
(2011) 06 MAD CK 0359
In the Madras High Court
Case No : O.S.A. No. 99 of 2011

Prime Habitats (P) Ltd.

APPELLANT

Vs

Deputy Chief Engineer Construction Southern Railway , Sri.
M. Devaraj Financial Adviser and Chief Accounts Officer, Sri.
T. Archunan Senior Divisional Engineer/Co-ordination and Sri.
S. Seshadri Senior Divisional Engineer Traction Distributions

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

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

Citation : (2011) 06 MAD CK 0359

Hon'ble Judges : V. Periya Karupiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : S. Kalyanaraman, for the Appellant; V.G. Suresh Kumar, for R1, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—When there is an express bar in the contract in awarding interest pendente lite, can the Arbitrator award interest pendente lite is the question falling for consideration in this intra Court appeal arising out the order of single Judge in O.P. No. 787 of 2008 dated 15.02.2010.

2. Brief facts are that the Railway Administration entered into an agreement with the Appellant at Chennai on 08.6.2001 bearing Agreement No. 173/CN/2001 for the work "Doubling of track between Shoranur and Mangalore - Cannanore - Uppala Section - construction of new Station building of 1st floor and S & T accommodation at ground floor of Valapattinam Station". Disputes arose in relation to the work, which is the subject matter of the said agreement and as the agreement provides for arbitration in case of disputes the General Manager, Southern Railway, the authority under the agreement to constitute the Tribunal appointed Respondents 2 to 4 as Arbitrators to adjudicate upon the disputes arising out of the said agreement. Appellant raised 16 claims against the 1st

Respondent and the same were contested by the 1st Respondent. The Arbitral Tribunal, by an Award dated 10.04.2008 had allowed the claims in part and awarded a sum of Rs. 13,65,833/-towards the various claims besides interest at 18% per annum from 04.10.2004 when the Appellant raised the disputes till the date of Award totalling to Rs. 8,52,053/-under claim No. 14.

3. Challenging that portion of Award directing payment of interest at Rs. 8,52,053/-from the date of claim till the date of Award, 1st Respondent-Southern Railway filed Petition u/s 34 of Arbitration and Conciliation Act, 1996. Placing reliance upon (2007) 5 MLJ 83 [D. Shivashankar v. Union of India], the learned single Judge held that when there is a clause in the contract governing the issue, thereby barring the grant of interest, the same is binding on the parties and consequently, the Tribunal cannot award interest pendente lite in those cases. On those findings, learned single Judge set aside the grant of interest pendente lite period to the tune of Rs. 8,52,053/-under Award dated 10.04.2008 and allowed the Petition filed u/s 34 of Arbitration and Conciliation Act.

4. Challenging the impugned order, Mr. S. Kalyanaraman, learned Counsel for Appellant contended that if the contractor makes clear the escalation of rates or compensation for the delay shall have to be made by the employer and the employer accept performance by the contractor inspite of delay and such notice by the contractor putting the employer on terms. It was further submitted that there was delay on the part of Railways in finalisation of the bills and Appellant put the Railways on notice by letter dated 10.04.2004 and since Appellant had made a demand even before the Railways invoked arbitration clause and the same was accepted by the Railways without any demur, the Appellant-contractor will be entitled to interest by way of compensation for the delay notwithstanding the clauses 16(3) and 64(5) of the agreement.

5. Placing reliance upon Sree Kamatchi Amman Constructions Vs. The Divisional Railway Manager (Works), Palghat and Others, , Mr. V.G. Suresh Kumar, learned Counsel appearing for 1st Respondent has contended that in view of specific bar Clause 64(5) of General Conditions of Contract which is a contract between the parties will govern the parties. Learned Counsel would further contend that Section 31(7)(a) of the Arbitration and Conciliation Act which provides for interest starts with the words "unless otherwise agreed by the parties" and thus makes the agreement between the parties sacrosanct. Learned Counsel would further contend that award of interest from the date of claim till the date of Award is contrary to Clause 64(5) and award of interest perse against the terms of contract and the learned single Judge rightly set aside the Award insofar as grant of interest of Rs. 8,52,053/-from the date of claim till the date of Award.

6. When there is an agreement between the parties as per which no interest shall be payable on whole or any part of the amount for any period till the date on which the Award is made, the General Conditions of Contract between the parties shall govern the parties.

7. The legislature while enacting the Arbitration and Conciliation Act, 1996, incorporated a specific provision in regard to award of interest by Arbitrators. Sub-section (7) of Section 31 of the Act deals with the Arbitrator's power to award interest. Clause (a) relates to the period between the date on which the cause of action arose and the date on which the award is made. Clause (b) relates to the period from the date of award to date of payment. Sub-section (7) of Section 31 reads as under:

31.(7)(a) Unless otherwise agreed by the parties, where and insofar 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. In Sayeed Ahmed and Co. Vs. State of U.P. and Others, , Clause G1.09 makes it clear that no interest or damages will be paid by the Government . Clause G1.09 is comprehensive and bars interest under any head in clear and categorical terms. Holding that when the provision in the contract bars the employer from entertaining any claim for interest or bars the contractor from making any claim for interest, it amounts to a clear prohibition regarding interest, in Para-16, the Supreme Court held as under:

16. In view of Clause (a) of Sub-section (7) of Section 31 of the Act, it is clear that the arbitrator could not have awarded interest up to the date of the award, as the agreement between the parties barred payment of interest. The bar against award of interest would operate not only during the pre-reference period, that is, up to 13.3.1997 but also during the pendente lite period, that is, from 14.03.1997 to 31.07.2001.

9. Referring to Sayeed Ahmed and Co. Vs. State of U.P. and Others, and considering the scope of Section 31(7) of the Act, in Sree Kamatchi Amman Constructions Vs. The Divisional Railway Manager (Works), Palghat and Others, , the Supreme Court held as under:

12. This Court had occasion to consider the jurisdiction and authority of the arbitrator to award interest under the Arbitration Act, 1940 and under the new Act in

Sayeed Ahmed & Co. v. State of U.P. (2009) 12 SCC

26. Relying upon the earlier decisions of this Court in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , Dhenkanal Minor Irrigation Division v.N.C. Budharaj (2001) 2 SCC 721, Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd. (2005) 6 SCC 462 and State of Rajasthan and Another Vs.

Ferro Concrete Construction Pvt. Ltd., , this Court held that the arbitrator had the jurisdiction and authority to award interest for three distinct periods, namely, the pre-reference period (which referred to the period between the date of cause of action to the date of reference), pendente lite (which referred to the period between the date of reference to the date of award), and further period (which referred to the period between the date of award to the date of payment) if there was no express bar in the contract regarding award of interest.

14. We may also refer to the decision of this Court in Union of India v. Saraswat Trading Agency (2009)

In view of Clause 64(5) of the General Conditions of Contract barring grant of interest which is binding on the parties and applying the ratio of the above decisions, the learned single Judge rightly set aside the Award insofar as grant of interest for the pendente lite period to the tune of Rs. 8,52,053/-. We do not find any reason warranting interference with the order of the learned single Judge.

10. In the result, the appeal is dismissed. Consequently, connected M.P. is closed. No costs.