
(2013) 03 DEL CK 0298
In the Delhi High Court
Case No : EFA (OS) 34/2012

Housing and Urban Development Corporation Ltd. APPELLANT
Vs
Leela Hotels Limited RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 3 AD 405 : (2013) 2 ARBLR 1 : (2013) 135 DRJ 598

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The appellant impugns the order dated 06.09.2012 of the learned Single Judge in the course of execution of an arbitral Award dated 25.06.2002 having force of a decree u/s 36 of the Arbitration & Conciliation Act, 1996 (Arbitration Act). The arbitral Award dated 25.06.2002, insofar as relevant for the present purposes, awarded interest to the respondent/decreed holder against the appellant/judgment debtor on the amounts awarded, at the rate of 20% per annum pre-arbitration and pendente lite and at the rate of 15% per annum from the date of the Award till the date of recovery.

2. OMP No. 308/2002 u/s 34 of the Arbitration Act preferred by the appellant/judgment debtor impugning the said Award was dismissed on 20.01.2003.

3. FAO(OS) No. 59/2003 preferred by the appellant/judgment debtor there against was also dismissed on 09.11.2004.

4. Civil Appeal No. 1094/2006 arising out of SLP (Civil) 3777/2005 preferred by the appellant/judgment debtor was also dismissed on 12.02.2008. However, the Supreme Court reduced the rate of interest awarded by the Arbitrator for the pre-award period from 20% to 18%.

5. The respondent/decreed holder then applied for execution of the Award. During the execution proceedings a question arose whether the amounts deposited by

the appellant/judgment debtor in terms of interim orders during the proceedings aforesaid, are to be appropriated first towards interest or principal. Order dated 19.11.2008 of the executing Court in this regard was challenged in EFA(OS) No. 4/2009 and the order dated 20.07.2009 of the Division Bench in the said appeal became the subject matter of Civil Appeal No. 9763/2011 (arising out of SLP (Civil) 18509/2009) disposed of by the Supreme Court on 15.11.2011. Need is however not felt to discuss in detail the controversy in the said proceedings, the same having been succinctly set out in the impugned order of the learned Single Judge and the same having not much relevance to the issue in hand.

6. Thereafter a dispute arose as to whether the interest awarded of 15% per annum from the date of the Award to the date of the recovery, was to be on the principal amount awarded only or also on interest awarded (as reduced by the Supreme Court) for the pre-arbitration period and pendente lite the arbitration proceedings. EA No. 696/2011 was filed by the respondent/decreed holder giving the calculation of the amount of Rs. 1,54,40,86,168/- due till then.

7. An affidavit in opposition was filed by the appellant/judgment debtor thereto, claiming that only a sum of Rs. 1,46,76,45,561/- was due under the Award and which had already been paid. The difference in the two calculations was on account of the fact that while the respondent/decreed holder was claiming post award interest at 15% per annum besides on the principal amount, also on the amount due towards pre-award interest and the appellant/judgment debtor was calculating the same only on the principal amount awarded and not on the amount towards pre-award interest.

8. The learned Single Judge in paras No. 10 to 12 of the impugned order has noticed that though in the earlier round of appeal during the execution proceedings, the appellant/judgment debtor had before the Supreme Court raised the said issue but the Supreme Court did not pronounce of the said submission.

9. The learned Single Judge further held the judgment of the Supreme Court in State of Haryana and Others Vs. S.L. Arora and Company, , relied upon by the appellant/judgment debtor, to be not applicable in view of the Award in the present case providing for post-award interest also on the amount due towards pre-award interest and the said part of the Award having not been interfered with, neither by the Single Judge nor by the Division Bench nor by the Supreme Court and for the reason of award of such post-award interest on pre-award interest amount, not amounting to compound interest.

