
(2006) 09 DEL CK 0154

In the Delhi High Court

Case No : RP No. 95 of 2005 in EFA (OS) No. 23 of 2004

Nav Bharat Nirman Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Arbitration Act, 1940 — Section 33

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 47 Rule 1, 151

Citation : (2006) 09 DEL CK 0154

Hon'ble Judges : Dr. M.K. Sharma, Acting C.J.; Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—This order shall dispose of Appellant's application under Order 47 Rule 1 read with Section 151 of the CPC for review of order dated 28.2.2005 whereby the appeal of the Appellant being EFA(OS) No. 23/2004 was dismissed against the order dated 12.5.2004 passed by the learned Single Judge in Execution Petition No. 2/2002 determining the amount payable to the Appellant as Rs. 74,217/- being simple interest @ 14% from 1.11.2001 to 24.8.2002 only.

2. The Appellant had executed the work of making arrangement for RDC-97 in terms of an agreement which was executed in 1997. The disputes had arisen between the Appellant and the respondent entailing appointment of Dr. Y.P. Dangey as arbitrator who had published an award on 25.1.2001. The learned Arbitrator gave an award of Rs. 4 lakhs with 14% simple interest from 1.1.1998 till payments. The Appellant was dissatisfied with the award and filed an application u/s 33 of the Arbitration Act, 1940 leading to an additional award and thus a total amount of Rs. 6,53,800/- was awarded to the Appellant with 14% simple interest from 2.6.1997 till the date of payment.

3. Since the respondent did not pay the amount awarded to the Appellant,

warrant of attachment were issued and an amount of Rs. 10,58,066/- was received from the bank in pursuance to the warrants of attachment issued by the Court. This amount of Rs. 10,58,066/- comprised of awarded amount of Rs. 6,53,800/- awarded in favor of Appellant and 14% simple interest till 1.11.2001.

4. The respondent filed objections against the award which were dismissed and vide order dated 26th September, 2003 it was held that there is no impediment in the enforcement of the award. On 4th November, 2003 counsel for the judgment debtor sought short adjournment to seek instruction from the respondent about the satisfaction of the decree and also represented that the payment shall be made before the next date and the matter was re-notified for 16th January, 2004. The Appellant thereafter, filed another execution application seeking interest of Rs. 4,20,581 on the amount of Rs. 10,58,066 calculated @ 18% from 1.11.2001 till 15th January, 2004. The executing Court, however, allowed an amount of Rs. 74,217/- only which was interest up to 24th August, 2002 when the amount was received pursuant to the warrants of attachment issued against the respondent.

5. Aggrieved by the order of the learned Single Judge Appellant filed EFA(OS) No. 23/2004 contending that he is entitled for interest till the amount was paid to him and not till the date when the amount was deposited which was also pursuant to the warrants of attachment issued by the executing Court pursuant to which the amount of Rs. 10,58,066 was received in the executing Court. It was contended that receipt of such amount pursuant to warrants of attachment issued by the executing Court is not the payment as envisaged in Rule 1 of Order 21 of the CPC and the Judgment debtor/ respondent is liable to pay the interest till the amount was released to the Appellant or was paid.

6. The appeal of the respondent was disposed of by order dated 28.2.2005 holding that the amount calculated by the learned Single Judge amounting to Rs. 74,217/- which was simple interest from 1.1.2001 to 24.8.2002 @ 14% is the amount payable to the Appellant and dismissed his appeal. This Court had gone on the premise that the Court had directed the respondent to deposit the amount of Rs. 10,58,066/- which was deposited on 24th August, 2002.

7. The award in favor of Appellant was for an amount of Rs. 6,53,800/- with simple interest at 14% per annum with effect from 2.6.1997 till date of payment. The receipt of amount in the Court pursuant to warrant of attachment, can not be construed as deposit by the respondent in the Court on 24.8.2002. It is apparent that there is an error apparent in the judgment dated 28.2.2005. The amount of Rs. 10,58,066/- was not deposited by the respondent but was received pursuant to warrants of attachment from the Bank which was ordered to be released in favor of the Appellant vide order dated 27th August, 2002. Therefore, receipt of amount on attachment will not be payment of amount by the judgment debtor as contemplated under Order 21 Rule 1 of the Code of Civil Procedure. Since the interest at 14% per annum was awarded to the Appellant till the date of payment, amount received pursuant to warrant of attachment

from the Bank will not be deposit of amount in the Court and will not be payment of amount to the Appellant as envisaged in Rule 1 of Order 21 of the CPC and will not absolve of the liability of the respondent to pay the interest.

8. The Apex Court in AIR 1968 SC 1047 P.S.L. Ramanathan Chettiar and Ors. v. O.R.M.P.R.M. Ramanathan Chettiar had held that the deposit of decretal amount by a judgment debtor in the Court to purchase peace by way of stay of execution of a decree does not pass title in the deposited money in favor of the decree holder and as such is not a payment in terms of Order 21 Rule 1 of the CPC which prescribes specific modes for satisfaction of a money decree. Since the amount was not deposited by the judgment debtor but was received pursuant to the warrants of attachment issued by the Court, the date of receipt of amount will not be date for the payment of amount to the Appellant. The amount has been paid to the Appellant on 29th May, 2004 so he will be entitled for interest till 28th May, 2004 and not up to 24th August, 2002. Therefore the Appellant is entitled for interest on the amount awarded to him @ 14% per annum till the amount was received by the Appellant.

9. Since the amount awarded is Rs. 6,53,800/- and the simple interest at 14% per annum with effect from 2.6.1997 till date of payment, Therefore, the Appellant is entitled for Rs. 6,39,809/- i.e interest at the rate of 14% per annum with effect from 2.6.1997 till 28.5.2004 as the amount lying in the court was paid to the Appellant on 29th May,2004 The amount of interest on the awarded amount of Rs. 6,53,800/- comes to Rs. 6,39,809/- out of which an amount of Rs. 4,96,502/- as interest has already been paid by the respondent to the Appellant. Therefore, the respondent is further liable to pay a sum of Rs. 1,43,307/- in satisfaction of the decree passed against the respondent.

10. Consequently, the application for review of order dated 28.2.2005 being review application No. 95/2005 is allowed and the respondents are directed to pay a further amount of Rs. 1,43,307/- to the Appellant. The said amount be paid to the Appellant within two weeks. Considering the facts and circumstances, the parties are directed to bear their own expenses.