
(2016) 03 CAL CK 0091

In the Calcutta High Court

Case No : G.A. No. 238 of 2016 with APOT 27 of 2016, G.A. No. 3783 of 2015, G.A. No. 2091 of 2008 and WP No. 2067 of 2005.

Eastern Coalfields Limited and another.

APPELLANT

Vs

Oriental Ceramics & Refractories (P) Limited and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 152

Citation : (2016) 164 AIC 522 : (2016) 2 CalLJ 507 : (2016) 2 CalLT 426 : (2016) 3 CivilLJ 829 : (2016) 6 WBLR 147

Hon'ble Judges : Soumitra Pal;Mir Dara Sheko, JJ.

Bench : Division Bench

Advocate : Alope Kumar Banerjee, Anirudha Mitra, S.M. Obaidullah and N.K. Roy, Advocates, for the Appellant; Sakya Sen and Chanchal Kr.Dutta, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J. - This appeal has been preferred by Eastern Coalfields Ltd. (for short "ECL") and its General Manager (S and M), the appellant nos. 1 and 2 respectively, against the order dated 13th January, 2016 passed in G.A.No.3783 of 2015 with W.P.No.2067 of 2005 and G.A.No.2091 of 2008 (Oriental Ceramics (P) Ltd. v. Coal India Ltd. and Ors.) principally on the ground that since the writ petition was finally disposed of by an order dated 1st October, 2015 (for short "the earlier order"), the learned Single Judge erred in passing the order dated 13th January, 2016 granting interest on an application praying for clarifying the earlier order. Since the learned Single Judge had finally disposed of the writ petition and the application, the subsequent application, being G.A.No.3783 of 2015, (for short "the application") was not maintainable.

2. Mr. Alope Kumar Banerjee, learned advocate for the ECL relying on the grounds of appeal, has submitted that though the application was made, inter alia, for clarifying the order passed on 1st October, 2015, actually it was an

application for modification and/or review of the earlier order. Submission is that the application was for modification of the earlier order with a prayer for direction upon the ECL to pay interest at the rate of 12% on the principal amount. Since in the writ petition filed in the year 2005 prayer was not made for grant of interest and as in the application, being G.A.No.2091 of 2008, prayer was made for grant of interest, the learned single Judge erred in modifying the order by directing payment of interest. As the chart prepared by ECL furnished before the learned single Judge contained mistakes, as evident from the order dated 18th June, 2015 passed by the Division Bench, it cannot be the basis to grant interest to the respondent/ writ petitioner. Since the writ petition was finally disposed of by the earlier order and thereafter, the learned advocate-on-record for the respondent/ writ petitioner had issued a letter dated 15th October, 2015 to ECL requesting to comply with the said order and for release of funds within the time frame as mentioned in the earlier order and as thereafter hearing was fixed on 5th November, 2015 and order was passed on 17th November, 2015 by ECL, the learned single Judge erred in modifying the earlier order. According to him, the letter appearing at Page-102 of the stay application issued on behalf of the respondent/writ petitioner in connection with the letter dated 17th November, 2015 issued by ECL, praying for grant of interest is a fresh cause of action.

3. Submission is that the interim order contained in paragraph 8 of the order dated 12th December, 2005 issued in Ashoka Smokeless Coal Industries cannot be the basis for grant of interest at the rate of 12% since the Supreme Court while finally disposing of the matter ? Ashoka Smokeless Coal Industries (P) Limited v. Union of India, (2007) 2 SCC 640 did not grant interest. As in Eastern Coal Field Ltd. v. Tatulia Coke Plant (P), (2011) 14 SCC 624, the Supreme Court had directed that if the authorities failed to pay the amount it would carry interest at the rate of 9% per annum, the respondent is not entitled to interest. Further as Explanation V to section 11 of the Code of Civil Procedure, 1908 stipulates that any relief claimed in the plaint, which is not expressly granted by the decree, shall be deemed to have been refused and as section 152 of the Code empowers Court to correct clerical or arithmetical mistakes in decrees and orders and as principles of the Code are applicable to writ proceedings, the learned Single Judge erred in passing the order impugned. Mr. Banerjee has relied on the judgments in State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943 and in J.S. Parihar v. Ganpat Duggar, (1996) 6 SCC 291 in support of his submission.