10. The senior counsel for the appellant/judgment debtor has invited our attention to paras No. 22 to 24 of the judgment dated 15.11.2011 of the Supreme Court in the appeal aforesaid in the earlier round of litigation arising from the execution proceedings, where it is noted that the issue relating to charging of compound interest did not survive since the parties had agreed that no compound interest would be payable in terms of the Award and that only

simple interest was to be paid and he has on the basis thereof contended that the respondent/decreed holder could not claim post-award interest on the pre-award interest amount, and which would amount to, compound interest. He has thus argued, that the learned Single Judge, in the impugned order, has erred in observing that there is nothing to show any agreement between the parties that no compound interest is payable in terms of the Award. Reliance is again placed on para No. 18 of S.L. Arora & Company *supra*, laying down that Section 31(7) of the Arbitration Act makes no reference to payment of compound interest or payment of interest upon interest nor does it require the interest, which accrues till the date of the Award, to be treated as part of the principal, from the date of Award for calculating the post Award interest and that the arbitral Tribunals do not have the power to award interest upon interest, or compound interest, either for the pre-award period or for the post-award period.

11. Per contra, the senior counsel for the respondent/decreed holder has invited our attention to para No. 21.9(e) of the arbitral Award in the present case, where the appellant/judgment debtor has been held liable to pay to the respondent/decreed holder interest at 20% per annum on the monies (including interest) awarded to the respondent/decreed holder by the Award, from the date of the Award to the date of recovery, and has argued that even though in the operative para of the Award, future interest has been restricted to 15% per annum only from the date of the Award to the date of recovery, but it will be not only be on the principal amount but also on the pre-arbitral proceedings and pendente lite arbitration proceedings interest amount also, in terms of the said paragraph of the Award and this part has not been interfered with in the challenge proceedings to the Award. He has further invited our attention to para No. 13 of the judgment dated 15.11.2011 *supra* of the Supreme Court to show, that the compound interest qua which the agreement between the parties is recorded in the said judgment, was qua the claim earlier being made by the respondent/decreed holder for interest with yearly rests and has argued that it was the said claim only which was not pressed by the respondent/decreed holder and not the claim for post-award interest on pre-award interest amount.

12. We have weighed the rival contentions. The operative part of the Award awards future interest at 15% per annum from the date of the Award to the date of recovery, without specifying whether the said interest is to be also on pre-award interest amount also or not. Of course, in the substantive part of the Award, in para No. 29.1 (e) *supra*, while awarding future interest, it was specified that the future interest would also be on the monies due under the Award including towards interest. Though there is inconsistency in the rate of future interest specified in the substantive part of the Award and in the operative part of the Award but there is no dispute that the rate of interest specified only in the operative part of the Award will apply and in our view the said inconsistency does not affect the award of future interest on interest due till the date of the Award also.

13. It is also very clear from the judgments of the Single Bench and Division Bench of this Court in challenge proceedings to the Award that the appellant/judgment debtors did not challenge the Award to the extent awarding post-award interest on the pre-award interest amount also. No such objection is shown to have been taken before the Supreme Court also in the challenge proceedings.

14. Though the appellant/judgment debtor, when approached the Supreme Court in SLP/Appeal from order in execution proceedings, challenged award of post-award interest on pre-award interest amount also, but the Supreme Court did not pronounce on the same and the necessary corollary is that the said objection was not accepted by the Supreme Court.

15. We however do not find any merit in the contention of the appellant/judgment debtor that the respondent/deGREE holder, in the aforesaid round before the Supreme Court, agreed not to claim post-award interest on pre-award interest amount. The agreement between the parties, recorded in order dated 15.11.2011 supra, of the Supreme Court is found to be only in respect of the claim then being made by the respondent/deGREE holder of interest with yearly rests and it was only such claim which was given up by the respondent/deGREE holder.

16. What follows in the aforesaid light is that the award of the post-award interest (at such rate as modified by the Supreme Court) not only on the principal amount but also on the pre-award interest amount has attained finality. The question which arises is, whether in execution, the said Award, which u/s 36 supra has to be enforced in the same manner as if it were a decree of the Court, can be interfered with.

