
(2012) 03 SC CK 0039

In the Supreme Court Of India

Case No : Civil Appeal No. 2751 of 2012 (Arising out of S.L.P. (C) No. 26581 of 2009)

H.P. Housing and Urban Devt. Auth. and Another

APPELLANT

Vs

Ranjit Singh Rana

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(7), 34(3), 37(1)

Citation : AIR 2012 SC 1337 : (2012) AIRSCW 2034 : (2012) 3 ALLMR 430 : (2012) 3 ALT 61 : (2012) 2 ARBLR 1 : (2012) 3 AWC 2217 : (2012) 2 CTC 445 : (2012) 2 JCR 146 : (2012) 4 MhLj 553 : (2012) 3 SCALE 412 : (2012) 4 SCC 505 : (2012) 2 Supreme 558

Hon'ble Judges : R.M. Lodha, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Y. Prabhakara Rao, for the Appellant; Binu Tamta and Dhrur Tamta, for the Respondent

Final Decision : Disposed Of

Judgement

R.M. Lodha, J.—Leave granted.

2. Pursuant to the agreement between the parties being agreement No. 11 of 1989-90 concerning construction of residential complex at Shimla, certain disputes arose. As per the terms of the contract, the Arbitrator was appointed to adjudicate the claims of the Respondent and counter-claims of the Appellants. On August 12, 1998, the Arbitrator passed the award. Aggrieved thereby, the Appellants filed objections u/s 34 (3) of the Arbitrator and Conciliation Act, 1996 (for short "the Act"). The objections were accepted by the High Court to the extent that the reasons were not given by the Arbitrator and, accordingly, the matter was sent back to the Arbitrator for giving reasons in support of the award.

3. After remand, the Arbitrator considered the matter and passed the award on February 14, 2001. The Appellants filed objections against the award dated February 14, 2001. They also deposited the entire amount due under the award

before the High Court on May 24, 2001. The objections filed by the Appellants were ultimately rejected by the single Judge of the High Court on February 26, 2008. Against this order, intra- court appeal is said to be pending. The Respondent, however, started execution of the Award dated February 14, 2001 by filing Execution Petition on August 12, 2008. The Appellants filed objections to the Execution Petition.

4. The question before the High Court was whether the Respondent was entitled to interest @ 18% p.a. from the date of the award dated February 14, 2001 till the date of actual payment to the Respondent.

5. The High Court considered the diverse provisions of the Act including Section 31(7)(a) and (b) of the Act and few decisions of this Court and ultimately held that the Respondent was entitled to post- award interest @ 18% p.a. from the date of the award till the date of the actual payment. It is this order which is in appeal before us.

6. There is no dispute that the entire amount due under the Award dated February 14, 2001 was deposited by the Appellants before the High Court on May 24, 2001. The question that arises for determination before us is, whether deposit of the entire award amount by the Appellants on May 24, 2001 into the High Court amounts to payment to the Respondent and the Appellants liability to pay interest @ 18% p.a. from the date of the award ceased from that date.

7. Section 31(7)(a) and (b) of the Act reads as under:

31(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

8. The above provision has been recently considered by this Court in State of Haryana and Others Vs. S.L. Arora and Company, This Court held as under:

... In a nutshell, in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence of contract, as per discretion of the Arbitral Tribunal. On the other hand, in regard to the post-award period, interest is payable as per the discretion of the Arbitral Tribunal and in the absence of exercise of such discretion, at a mandatory statutory rate of 18% per annum.

This Court further observed in para 24.6 as under:

...but if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in

whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post-award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest, the claimant will be entitled to post- award interest at the higher rate of 18% per annum.

9. Learned Counsel for the parties are ad idem that the Arbitrator has not exercised any discretion in the matter pertaining to the interest for the post-award period. Obviously, in absence thereof, by virtue of Section 31(7)(b) of the Act, the award would carry interest @ 18% p.a. from the date of the award till the date of payment. Whether May 24, 2001 when the entire award amount was deposited by the Appellants into the High Court is the date of payment ?

10. Payment is not defined in the Act. The Concise Oxford English Dictionary (Tenth Edition-revised) defines 'payment' '1. the action of paying or the process of being paid. 2. an amount paid or payable'. Webster Comprehensive Dictionary (International Edition) Volume two defines 'payment' '1. the act of paying. 2 Pay; requital; recompense.' The Law Laxicon, 2nd Edition reprint by P. Ramanatha Aiyar, inter alia, states 'payment is defined to be the act of paying, or that which is paid; discharge of a debt, obligation or duty; satisfaction of claim; recompense; the fulfillment of a promise or the performance of an agreement; the discharge in money of a sum due.

11. The word 'payment' may have different meaning in different context but in the context of Section 37 (1) (b); it means extinguishment of liability arising under the award. It signifies satisfaction of the award. The deposit of the award amount into the Court is nothing but a payment to the credit of the decree-holder. In this view, once the award amount was deposited by the Appellants before the High Court on May 24, 2001, the liability of post-award interest from May 24, 2001 ceased. The High Court, thus, was not right in directing the Appellants to pay the interest @ 18% p.a. beyond May 24, 2001.

12. The appeal is, accordingly, allowed in part. The impugned order of the High Court is modified and it is directed that the Appellants shall be liable to pay interest @ 18% p.a. for the post-award period from the date of award until May 24, 2001. After May 24, 2001, the Appellants are not liable to pay any interest on the award amount u/s 37(1)(b) of the Act.

13. We are informed by Mr. Y. Prabhakara Rao, learned Counsel for the Appellants that the amount as per the impugned order dated March 5, 2009 was deposited by the Appellants which has been withdrawn by the Respondent. In light of this, we observe that the High Court shall now re-determine the amount due and payable to the Respondent under the award and the post- award interest as indicated above. The excess amount, if withdrawn by the Respondent shall be refunded to the Appellants within two months of re-determination by the High Court.

14. No costs.