4. Mr. Sakya Sen, learned advocate appearing on behalf of the respondent, that is the writ petitioner, submits that since in the application, being G.A 2091 of 2008, prayer was made for a direction upon the authorities to refund the amount along with interest and as it was not granted by the earlier order, the application being GA 3783 of 2015 was filed, inter alia, praying for an order clarifying that the refund as construed in the earlier order would mean refund of the difference of amount with added interest at the rate of 12% from the date of deposit of money by the petitioner till the date of refund by the respondents. Since before

the Supreme Court the Coal Authorities undertook to refund the amount along with 12% interest and the Supreme Court while passing the final order did not vary or modify the said order containing the undertaking and as undertaking was not discharged rather it was honoured and as ECL never contended that they have gone back from the said undertaking and will not pay the interest, there was a patent error in the earlier order. Since the point regarding grant of interest was not argued before the learned Single Judge, it is not constructive res judicata. Since ECL did not contend that the authorities had no liability to pay interest and as the objection of ECL was with regard to the extent of reverification and not interest, which was part of the undertaking, there was no necessity to separately direct payment of interest. According to him the nature of omission has to be considered. As inclusion of interest did not touch upon the merits of the case and the issue of interest was not even contested by the ECL, the application, being GA. 3783 of 2015, was in the nature of an application under section 152 of the Code. In support of his submission Mr. Sen has relied on the following judgments:- i) Sachindra Nath Kolya v. Probodh Chandra Sarkar, AIR (35) 1948 Calcutta 126; ii) Devidas Khushalrao Deshmukh v. Yeotmal Central Bank, Ltd. Yeotmal, 1956 Nagpur 239; iii) Rallis India Ltd. v. State of Tamil Nadu, AIR 1999 SC 150; iv) Jayalakshmi Coelho v. Oswald Joseph Coelho, (2001) 4 SCC 181; v) State of Punjab v. Darshan Singh, (2004) 1 SCC 328 and vi) S. Balasubramaniam v. P. Janakaraju, ILR 2004 Karnataka 242.

5. The issue is whether the learned Single Judge was justified in passing the order dated 13th January, 2016 on the said application by modifying the earlier order when the writ petition and the connected application had been finally disposed of.

6. In order to answer the issue, it is appropriate to set out the relevant prayers in the writ petition which are as under:-

a) A declaratory order, if necessary directing the writ petitioner unit be permitted to lift coal as per entitlement by furnishing Indemnity Bond and other undertakings as per solemn orders of Hon"ble Supreme Court dated 19.10.2005 and extensions thereof.

b) A writ in the nature of Mandamus do issue directing the respondents to supply coal as per entitlement by furnishing Indemnity Bond and other undertakings as per solemn orders of Hon"ble Supreme Court dated 19-10-05 and extensions thereof;

f) CIL and its subsidiaries cannot discriminate against the writ petitioner or similarly circumstanced units.

g) Writ petitioner be permitted to lift coal as per entitlement by furnishing Indemnity Bond and other undertaking specified by the Hon"ble Supreme Court in solemn orders dated 19.10.05 and extensions thereof till date.

7. In this context it is necessary to set out the prayers in G.A 2091 of 2008

which are as follows:-

"a) Respondents be directed to refund amounts along with interest i.e. Rs. 2,18,69,370/- (Rupees two crore eighteen lakh sixty nine thousand three hundred seventy) from NEC and Rs.54,21,050/- (Rupees fifty four lakhs twenty one thousand fifty) from ECL.

b) Respondents be restrained from charging 120% of notified price which was notified by the respondent CIL on 16th June, 2004 for coal being supplied to the petitioners, in spite of the direction of the Hon''ble Supreme Court dated 1st December, 2006 in the meantime.

c) Respondent be directed to refund the excess amount collected from the petitioners, by charging 120% of notified price which was notified by the respondent CIL on 16th June, 2004 since January, 2007.

d) Such further and/or other order/orders be made and/or direction or directions be given as this Hon''ble Court may deem fit and proper."

