

(2012) 08 P&H CK 0273
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 245 of 2011 (O and M)

Gian Chand Jindal

APPELLANT

Vs

Executive Engineer, Public Health Division No. 2, Sirsa and
Others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2012) 4 RCR(Civil) 631

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

Bench : Single Bench

Advocate : P.K. Garg, for the Appellant; Ajay Gupta, Addl. A.G. Haryana, for the Respondent

Judgement

A.N. Jindal, J.—This appeal has arisen out of the award dated 13.2.2007 passed by the Arbitrator-cum-Superintending Engineer, Public Health, Sirsa and also the judgment dated 16.2.2010 passed by the District Judge, Sirsa, dismissing the objection petition filed by Gian Chand Jindal petitioner-appellant (herein referred as, "the appellant"). The appeal involves the limited question: "whether the appellant could be awarded pre-reference, pendente lite and post-award interest in the absence of contract to that effect?" The arbitrator while passing the award dated 13.2.2007 for a sum of Rs.6,68,065/- ordered as under :

The department will make payment of award made within 60 days from the date of writing of this award. No interest on the amount will be payable for these sixty days, if payment of award is made within this period, otherwise simple interest @ 8% (eight percent) per annum will be paid to Sh. Gian Chand Jindal contractor by the department till the date of payment from the date of writing of this award.

2. Against this award, the appellant filed objection petition wherein the District Judge, Sirsa, while observing that since Section 31 (7) of the Act does not issue mandate to the court for granting interest on the award amount, therefore, it declined the prayer of the appellant to grant interest.

3. The Learned Counsel for the appellant has contended that the arbitrator did not appreciate the factual and legal position in the right perspective. Even in the absence of any contract with regard to payment of interest, the arbitrator is fully competent and powerful to award pre-reference pendente lite interest at a reasonable rate. Non awarding of interest is a mistake apparent on the record which is bound to be corrected.

4. The question with regard the awarding of interest is no more res-integra in the light of the judgments delivered by the Apex Court in cases Action Committee, Un-Aided Pvt. Schools and Others Vs. Director of Education, Delhi and Others, and Indian Hume Pipe Co. Ltd. vs. State of Rajasthan 2010 (1) RCR (Civil) 620. In Ferro Concrete Construction Pvt. Ltd.'s case (supra), the Apex Court while awarding interest made the following observations :-

63. The legal position, however, underwent a change after the enactment of Interest Act, 1978. Sub-section (1) of section 3 of the said Act provided that a court (as also an arbitrator) can in any proceedings for recovery of any debt or damages, if it thinks fit, allow interest to the person entitled to the debt or damages at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

3 (1) (a) if the proceedings relate to the 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 this 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.

64. Sub-section (3) of section 3 made it clear that nothing in that section shall apply to any debt or damages upon which interest is payable as of right, by virtue of any agreement; or to any debt or damages upon which payment of interest is barred, by virtue of an express agreement. The said sub-section also made it clear that nothing in that section shall empower the court to award interest upon interest. Section 5 of the said Act provides that nothing in the said Act shall affect the provisions of section 34 of CPC 1908.

65. The position regarding award of interest after the Interest Act, 1978 came into force, can be stated thus :

(a) where a provision has been made in any contract, for interest on any debt or damages, interest shall be paid in accordance with the such contract.

(b) where payment of interest on any debt or damages is expressly barred by the contract, no interest shall be awarded.

(c) where there is no express bar in the contract and where there is also no provision for payment of interest then the principles of section 3 of Interest Act

will apply in regard to the pre-suit or pre-reference period and consequently interest will be payable:

(i) where the proceedings relate to a debt (ascertained sum) 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;

(ii) where the proceedings is for recovery of damages or for recovery of a debt which is not payable at a certain time, then from the date mentioned in a written notice given by the person making a claim to the person liable for the claim that interest will be claimed, to date of institution of proceedings.

(d) payment of interest pendente lite (date of institution of proceedings to date of decree) and future interest (from the date of decree to date of payment) shall not be governed by the provisions of Interest Act, 1978 but by the provisions of section 34 of CPC 1908 or the provisions of the law governing Arbitration as the case may be.

In Indian Hume Pipe Co. Ltd."s case (supra), the Apex Court made the following observations :-

20. Learned Single Judge also committed a grave error in coming to the conclusion that even though arbitrator was competent to award interest but it was not mandatory on his part to do so. The said reasoning does not appeal to be legally tenable and convincing for the simple reason, if the amount has been withheld wrongly and without any justification then of course the aggrieved party would be fully justified in claiming interest. This is the mandate of Section 34 of the CPC as also Section 29 of the Act.

21. Both the aforesaid provisions make it abundantly clear that power to award interest at all stages vests with the arbitrators. Arbitrators are bound to make the award in accordance with law and if there is no embargo or legal hurdle in awarding interest for the aforesaid three stages mentioned hereinabove then there cannot be any justifiable reason to deny the same.

5. The aforesaid judgments leave no doubt to hold that when once the legally payable amount to the objector is withheld for no valid reasons, he is entitled to receive the unpaid amount and even in the absence of the contract with regard to payment of interest the arbitrator is bound to decide the same and non payment of interest on the delayed payment would certainly be mistake apparent on the record to be rectified. In the result, this appeal is accepted, impugned order as well as the award are modified to the extent that the appellant would be at liberty to receive interest @ 8% per annum on the award amount with effect from the date it becomes due i.e. from March, 1999.