

(1990) 03 BOM CK 0075

In the Bombay High Court

Case No : Civil Revision Application No. 197 of 1989

Ravindra V. Tamba

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1990) 3 BomCR 80

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : S.G. Dessai, for the Appellant; H.R. Bharne, A.G.A., for the Respondent

Judgement

Sharad Manohar, J.—The question involved is a more question of calculations. The stake involved is probably of a few hundred rupees; perhaps of a thousand or so, and on this small point the Government and the Contractor are breaking their heads figuratively.

2. In the dispute between the Government on one hand and the Engineer Contractor on the other, Award was given. There is no dispute that the principal amount payable by the Government to the Contractor is an amount of Rs. 5, 246.39 p. in respect of the final bill. Interest is made payable on the same from the date when the final bill became payable. Para 99 on the Award is quite clear on this point. That para shows that the payment of final bill was delayed by the Government unnecessarily and no that account the claimant has been held entitled to interest at the rate of 12% per annum from the date when the payments should have been made till the date of the Award.

In the proceedings for making the Award the rule of the Court, the Award had to be remitted to the Arbitrator for certain reasons and the Arbitrator gave an amended Award. The reason why the Award was remitted has nothing to do with the question of the rate or amount of interest on the amount due as final bill. The remission was for the purpose of quantification of certain items of claim. The

Arbitrator did the work of quantification. The Award therefore, stood amended accordingly. The Award as amended by the subsequent Award was made the rule of the Court.

But while doing so, by virtue of a manifest mistake, apparent on the fact of the record, a distinction is apparently made between the original Award and the amended Award. Really speaking, what must have been intended was that once the Award was amended the original Award merges in the amended Award. It is not as if that there were two Awards and two Decrees. The fact is that there is just one Decree. This means that the original Award had, even according to the Courts, merged in the amended Award. The words in the original Award (Para 99) "till the date of the Award" used in the Award must be deemed to be till the date of the final Award, that is to say, till the date of the amended Award in which the original Award had merged, This has to be so, because the decree that is passed ultimately in one Decree, not two Decrees.

3. The Court has ordered that interest shall be paid at the rate of 12% from the date of the amended Award. What is evidently intended is that the direction contained in the original Award (Para 99) must be construed to mean that the interest was payable till the date of the final Award, that is to say, the Award which stood after its amendment. There was never any intention to pass two different Awards. If there was such intention, two different Decree would have been passed, because the two different Awards would have been made the rule of the Court separately.

4. Once it is realized that the words used in the Decree making interest payable "from the date of the amended Award" must be deemed to mean from the date of the final Award and once we notice that the relevant expression in para 99 of the Award must be construed to mean direction to pay interest till the date of the final Award, i.e. the amended Award, the entire riddle gets solved.

5. The contention that there was no intention to pay interest to the Contractor for the interregnum between 29.10.1984 (which is the date of the original Award) and 27-12-1986 (which is the date of the amended Award) just cannot be accepted because there is no conceivable reason why any Court will deny interest to any party just for such interregnum. My attention was not invited to anything either in the Award or the Decree justifying any such intention either by the Administrator or by the Court. It is true that some semantic precision would have obviated this dispute; but after all the Courts have to take the commonsense view of the matter. One must impute commonsense to Courts and other authorities, when they pass Decrees or Awards.

6. It therefore, follows that the judgment debtor is bound to pay interest to the decree holder from 1-4-1979 which is the date when the amount of Rs. 5,246.39 p. became payable, till the date of the payment.

7. The Revision Application therefore succeed. The opponent Government is directed to pay to the petitioner the amount of Rs. 5,246.39 p. which is

admittedly the amount payable to the petitioner alongwith interest at the rate of 12% from 1-4-1979 till the date of payment. The entire amount shall be calculated and paid to the petitioner within 15 days from the date of the presentation of this Order to the relevant office of the Government and if default is made by Government in this behalf, the petitioner shall be entitled to approach this Court for appropriate relief on that account. In view of the unreasonable attitude of the Department, the Department shall pay costs to the petitioner which are quantified at Rs. 500/-.