8. It is also pertinent to mention the prayers in the application, being GA 3783 of 2015 which are set out herein below:-

a) The order dated 01.10.2015 passed by His Lordship Arindam Sinha in W.P.No.2067 of 2005 and GA No.2091 of 2008 be modified and/or corrected by deleting the submission of the petitioner to the effect that the amount settled as would appear from that chart duly signed by the authorised agent on behalf of the Eastern Coalfields and submitted to the court refer to the submission made by the petitioner in W.P.No. 2068 of 2005 (Somal Pipes Pvt.Ltd. v. Coal India Limited). The inadvertent error appearing in the order dated 01-10-2015 be corrected and the said order be modified accordingly.

b) Pass an order clarifying that the "refund"" as construed in the Order dated 01.10.2015 passed by His Lordship Arindam Sinha in the Writ Petition and GA stated above stands for and shall mean the "refund of difference of amount with added interest @ 12% from the date of deposit by the petitioner till the date of refund by the respondents.

c) Ad-interim order or orders be made;

d) Pass any such order/orders as this Hon''ble Court may deem fit in the interest of justice.

9. We find that the learned Single Judge while disposing of the writ petition and its connected application on 1st October, 2015 had directed that once claims are settled, the settled amount would be forthwith payable by the two Coal companies to the respondent/writ petitioner. In the earlier order there was no direction to pay interest. The question is whether the amount to be paid, that is the settled amount, included interest. The respondent/writ petitioner had relied on a chart, furnished by the ECL, to claim interest. On behalf of ECL it was submitted that the chart contained mistakes. In this regard it is appropriate to

set out the relevant portion of the order dated 18th June, 2015, passed in APO No. 1820 of 2015 in appeal against the order dated 16th April, 2015 passed by the learned Single Judge in the pending writ petition, which is as under :-

"The settled law of the country is that an admission is not conclusive and can be explained away. Admission can also be withdrawn in an appropriate case. Therefore, just because an admission is made which, it is alleged, was based on mistake, that cannot create any right. We are not accepting the fact that this was based upon a mistake. That question may be gone into by the learned Trial Court. Therefore, the direction for payment is substituted by directing the appellant to pay the like sum to the Registrar, O.S. He shall keep the money invested in a short-term fixed deposit and shall go on renewing the same and hold the money subject to further orders of this Court. The claims and contentions of the parties shall naturally be decided by the learned Trial Court in accordance with law."

10. Therefore it is evident from the order dated 18th June, 2015 that the claim of the writ petitioner was wide open. In this regard, it is to be noted that Mr. Sen has relied on the interim order dated 12 December, 2005 passed in Ashoka Smokeless (supra) which, inter alia, is as under:-

"?we must note that assurance has been given by the learned Solicitor General appearing on behalf of Coal India Ltd. and other subsidiary Companies that the interim order of this Court dated December 12, 2005 shall be implemented in letter and spirit.

We would clarify that so far as furnishing of security for the balance 66% of the enhanced price is concerned, the Coal Companies shall not insist on furnishing bank guarantees and shall supply Coal on their furnishing undertakings by the Managing Director or Managing Partner of the Company/Firm, as the case may be, apart from indemnity bonds or other types of securities subject of course to the compliance of other directions..."

11. However, while finally disposing of Ashoka Smokeless (supra) by judgment dated 1st December, 2006, the Supreme Court did not issue direction to grant interest.

12. Perusing the writ petition we find there was no prayer to grant interest. However, in the application, being GA No. 2091 of 2008, there was a prayer to grant interest. Since the Supreme Court in the final judgment in Ashoka Smokeless (supra) did not issue direction for grant of interest, the letter at page 102 of the stay application issued by the learned advocate on record for the respondent/writ petitioner which was subsequent to the order dated 17th November, 2015, claiming interest is a new cause of action. Therefore, the learned Single Judge erred in passing the order dated 13th January, 2016 on the said application modifying the earlier order. In this regard it is appropriate to refer to law laid down in State of U.P. v. Brahm Datt Sharma (supra) which supports the stand of ECL wherein the Supreme Court while allowing the appeal

held that "when proceedings stand terminated by final disposal of writ petition it is not open to the Court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and finality of proceedings would cease to have any meaning."

