
(2009) 07 OHC CK 0072
In the Orissa High Court

Durga Charan Routray and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2010) 109 CLT 301 : (2009) 2 OLR 1002 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—These two Writ Petitions having common facts were heard together & are being disposed of by this common Judgment.

W.P.(C) Nos. 4989 of 2008

2. In this Writ Petition, the Petitioner, who is a Contractor has challenged the Order Dated 18.1.2008 passed by the Learned District Judge, Mayurbhanj, Baripada in Execution Petition No. 1 of 2006 accepting the calculation sheet filed by the Judgment Debtor as correct.

3. The Petitioner executed a work for the Opposite Parties after entering into a contract. During execution of the said work, certain disputes arose regarding work/payment between the parties. As a result, the dispute was referred to the sole Arbitrator. The Arbitrator after hearing both the parties on 28.9.2005 passed an award & the relevant part of the award is as follows:

Thus the total awarded amount as per Schedule- "A" above comes to Rs. 31,05,210.00 (Rupees thirty one lakhs five thousand two hundred ten only). As already stated, the said amount shall carry interest at the rate of 15 % per annum from 28.0.2000 till the date of payment thereof within three months from the date of the award. In the event of default in payment within three months from the date of the award, it shall carry interest at the rate of 18% per annum

from the date of default till the date of payment.

4. The Opposite Parties challenged the said award by filing Misc. Case No. 28 of 2006 u/s 34 of the Arbitration & Conciliation Act, 1996 before the Learned District Judge, Mayurbhanj, Baripada. The application was dismissed on 25.8.2008. Against the dismissal order, ARBA No. 25 of 2006 was preferred before this Court. The appeal was also dismissed by this Court on 8.2.2007. Challenging the said order, SLP (Civil) No. 6659 of 2007 was filed before the Apex Court which was also dismissed on 29.10.2007. In the meantime, the Petitioner filed Execution Petition No. 1 of 2006 before the Learned District Judge, Mayurbhanj, Baripada to execute the award passed by the Arbitrator. During pendency of the execution case, Rs. 32,00,000 was released towards payment from the accrued amount due to the Petitioner. In the said execution proceeding, the Judgment Debtor submitted a calculation sheet vide Annexure-2 for rest of the amount. As per the said calculation sheet, the Petitioner is entitled to Rs. 33,36,467 after deducting the amount of Rs. 32,00,000, already received by him. After considering the award passed in the arbitration proceeding & the claim made by the Petitioner, the Learned District Judge in the impugned order held that the calculation sheet submitted by the Judgment Debtor is correct & the claimant-contractor is entitled to Rs. 33,36,467.

5. Learned Counsel for the Petitioner submitted that the impugned order passed by the Learned District Judge is not correct as he failed to appreciate the claim of the Petitioner. The Petitioner has claimed interest at the rate of 18% per annum on the awarded amount from the date of award till payment since the Judgment Debtor has not paid the amount within the stipulated time as per the award passed by the Arbitrator. He further submitted that the Petitioner is entitled to 18% interest on the entire awarded amount (i.e., principal amount + interest). In support of his contention he cited a decision of the Apex Court reported in Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., & submitted that the impugned order passed by the Learned District Judge is liable to be set aside.

6. Learned Addl. Standing Counsel for the Opposite Parties submitted that the impugned order passed by the Learned District Judge is correct & the decision cited by the Learned Counsel for the Petitioner is not applicable to the present case. Therefore, the impugned order need not be interfered with.

7. On the above dispute in this Writ Petition, this Court has to examine whether the Arbitrator has allowed the claim of the Petitioner for grant of interest on the amount due to the delay in payment. The award dated 28.9.2005 reveals that the Arbitrator has awarded the amount of claim as per Schedule- "A" where he has described the work executed by the claimant & its price in Item Nos. 1,8,9,14,15,2,3,5,6,10,11,12,13,16 to 18, 23,24,25 & 27 & rejected the claim under Item Nos. 4,7,19,20,21,22 & 26 & as per the claim items for the work completed by the Petitioner, the cost of the work was Rs. 30,05,209.75p. & the arbitration cost was Rs. 1,00,000. As per the total cost, he has awarded Rs. 31,05,210. After the said award, the Arbitrator has allowed the Petitioner to get

simple interest at the rate of 15% per annum from 28.10.2000 till the date of payment including the grace period of three months from the date of the award & in the event of default in payment within three months from the date of the award, it shall carry interest at the rate of 18% per annum. Therefore, from the above, it is crystal clear that the Arbitrator has not allowed the claim of the Petitioner towards the interest as a part of the claim.

8. Since the Arbitrator has taken into consideration the work completed by the Petitioner & the cost of the said work has been awarded as per the claim of the Petitioner & he has not included the interest as part of the claim of the contractor in the award. In Oil & Natural Gas Commission's case (supra), the Apex Court has held as under:

There cannot be any doubt that the Arbitrators have powers to grant interest akin to Section 34 of the CPC which the power of the Court in view of Section 29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads one is the balance of amount under invoices & letter dated February 10, 1981 & the amount certified & paid by the Appellant & the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by the time the claim was filed before the Arbitrators. Therefore, the power of the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case. Therefore, the first contention raised by Shri Datta, though interesting, deserves to be & is rejected.

In that case, the Apex Court held that the Contractors claim towards interest is awarded as part of the claim. Therefore, the same amount cannot be treated as interest only. Rather, it is an amount of claim for delay in payment of damages. Therefore, the said amount carries interest in case of default in payment.

9. In the present case, since the Arbitrator has not accepted the interest part as a claim of the Petitioner & he has awarded only the cost of the work completed by the contractor, thereafter awarded the interest on the said cost & directed the Opposite Parties to pay the cost, the Petitioner is not entitled to get interest on the interest part. The Learned District Judge has therefore rightly held that the Petitioner is not entitled to interest over the interest amount & this Court is not inclined to interfere with the impugned order.

W.P.(C) No. 8429 of 2009

10. This writ application has been filed by the State challenging the Order Dated 24.3.2007 passed by the Learned District Judge, Mayurbhanj, Baripada in Execution Petition No. 1 of 2006 attaching the account of the Judgment Debtor towards payment of the decree holder on the ground that since SLP No. 6659 of

2007 was pending before the Apex Court, the Learned District Judge should not have attached the accounts of the Judgment Debtor for execution of the award.

11. Since the SLP is stated to have already been dismissed by the Apex Court in the meantime, this Writ Petition has become infructuous. In the result, both the Writ Petitions are dismissed.