
(2004) 08 AP CK 0050

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2481 of 2004

Nutri Solvextract Pvt. Ltd.

APPELLANT

Vs

Sri S.L.S. Ahmed, Sole Arbitrator and Another

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 29

Arbitration and Conciliation Act, 1996 — Section 31(7)

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6, Order 47 Rule 1, 114, 151, 34

Citation : (2005) 1 ACC 857 : (2004) 5 ALT 555 : (2005) 1 ARBLR 141 : (2005) 2 BC 505

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Shiv Kumar, for the Appellant; M. Seetha Devi, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This revision petition is filed by the plaintiff in O.S. No. 359 of 1989 on the file of the V Senior Civil Judge, City Civil Court, Hyderabad, aggrieved by the order in I.A. No. 1241 of 1994 dated 14-09-1999.

2. The petitioner is a Company, dealing with supply of chemicals. It insured its godowns with the United India Insurance Company, the second respondent herein. A fire accident occurred on 15-06-1986 in one of its godowns. The petitioner made a claim with the second respondent. In terms of the contract of Insurance, the claim of the petitioner was referred to an Arbitrator, the first respondent. On a consideration of the claim and on examination of the matter, the first respondent passed an Award for Rs. 4,12,335/- dated 04-01-1989. The petitioner filed O.S. No. 359 of 1989 under Sections 14 and 17 of the Arbitration Act, 1940 (for short, "the Act"), making the Award of the Arbitrator, as rule of the Court. The suit was decreed on 29-03-1994 and it became final.

3. Neither the Arbitrator nor the trial Court granted any interest for any period on the claim of the petitioner. However, in Clause (3) of the decree, it was indicated

that the petitioner is entitled to recover the principal amount with an interest at 19.5% per annum from the date of claim i.e. 15-06-1986. Inasmuch as the interest was awarded neither by the Arbitrator nor by the trial Court, the second respondent filed I.A. No. 819 of 1994 u/s 152 C.P.C for correction of the decree. The trial Court ordered the said I.A. on 04-07-1994 correcting the decree insofar as it relates to the payment of interest.

4. The petitioner filed I.A. No. 1241 of 1994 u/s 114 read with Order XLVII, Rule 1 C.P.C seeking review of the judgment insofar as it was denied the interest on the decretal amount. The basis of the claim of the petitioner was that interest was denied to it on the basis of judgment of High Court of Delhi in *Shanta Trivedi v. LIC of India*, AIR 1988 Delhi 40 whereas in its judgment in *Secretary, Irrigation Department, Government of Orissa and others v. G.C. Roy*, the Hon'ble Supreme Court held that it is competent for grant of interest even where the agreement is silent. The power of trial Court u/s 34 of C.P.C was also invoked. The trial Court dismissed the I.A. through the order under revision.

5. Sri P. Shiv Kumar, learned Counsel for the petitioner, submits that the trial Court ought to have granted interest to the petitioner at least from the date of filing of the suit and it denied the same on the basis of a judgment of the Delhi High Court, which no longer was good law in view of the judgment of the Supreme Court in *G.C. Roy's* case. He contends that even if the principle enunciated by the Delhi High Court that in the absence of an agreement, it is not competent for the Arbitrator to award an interest, is taken into account, the same does not restrict the power of the Court to grant interest u/s 34 of the said Act. He places reliance on several judgments rendered by the Supreme Court.

6. Ms. M. Seetha Devi, learned Counsel for the second respondent, on the other hand, submits that the application filed by the petitioner was not maintainable in law on the grounds of limitation as well as *res judicata*. According to her, the Arbitrator is competent to award interest for all the four stages, namely, pre-reference, pendency of proceedings before him, future interest between the date of Award and date of decree and, from date of decree till the realization of the amount. She places reliance upon the judgment of the Supreme Court in *T.P. George Vs. State of Kerala and Another*, .

7. The petitioner presented a claim to the second respondent, for compensation for the loss on account of a fire accident, in view of coverage of insurance, for the godown. In terms of the contract, the first respondent was appointed as Arbitrator for assessing the compensation. The first respondent, in turn, passed the Award on 04-01-1989 for a sum of Rs. 4,12,335/-. The petitioner filed O.S. No. 359 of 1989 to make the Award of the first respondent as rule of the Court. The second respondent did not feel aggrieved by the Award and did not file any application to set aside the Award. The record does not disclose that the petitioner had made any claim for grant of interest from the date of accident, obviously being conscious of the fact that it is not entitled to be paid the amount till the damage is assessed.

8. The suit was decreed on 29-03-1994. The trial Court denied interest to the petitioner for any period by relying upon the judgment of the Delhi High Court referred above. However, the decree was drawn contrary to the contents of the judgment and in utter violation of Rule 6 of Order XX, C.P.C. Though the judgment did not provide for any interest at all, the decree indicated that the petitioner is entitled to recover the amount with interest at 19.5% per annum. It is rather surprising that such a clause was included in the decree.

9. On noticing Clause (3) of the decree providing for interest, the second respondent filed I.A. No. 819 of 1994 u/s 152 C.P.C to correct the decree, so that it can be brought in conformity with the judgment. In all fairness, the petitioner endorsed "no objection" in that application, and it was ordered.

10. The petitioner filed I.A. No. 1241 of 1994 seeking review of the judgment insofar as it denied any interest to it. This application was resisted by the second respondent on two grounds, namely, that the application was delayed and that the order passed in I.A. No. 819 of 1994 operates as res judicata. Both the grounds appealed to the trial Court.