13. Since in the instant case, the respondent/writ petitioner prayed for interest by filing the application for clarification, in view of the law laid down in *J.S.Parihar*(supra) that "once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum", the judgement under appeal cannot be supported.

14. That apart as the principles of the Civil Procedure Code are applicable to writ proceedings, assuming grant of interest was a part of the claim of the respondent/writ petitioner, in view of Explanation V to section 11 of the Code, which postulates that any relief claimed in the plaint, which is not expressly granted by the decree, shall be deemed to have been refused, as interest was not granted by the earlier order, the learned Single Judge erred in passing the order dated 13th January, 2016 by modifying the earlier order. Moreover as section 152 permits correction of clerical or arithmetical mistakes in judgments, decrees or order or errors arising therein from any accidental slip or omission and as denial of interest in the earlier order or in the parent order cannot be called a mistake, the learned Single Judge erred in modifying the earlier order. However question still remains whether the earlier judgment or order could be modified or varied by invoking Section 152 of the Code ? There is no dispute that the writ petition does not contain prayer for grant of interest. In a subsequent application, prayer was made for grant of interest. The earlier order, that is, the judgement dated 1st October, 2015 does not contain any discussion on the question of grant of interest. Keeping Section 152 in mind, can it be held that it is a clerical or an arithmetical mistake arising out of accidental slip or omission? In our view, had there been some positive discussion on the question of grant of interest in the earlier order, the contention that accidental slip or omission led to a mistake could have been accepted, as in that event, relief, if granted, would have been in harmony with the earlier order. However, as Court by its earlier order expressly did not allow the prayer regarding interest, and as held hereinbefore, it was deemed refusal under Explanation V to Section 11 of the Code, earlier order cannot be varied by invoking section 152. In the light of the discussion hereinbefore, the learned Judge erred while passing the order impugned in relying on the inherent power under section 151 as considering the facts of the case, it came in conflict with Explanation V to section 11 and section 152 of the Code.

15. So far as the judgements relied on behalf of the respondent/writ petitioner are concerned, the judgement in *Jayalakshmi Coelho* (supra), particularly the principles of law laid down in paragraph-14 thereof, is not applicable to the facts

of the case as therein the decree was passed on the basis of an agreement. The judgement in *State of Punjab v. Darshan Singh* (supra) is inapplicable as Section 152 of the Code cannot be invoked to modify or alter an order. The judgement in *Devidas Khushalrao Deshmukh* (supra) it is not applicable as it deals with an inadvertent omission for payment of interest. As the Supreme Court while finally disposing of the matter did not grant interest, the judgement in *Rallis India Ltd.* (supra) is inapplicable. The principles of law in *S. Balasubramaniam* (supra) are not applicable as in the case in hand the application for clarification was filed after the order was passed by ECL. Since in the earlier order there was no discussion on the question of grant of interest and adhering to the directions of the Court, ECL had passed an order, in view of principles of law laid down in *State of U.P Brahm Datt Sharma* (supra) as noted hereinbefore, the judgment in *Sachindra Nath Kolya* (supra) is not applicable to the facts of the case.

16. Therefore, as the learned Single Judge did not grant interest by the earlier order and as once a petition is disposed of by a final order, under section 152 clerical or arithmetical mistakes in judgement, decree or order can only be corrected and any order granting further relief on the basis of subsequent application is not permissible and in view of Explanation V to section 11 of the Code, as modification of the earlier order is not permissible, the submission made on behalf of the appellant contains sufficient force.

17. Hence, for the reasons as aforesaid, the judgment dated 13th January, 2016 passed by the learned Single Judge is set aside and quashed. The appeal is allowed. The application is disposed of.

Mir Dara Sheko, J. - I agree.