17. The settled principle of law is that the executing Court cannot go behind the decree. Reference if any required in this regard can be made to the five Judge judgment in Gurpreet Singh Vs. Union of India (UOI), , Food Corporation of India Vs. S.N. Nagarkar, , Deepa Bhargava and Another Vs. Mahesh Bhargava and Others, , Coal Linker Vs. Coal India Ltd., and Morepen Laboratories Ltd. and Others Vs. Morgan Securities and Credits Pvt. Ltd.,

18. Before coming to the dicta of the Supreme Court in S.L. Arora & Company we may notice that the consistent view of this Court has been that future interest on the interest till the date of the decree or Award is permissible. Reference in this regard may be made to Saraswati Construction Co. Vs. Delhi Development Authority, where, relying on Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., , it was held that the pre-suit and pendente lite interest crystallizes into the decretal amount and the future interest becomes payable on the entire amount comprised of the claims, as well as the pre-suit and pendente lite interest and interest from the date of the passing of the decree is not to be calculated merely on the amount of claims upheld by the Arbitrator/Court but also on amount of interests awarded by the Arbitrator or the Court.

19. On an appeal against the aforesaid, the Division Bench in Delhi Development

Authority Vs. Saraswati Construction Co., held that interest awarded in lieu of compensation or damages becomes principal amount for which a party would be entitled for interest on account of it being withheld by the opposite party.

20. A constitution Bench of the Supreme Court in Central Bank of India Vs. Ravindra and Others, upheld compound interest though in the context of Banking business.

21. Mention may however be made of dicta of a subsequent Division Bench of this Court in Pt. Munshi Ram and Associates (P) Ltd. Vs. Delhi Development Authority, where, relying on S.L. Arora & Company supra, Saraswati Construction Co. was held to be not good law. However, the Division Bench in this case was answering a reference and the question, whether the award, in execution could be interfered with, did not arise.

22. That brings us to S.L. Arora & Company; the Supreme Court in the said judgment was concerned with the interpretation of Section 31(7) of the Arbitration Act and while doing so held that Section 31(7) makes no reference to payment of compound interest or payment of interest upon interest and does not require the interest which accrues till the date of Award, to be treated as part of the principal from the date of Award for calculating post-award interest. It was further held that in the absence of any provision for interest upon interest in the contract, Arbitral Tribunals do not have the power to award interest upon interest or compound interest either from the pre-award period or from the post-award period.

23. We have considered, whether a distinction can be carved out from S.L. Arora & Company, for the reason of the question in the present case having arisen in execution and the Award having attained finality. However, what we find is that S.L. Arora & Company also was a case of execution only and though this aspect of the arbitral Award in that case also having attained finality was not addressed or adjudicated but the Supreme Court nevertheless interfered with the Award of post-award interest on pre-award interest amount also, even at stage of execution.

24. We are however of the opinion that in the face of the established proposition aforesaid noticed, of it being impermissible to in execution go behind the decree and on which aspect S.L. Arora & Company is quiet, S.L. Arora & Company cannot be said to be a judgment allowing going behind the decree in an execution. The Supreme Court in a catena of decisions has held that a decision is an authority for what it decides and not for what can logically be deduced therefrom. (See Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, and Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others,). Lord Halsbury in Quinn v. Leatham [1901] A.C. 495 said, "The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes

that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all...". The Supreme Court in Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, cited Lord Denning with approval opining that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. It was further held that the temptation to decide cases by matching the colour of one case against the colour of another is to be avoided.

25. We may also notice that the judgment in S.L. Arora & Company has vide order in Hyder Consulting (Uk) Ltd. Vs. Governor State of Orissa Tr. Chief Eng. been referred to a larger bench.

26. Thus, though we are bound by S.L. Arora & Company but since in the facts of the present case, where the Award expressly grants post-award interest on pre-award interest amount also and where the appellant/judgment debtor in the proceedings challenging the Award failed to challenge the Award on the said ground and the Award has thus become final and has the effect of a decree, it is not open to the appellant/judgment debtor to at the stage of execution proceedings challenge the Award on the said ground. Such challenge if entertained by us, would amount to going behind the decree and which is impermissible. In Morepen Laboratories Ltd. *supra*, also the Division Bench of this Court was concerned with challenge to the rate of interest awarded at the stage of execution and held the same to be impermissible.

27. For the aforesaid reasons, we hold the appellant/judgment debtor to be bound by the Award of post-award interest on the pre-award interest amount also, notwithstanding the dicta in S.L. Arora & Company. We therefore do not find any merit in this appeal and dismiss the same. However, in the legal scenario aforesaid, no costs.