(2018) 09 DEL CK 0305

In the Delhi High Court

Case No : Review Pet. 522 Of 2017 In Efa(Os) 23 Of 2015

National Project Construction Corporation APPELLANT

Vs

Construction Rasa Pvt. Ltd RESPONDENT

Date of Decision : 25-09-2018

Acts Referred:
Code of Civil Procedure, 1908 — Section 96, 114, 151, Order 21 Rule 58

Citation : (2018) 09 DEL CK 0305

Hon'ble Judges : S. Ravindra Bhat, J;A. K. Chawla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A. K. CHAWLA, J

1. By the petition filed under Section 114 read with Section 151 CPC in short 'the subject petition', the petitioner-Construction Rasa Pvt. Ltd. in short

'CRPL' seeks review of the judgment dated 16.05.2016 passed by this Court in EFA (OS) 23/2015.

2. Vide judgment dated 16.05.2016, this Court expressed its opinion as to the true construction of the award as regards the element of interest payable

by non-applicant - National Project Construction Ltd. in short 'NPCC' under an award by the Arbitrator (published under the Old Arbitration Act,

1940), which was directed to be made Rule of the Court by the learned Single Judge of this Court on April 1st, 2011. The Arbitrator had directed

NPCC to pay to CRPL an amount of `26,48,484/- towards the balance of the principal amount. In addition, NPCC was also asked to pay interest @

16% p.a. on the principal amount from 22.07.1989 to the date of the award i.e. 28.09.1997 and further pay interest @ 16% p.a. on the principal amount from the date of the award, till the date of payment or decree, whichever is earlier. Such award came to be made Rule of the Court on April

1st, 2011, dismissing the objections filed by NPCC awarding simple interest @ 9% p.a. from the date the Arbitrator entered upon reference i.e.

22.07.1989 upto date of award dated 28.09.1997 and simple interest also at the same rate from the date of award upto the date of payment made after

passing the decree. Thereafter, it is only during the course of the execution proceedings that an issue came to be raked up by CRPL as regards the

true construction of the decree and the executing court made an order dated 15.02.2012, in effect, taking the view that the interest awarded by the

Arbitrator till the date of the award would form part of the principal amount and the interest thereafter, shall be payable as fixed by the Court. JD-

NPCC sought modification thereof by filing EA 191/2012 placing reliance upon State of Haryana vs. S.L. Arora and Co.(2010) 3 SCC 690. On the

said application being dismissed, NPCC preferred EFA (OS) 23/2015, which came to be disposed of by this Court on 16.05.2016. Now, CRPL has

filed the instant application seeking review thereof under Section 114 read with Section 151 CPC. This Court had disposed of the appeal with the

observations made in paras 8 and 9, as under :

8. This court is of the opinion that the appellant NPCCâ??s argument is merited and substantial. There is no indication in the award that the interest

on the principal sum awarded, `26,48,484/- upto the date of the award, is to be added, after which further interest is to be calculated. On the contrary,

the internal indication in the award is that the two awarded amounts were `3,98,473/- (payable by the claimant to NPCC) and the sum of `30,46,957/-

payable by the NPCC to the Claimant. The principal liability of NPCC was fixed at `26,48,484/-. Unlike the question in Ferro Concrete Construction

there is no controversy about the power of arbitrators to award interest; or to pay interest on amounts, which had crystallized as delayed interest

payments, under the contract in question, as in Oil &Natural Gas Commission. Here the issue is whether the direction to pay interest on `26,48,484/-

was itself an award, to be added to that sum.

9. An important factual aspect, which escaped attention of the single judge, is that the single judge never actually interpreted the award as the

Claimant sought to do, in execution proceedings. All that was stated while making the award rule of court is extracted as follows:

â??The plaintiff is also awarded interest, as stipulated hereinbefore from the date of award till the payment of awarded amount @ 9% simple interest

per annum. Decree sheet be drawn. All the pending applications are disposed of. Considering the facts and circumstances, parties are left to bear

their own costs.â??

The gloss which the decree holder/Claimant sought to place over this direction (which is ambiguous) is that it upheld an award of interest on a

composite amount of principal amount, plus pendente lite interest. Whilst such awards may certainly be made, this court does not discern the present

case to be concerned with one such. The awarded amount alluded to by the judgment of 01.04.2011 was the principal amount of ` 26,48,484/-. On that

amount, pendente lite interest and future interest was payable. There was no question of merging one interest amount with the principal sum due, for

one period and then calculating interest on the cumulative â??principalâ?. Such a construction of the award is excess of it and simply too strained to

be accepted.

3. It would thus be seen that this court has made categorical observations as regards the liability of interest under the award that was made Rule of

the Court under the provisions of the Arbitration Act, 1940 and not the Arbitration and Conciliation Act, 1996. It is also to be noted that the issue of

construction or the interpretation of the decree had arisen only during the execution proceedings and not in the exercise of the original jurisdiction of

this Court, which invites strict adherence to the procedure provided for hearing a regular appeal under Section 96. A plain reading of Order 21 Rule 58

CPC would show that the adjudication of any claim or objection under it has to be adjudicated upon by the executing court. The objective is that the

litigation is not protracted or procrastinated. This court having considered the appeal on the vital aspects and having expressed its opinion on the true

construction of the terms of the decree, is of the considered view that there is no error apparent on the record inviting review as sought for by CRPL.

In the given factual conspectus of the things, mere absence of advertence to any plea of the review petitionerCRPL as regards the maintainability of

the appeal or limitation, for which CRPL has not adverted to any specific provision of law, in our considered view, is not tenable inasmuch as it is implied to have been rejected in the given facts and circumstances of the case.

4. In view of the foregoing, the review petition is dismissed

