
(2012) 10 AP CK 0036
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1184 of 2012

General Manager, South Central Railway and Others	APPELLANT
Vs	
Ch. Kotaiah and Another	RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2013) 2 ALD 573 : (2013) 1 ALT 641

Hon'ble Judges : G. Krishna Mohan Reddy, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : C.V. Vinitha Reddy, for the Appellant; Somanchi Venkateswarlu, Counsel for Respondent No. 1. and None, for the Respondent

Judgement

Ashutosh Mohunta, J.—This appeal is filed by the appellants-railways against the order and decree dated 18.10.2005 passed in O.P. No. 265 of 2002 by the I Additional Chief Judge, City Civil Court, Secunderabad, insofar as it relates to awarding of interest over the amounts awarded under Claim Nos. 1 and 2 by the 2nd respondent-Arbitrator. The appellants entrusted certain construction works to the 1st respondent-contractor under a contract in the year 1992. Subsequently, the contract could not be performed by the 1st respondent-contractor within the specified period and, therefore, a dispute arose between the appellants-railways and the 1st respondent-contractor. Thereafter, the 1st respondent-contractor made an application u/s 11 of the Arbitration and Conciliation Act, 1996 before this Court and this Court appointed the 2nd respondent herein as an Arbitrator for resolving the dispute. As many as seven claims were made by the 1st respondent-contractor before the 2nd respondent-Arbitrator. The 2nd respondent-Arbitrator while allowing claims 1, 2 and 6, rejected claims 3 to 5 and 7 and accordingly passed an award dated 28.08.2002 observing that the 1st respondent is entitled to recover a sum of Rs. 1,12,885/- (being the final bill) with interest at the rate of 18% per annum from 01.07.1997 till the date of payment and also a sum of Rs. 63,289/- (being the security deposit) with interest at 18% per annum from 01.07.1997 till the date of

payment after deducting interest that might have accrued on the fixed deposit of Rs. 18,206/- made in the Central Bank of India, Vijayawada branch. Feeling aggrieved by the award inasmuch as it relates to awarding of interest over the amounts awarded under Claim Nos. 1 and 2, the appellants-railways filed O.P. No. 265 of 2002 before the I Additional Chief Judge, City Civil Court, Secunderabad. The learned Additional Chief Judge by impugned order dated 18.10.2005 dismissed the said O.P. Challenging the said order, the appellants-railways preferred this appeal.

2. Learned Counsel for the appellants-railways submits that awarding of interest on the payment of earnest money or security-deposit or amounts payable to the contractor under the contract is prohibited by virtue of Clause 16 (2) of the General Conditions of Contract.

3. Clause 16 (2) of the General Conditions of Contract reads as under:

No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon.

4. Learned Counsel for the appellants-railways has placed reliance on a decision of the Supreme Court in *Sree Kamatchi Amman Constructions Vs. The Divisional Railway Manager (Works), Palghat and Others*, wherein the apex Court held as under:

Arbitral Tribunal cannot award interest from date of cause of action to date of award, on amount awarded to contractor under contract in terms of which there was specific bar on payment of interest.

5. Learned Counsel for the appellants-railways has also placed reliance on a decision of the Supreme Court in *Union of India (UOI) Vs. Krafters Engineering and Leasing (P) Ltd.*, wherein the apex Court held as under:

Where there was a contract between parties expressly prohibiting grant of interest, in that event, the Arbitrator cannot grant pendente lite interest ignoring the terms of contract.

6. On the other hand, learned Counsel for the 1st respondent-contractor submits that the Order of the Court below confirming the award of the 2nd respondent-Arbitrator is quite legal and valid and in that view of the matter, no interference is called for.

7. After hearing the learned Counsel for the parties and keeping in mind the aforesaid decision of the Supreme Court in *M/s. Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat* (1 supra), we are of the considered view that the Arbitral Tribunal cannot award interest from the date of cause of action till the date of payment on the amount awarded to the 1st respondent-contractor. Therefore, the 2nd respondent-Arbitrator erred in

awarding interest at 18% per annum on the awarded amounts in favour of the 1st respondent-contractor from 01.07.1997 till the date of payment. However, the appellants-Railways are liable to pay interest at 9% per annum on the awarded amount from the date of award till the date of payment.

8. For the aforesaid reasons, we set aside the award of the 2nd respondent-Arbitrator granting interest at 18% per annum from 01.07.1997 till the date of payment in respect of the amounts payable to the contractor under the contract as well as the impugned order of the Court below. However, the appellants-Railways are liable to pay interest at 9% per annum on the awarded amounts payable to the 1st respondent-contractor from the date of award till the date of payment in view of the judgment of the Apex Court in Sreemanthula Kesavachari (died) per L.R. Sreemanthula Rajeswaramma Vs. Yayyavuru Vallama (died) per L.Rs., Except to the extent of reduction in rate of interest, the award passed by the 2nd respondent-Arbitrator is sustained in other respects. Resultantly, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above. There shall be no order as to costs.