the Respondent No. 1, then the Respondent No. 1 filed an objection petition and consequently, the award was set aside on 11.5.1989 with the directions for removal of the Arbitrator on account of misconduct on his part. The Petitioner filed an appeal which was also dismissed. Consequently, P.M. Sood was appointed as an arbitrator but the dispute still remained un-adjudicated before P.M. Sood which compelled the Respondent No. 1 to move another application for appointment of the fresh arbitrator. Ultimately, the Respondent No. 2 was appointed as an arbitrator who passed the award during the extended time i.e. on 18.8.2002.

4. The Petitioner filed objection petition against the said award. The said objections were contested by the Respondent No. 1 and ultimately, the trial court after dismissing the objection petition filed by the Petitioner made the award dated 18.8.2002 as rule of the court and ordered that the Respondent No. 1 would be entitled to compound interest @ 12% per annum w.e.f. 1.7.1985 till realization.

5. The appeal against the award preferred by the Petitioner Housing Board was dismissed by the learned Additional District Judge, Chandigarh on 28.11.2007. Hence this petition has been filed.

6. Arguments heard. Record perused.

7. Mr. Dharam Pal Sharma, Arbitrator had passed the award on 18.8.2002 awarding a sum of Rs. 5,13,330-60 against the claim of Rs. 7,47,821-38 as raised by the Respondent No. 1 along with compound interest @ 12% per annum w.e.f. 1.7.1985 till realization, which was made rule of the court by the trial court on 29.4.2006. The appeal preferred by the Petitioner against the said order was also dismissed.

8. The parties are not at issue with regard to the principal amount as was made the subject of the award, but Mr. K.K. Gupta, Advocate for the Petitioner has made serious challenge to the awarding of the interest by the Arbitrator as well as both the courts below i.e. compound interest @ 12% per annum from 1.7.1985 till realization in the absence of any such contract between the parties. Mr. Gupta has contended that in the original claim statement the Respondent No. 1 did not claim any interest. However, it is only in the revised claim statement filed in January, 2002 i.e. much after the period of limitation, the Respondent not only increased the claims but also claimed compound interest on the claims. Moreover as per Section 29 of the Arbitration Act, 1940, only the court was having the discretionary powers to allow the interest from the date of decree at a reasonable rate on the principal sum as adjudged by the award and confirmed by the decree. The arbitrator in spite of having no power u/s 29 of the Arbitration Act, 1940, allowed compound interest @ 12% per annum and that too w.e.f. 1.7.1985, whereas, reference was made to him in January, 2002. To the

contrary, learned Counsel for the Respondent No. 1 has urged that it was only discretion of the arbitrator as well as of the court to award pre-reference or post-reference interest and this Court at this revisional stage should be reluctant to interfere in the discretion exercised by the court while awarding compound interest. The arbitrator was within his rights to award compound interest over the claim awarded to him.

9. Having heard the rival contentions, it may be observed that there was no clause in the agreement for awarding interest, what to talk of compound interest, therefore, a reasonable interest which the arbitrator could deem it appropriate, in the circumstances of the case, could be awarded. To award compound interest was governed by the Interest Act, 1978. In the absence of any such contract, he could apply the principles as enshrined u/s 3 of the Interest Act. Section 3 of the Interest Act, 1978 reads as under:

3. Power of Court to allow interest -(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in his regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in Sub-section (1), -

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the Plaintiff or any other person or in respect of a person's death,

then, the power conferred by that Sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the Court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the Court is satisfied that there are special reasons why no interest should be given in respect of those damages.

3. Noting in this Section (a) shall apply in relation to

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement.

(b) shall affect

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in Negotiable Instruments Act, 1881; or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908;

(c) shall empower the court to award interest upon interest.

10. According to Section 3 of the Interest Act, 1978, the court and the Arbitral Tribunals were to award interest from the date of cause of action to the date of institution of legal proceedings or initiation of arbitration proceedings. Sub-section (3) (c) of Section 3 of the Interest Act, 1978 makes it clear that nothing in the said section shall empower the court or arbitrator to award interest upon interest. It should be noted that Section 3 of the Interest Act, does not deal with either pendente lite or future interest. Thus, the true intent and spirit of Sections 3 and 29 of the Act is that the payment of pre-reference interest is governed by the contract between the parties and the post reference interest is the discretion of the Court.

11. Admittedly, there is no agreement with regard to awarding compound interest and, therefore, no such compound interest could be granted to the Respondent No. 1.

12. The Apex Court in State of Haryana and Others Vs. S.L. Arora and Company, observed as under:

12. Compound interest can be awarded only if there is a specific contract, or authority under a statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest.

13. Further the Apex Court in S.L. Arora and Company's case (supra) observed as under:

16. In the Arbitration Act, 1940 ("the old Act", for short) there was no provision dealing with the power of Arbitral Tribunals to award interest. Section 29 of the Old Act merely provided for post-decree interest and authorised the court to direct in the decree, where the award was for payment of money, payment of interest from the date of decree at such rate as the court deemed reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree. The power of Arbitral Tribunals to award interest was governed by the

provisions of the Interest Act, 1978 and the law enunciated by courts.

14. The Apex Court, while concluding the judgment, in S.L. Arora and Company's case (*supra*), observed as under:

34. Thus, it is clear that Section 31 (7) merely authorises the Arbitral Tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the award is silent about interest from the date of award till the date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till the date of payment. The calculation that was made in execution petition as originally filed was correct and the modification by the Respondent increasing the amount due under the award was contrary to the award.

15. Actually in this case, since the courts below had awarded the future interest @ 18% per annum, therefore, in the circumstances, the Apex Court did not like to disturb the exercise of discretion in awarding of the interest @ 18% per annum. But, in the instant case, the trial court fell in error while granting 12% per annum compound interest in the absence of any contract which is totally against the principles of law and statute. As such, the award passed by the arbitrator as well as the judgments passed by the courts below need to be disturbed to that extent.

16. Resultantly, I hereby partly accept this petition, set aside the impugned judgment qua interest only and direct that the Respondent No. 1 would be entitled to simple interest @ 12% per annum on the award amount i.e. Rs. 5,13,330-60 w.e.f. 1.7.1985 till its realization.