11. As for the question of limitation, it needs to be seen that the suit was decreed on 29-03-1994. Since an appeal is to be filed against the decree, the petitioner cannot be said to have any genuine grievance as long as the decree provided for interest. The decree was corrected on 04-07-1994. Soon after obtaining the certified copy of the decree, the petitioner filed the application for review on 08-08-1994. The cause of action for filing of review accrued only on 04-07-1994. Even before the expiry of the limitation for filing of an appeal, the petitioner filed an application seeking review. Hence, it cannot be said that the application was delayed.

12. So far as the objection as to res judicata is concerned, it needs to be seen that the application in I.A. No. 819 of 1994 was not adjudicated on merits nor did the petitioner waive its right to claim interest. The only issue in the I.A. was as to whether it was drawn in accordance and conformity with the judgment. In fact there cannot be any contentious issues in an application filed u/s 152 C.P.C. Any order passed in such application can operate as res judicata only in relation to the correction that may have been carried out. The petitioner cannot be said to have permitted the decree to become final against it. Therefore, the trial Court was not justified in rejecting the application on the ground that the order passed by it in I.A. No. 819 of 1994 operates as res judicata.

13. Grant of interest in arbitration proceedings is governed by Section 29 of the Arbitration Act, 1940 or Section 34 C.P.C, depending on the stage and forum at which they are pending. Whether it is Section 29 of the Act or Section 34 of C.P.C, existence of power by itself, is never a justification for grant of interest. It all depends on the nature of transactions and facts and circumstances of each case. The entitlement of a party to receive a definite sum of money is an important factor in this context. If the claim is in relation to a sum which is to be

ascertained, Courts would be slow to grant interest for the period anterior to such ascertainment or assessment. Normally, the question of grant of interest as a compensatory measure would arise when it is found that the money payable by one party to the other was unjustifiably with-held.

14. Reverting to the facts of the case, it needs to be seen that the petitioner cannot be said to have become entitled to be paid the amount soon after the accident occurred. The agreement itself provided for ascertainment by an Arbitrator of the damage caused in the accident. It is only when the Arbitrator quantifies the damage and his Award becomes enforceable, a right accrues to the petitioner to receive that amount. That eventuality has taken place only when the Award made by the first respondent was made the rule of the Court. The petitioner, if at all, would be entitled for any interest subsequent to the date on which the Award is made as the rule of the Court namely, the date of decree passed by the trial Court.

15. Placing reliance upon the judgment of the Supreme Court in T.P. George's case, the Counsel for the respondent submits that it is the sole prerogative of the Arbitrator to award interest for the four stages in an appropriation proceedings, namely

- (1) from the stage of accrual of cause of action till filing of the arbitration proceedings
- (2) during pendency of the proceedings before arbitrator
- (3) future interest arising between date of award and date of the decree and
- (4) Interest arising from date of decree till realization of award.

According to her, it is for the Arbitrator to award any interest for all or any stage referred to above and the Court is not competent to grant any interest.

16. A reading of Head Note (B) of the judgment in T.P. George's case, in a way supports the contention of the second respondent. However, on a careful reading of Para 9 of the judgment, it would be evident that the head note is misleading. It is relevant to extract the head note as well as the relevant portion in the judgment.

"(B) Arbitration and Conciliation Act (26 of 1996), S.31(7) - Arbitrator - Interest - Power to award - Arbitrator has power to award interest at all four stages - Award granting interest from date of award cannot be faulted.

Arbitrator can award interest for all four stages. (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before arbitrator, (3) future interest arising between date of award and date of the decree and (4) Interest arising from date of decree till realization of award.

The direction to pay interest from date of Award cannot be faulted."

In para 9 of the judgment, the sentence, "Arbitrator can award interest for all four stages" does not find place. Para 9 reads as under:

"The next question is whether the High Court was right in setting aside the award of the interest from the date of the Award. This Court has held in the case of M/s. Jagdish Rai and Brothers Vs. Union of India, , that the award of interest ought to be granted in all cases when there is a decree of money unless there are strong reasons to decline the same. In the case of M/s. Jagdish Rai and Brothers Vs. Union of India, , this Court has held that there are four stages of grant of interest, viz. (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before arbitrator, (3) future interest arising between date of award and date of the decree and (4) interest arising from date of decree till realization of award. The power of Court to grant interest from date of decree is not in doubt. In the case of Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, this Court has held that the Arbitrator is competent to award interest from the date of the Award. This Court has held in the case of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , that the arbitrator has power to grant interest pendente lite. Recently in the case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, Vs. N.C. Budharaj (Dead) by Lrs. etc. etc., , this Court has held that arbitrator can award interest for the pre-reference period. Thus as per law laid down by this Court interest can be awarded at all four stages. The reasoning given by the High Court that interest cannot be awarded by the arbitrator is thus fallacious and cannot be sustained. In our view the direction to pay interest from date of Award cannot be faulted. The impugned judgment to the extent that it disallows the interest from the date of the Award is set aside."

17. From this, it is evident that the sentence "the Arbitrator can award interest for all four stages" does not find place in the judgment. On the other hand, the sentence following the portion extracted in the head note discloses that the Court is conferred with the power to grant interest from the date of decree. It is somewhat difficult to accept the contention that an Arbitrator has the power or jurisdiction to control the interest regime, in relation to proceedings before the Court, may be arising out of the award.

18. Whatever may have been the justification for the second respondent in not paying the amount till it was quantified by the Arbitrator, it cannot withhold the amount, after the award was made the rule of the Court. Hence the amount shall carry interest from the date of decree. Therefore, this Court is of the view that the petitioner is entitled to be granted interest from the date of decree, at the rate of 12% per annum is said to be the permissible rate of interest in appropriation proceedings.

19. The Civil Revision Petition is allowed. The order under revision is set aside, and the judgment and decree of the trial Court in O.S. No. 359 of 1989 shall stand reviewed and modified to the effect that the amount covered by the award shall carry interest at the rate of 12% per annum, from the date of decree till the

date of realization.