
(2007) 07 CAL CK 0004
In the Calcutta High Court
Case No : AP No. 230 of 2005

Nathuni Shaw

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Contract Act, 1872 — Section 74

Citation : (2008) 3 ARBLR 334

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Abhrajit Mitra and Mainak Bose, for the Appellant; D.K. Singh, for the Respondent

Judgement

Sanjib Banerjee, J.—The grievance of the petitioner is restricted to one point, in course of hearing. The petitioner obtained a refund of the earnest money deposited pursuant to its agreement with the respondent to purchase certain scrap. The petitioner insists that upon the arbitrator holding that the petitioner was entitled to refund of the earnest deposit, interest for the period for such earnest deposit so withheld by the respondent-Railways should have also been awarded.

2. The petitioner made a much larger claim in the reference. The petitioner alleged that he had suffered damage to the extent of Rs. 10,00,000 and also claimed, in the alternative, a direction for delivery of the goods purchased without the Railways being entitled to claim any interest. The arbitrator found that the claim on account of loss and damages was unmeritorious. The arbitrator held that there was a substantial period of time after the earnest money had been deposited that the claimant had been inactive. The arbitrator found that the terms of the sale was on as is where is basis and the claimant's grievance that the goods were not in a deliverable state, was unacceptable.

3. The arbitrator, however, found as a matter of fact that the price of the scrap had increased from Rs. 441.25 per metre in September 2001 to Rs. 781 per

metre in April 2004. The arbitrator, thus, concluded that the respondent-Railways had not suffered any loss that could have entitled them to retain the earnest money or forfeit the same. On such reasoning, the arbitrator awarded the refund of the earnest deposit.

4. Having concluded that the Railways had not suffered any loss which could have entitled the Railways to retain the earnest deposit, the arbitrator did not furnish any reason to decline interest to the petitioner. The petitioner has referred to Section 74 of the Contract Act and the judgment reported at Fateh Chand Vs. Balkishan Das, . The petitioner refers to the following passage appearing at paragraph 11 of the report:

Before turning to the question about the compensation which may be awarded to the plaintiff, it is necessary to consider whether Section 74 applies to stipulations for forfeiture of amounts deposited or paid under the contract. It was urged that the section deals in terms with the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however no warrant for the assumption made by some of the High Courts in India, that Section 74 applies only to cases where the aggrieved party is seeking to receive some amount on breach of contract and not to cases where upon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty" comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture. We may briefly refer to certain illustrative cases decided by the High Courts in India which have expressed a different view.

5. The petitioner submits that it has been recognised that Section 74 entitled a party to retain the earnest deposit or to forfeit it just as the provisions contained in that section allows a party to claim damages upon it being demonstrated that it had suffered damages. The quantum is not always important, the factum has to be established. In the present case, the arbitrator found that there was no loss or damage occasioned to the Railways on account of the petitioner's conduct. That the petitioner was in breach and that the petitioner did not deposit the balance consideration within time, in such circumstances, becomes irrelevant. The arbitrator found that the price of the goods had nearly doubled during the interregnum. The petitioner next cites the judgment reported at Special Deputy Collector (Land Acquisition), General, Hyderabad Vs. B. Chandra Reddy and

Others, and refers to paragraph 18 thereof:

A similar issue came up for consideration before a Constitution Bench of this Court in *National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India*, . There, the court was considering the question whether the Corporation under the Life Insurance Corporation Act, 1956 was or was not required to pay compensation with interest to the insurer. The court noted that neither the Act nor the Rules contained any express provision for grant of interest. Relying on English cases referred to earlier, however, the court held that the insurer would be entitled to claim interest once it is proved that he was illegally deprived of the amount to which he was legally entitled and there was delay on the part of the Corporation in making payment of such amount.

6. It is contended by the petitioner that once the respondent was found not to be entitled to the earnest deposit, the respondent was liable to pay interest for the period during which it retained the earnest deposit despite demand for refund made by the petitioner.

7. The respondent resists such claim for interest on the ground that the agreement did not provide for payment of any interest. According to the respondent, the relevant agreement not only does provide for payment of interest by the Railways on earnest deposit, but it bars the payment of interest. The respondent has, however, not been able to demonstrate from its affidavit or the documents relied on therein that there is any clause in the agreement to such effect.

8. The only clause that the respondent finds in its support is Clause 2(b) of the General Conditions of Sale by Auction, covering Railways sales. Clause 2(b) governs situation where the highest bid is not accepted on the spot but is reserved for consideration as will be evident from the clause itself:

Where, however, the highest bid is not accepted on the spot but is reserved for consideration of the railway administration vide Clause 1(b) above, the earnest money deposit shall be forfeited if the bidder unilaterally withdraws, amends, impairs or derogates from his bid in any respect within the period of validity of the bid. If the bid reserved for consideration is finally accepted by the railway administration, the earnest money deposit will be retained and adjusted as part of the bid money. If the bid is not finally accepted by the railway administration the earnest money deposit made by the bidder shall be refunded to him. No interest shall be payable on such refunds.

9. The stipulation in Clause 2(b) that no interest would be paid on the earnest money deposit is restricted to cases covered by Clause 2(b) and cannot be extended to the petitioner's case.

10. If the respondent was not entitled to retain the earnest deposit, as has been found by the arbitrator, the respondent was liable to refund it upon the first demand therefore by the petitioner. It appears from the award that the petitioner

demanded the refund of the earnest deposit by its letter of December 13, 2001. The petitioner is entitled to interest on the earnest deposit retained by the Railways for the period beginning December 14, 2001. The petitioner should be paid interest @ 8% per annum, considering the prevailing rate of interest during the period 2001-2004.

11. The award is modified to the above extent. The petitioner will be entitled to refund of the earnest deposit in terms of the award. The petitioner will be entitled to interest @ 8% per annum on the earnest deposit calculated up to the date of refund of the earnest deposit. The petition is disposed of on the above basis without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.