(1972) 08 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 635 of 1969

R.B. Somappa APPELLANT

Vs

The Mysore Co-operative Appellate Tribunal and Others RESPONDENT

Date of Decision : 22-08-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Mysore Co-operative Societies Act, 1948 — Section 70

Citation : AIR 1973 Kar 37 : AIR 1972 Kar 37

Hon'ble Judges : M. Sadananda Swamy, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : Kadidal Manjappa, for the Appellant; B.T. Partha Sarathy, for the Respondent

Final Decision : Partly Allowed

Judgement

K. Jagannatha Shetty, J.—This writ petition under Articles 226 and 227 is directed against the appellate judgment of the Mysore Co-operative Appellate Tribunal in Appeal No. 251/66. by which it has affirmed the Award of the Arbitrator in Dispute No. 1402/1965-66.

2. By the agreement dated 27-3-1955, R. B. Somappa. the petitioner before us was constituted as an Agent for and on behalf of the Taluk Agricultural Produce Co-operative Marketing Society Ltd., (3rd respondent) to purchase, store and hull the paddy into rice and deliver the same to the Society. Clause 21 of the agreement provides as follows:--

"If the first party fails to deliver rice as per the percentage fixed above under clause No. (6) the cost of such quantity has to be paid at the Ex-Mill rate for shortage of rice upto one per cent and retail rate for shortage of rice beyond one per cent to the second party." The petitioner did not conform to the conditions set out in the agreement. The Society, therefore, filed a dispute u/s 70 of the Mysore Co-operative Societies Act, which was later on referred to an Arbitrator for decision. The Arbitrator made an Award dated 21-10-1966 by the following terms as follows:--

"(1) The cost of 318-58 quintal of I variety rice at Rs. 86/- being the retail rate per quintal (inclusive of S.T. at 1 per cent and other charges).

... Rs 27. 397-88

(2) The cost of 31-21 quintals of II variety rice at Rs. 85/- being the retail rate per quintal (inclusive of S.T. at 1 per cent and other charges).

... Rs. 2.653-06

(iii) Interest at 12 per cent per annum from 1-12-1965 to 16-4-66.

... Rs. 1,352-00

Total, Rs. 31,402-94

I. therefore, hereby order that the respondent do pay to the plaintiff Society a sum of Rs. 31,402-94 with further interest at 12 per cent per annum from 17-4-66 to the date of realisation together with arbitration fee and other charges, if any.

Sd. H. B. Yathiraj. Inspector of Co-operative Societies for Arbitration."

It is seen therefrom that the Arbitrator has awarded interest at the rate of 12 per cent from the date of default i.e. from 1-12-65 till the date of filing of the dispute i.e.. 16-4-1966. Further, he has also directed the recovery of interest at 12 per cent from 17-4-1966 to the date of realisation of the award amount.

3. The appeal preferred by the petitioner against the said award was dismissed by the Mysore Co-operative Appellate Tribunal. Hence, he had approached this Court for reliefs.

4. In the course of the arguments the dispute between the parties was narrowed down to only one point, i.e.. regarding the liability of the petitioner. to pay interest from 1-12-1965 to 16-4-1966 and further on from 17-4-1966 till the date of realisation, or the power of Arbitrator to award interest on the principal sum claimed by the Society, On, behalf of the petitioner, it was urged that the principal sum claimed is In the nature of damages, that the Arbitrator was not a Court, and the interest award-ed by him has no support either by custom usage, contract or under any law.

5. Of course, there is no custom usage or contract pleaded or proved in the present case. The only statutory pro-vision authorising the Arbitrator to award interest is Section 34 of the Coda of Civil Procedure. The said section, in terms, cannot apply to the proceedings before him. That was the view taken by, the Supreme Court in Seth Thawardas Pherumal Vs. The Union of India (UOI), . But the said decision came up for consideration in two later cases: (1) Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, and (2) Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., Bachawat. J.. speaking for the Court in

Firm Madanlal''s case said thus:--

"It will be noticed that the judgment of this Court in Seth Thawardas Pherumal Vs. The Union of India (UOI), . is silent on the question whether the arbitrator can award interest during the pendency of arbitration proceedings if the claim regarding interest is referred to arbitration. In the present case, all the disputes in the suit were referred to the arbitrator for his decision. One of the disputes in the suit was whether the respondent was entitled to pendente lite interest. The arbitrator could decide the dispute and he could award pendente lite interest just as a Court could do so u/s 34 of the Code of Civil Procedure. Though in terms, Section 34 of the CPC does not apply to arbitrations, ft was an implied term of the reference in the suit that the arbitrator would decide the dispute according to law and would give such relief with regard to pendente lite interest as the Court could give if it decided the dispute. This power of the arbitrator was not fettered either by the arbitration agreement or by the Arbitration Act. 1940."

In the Bungo Steel Furniture''s case. Ramaswamy. J. at page 1035, after referring to the earlier decisions of the Court, stated thus:

"...... Seth Thawardas Pherumal Vs. The Union of India (UOI), does not deal with the question whether the arbitrator can award interest subsequent to the passing of the award if the claim regarding interest was referred to arbitration. In the present case, all the disputes in the suit, including the question of interest, were referred to the arbitrator for his decision. In our opinion, the arbitrator had jurisdiction, in the present case, to grant interest on the amount of the award from the date of the award till the date of the decree granted by Mallick. J. The reason is that it is an implied term of the reference that the arbitrator will decide the dispute according to existing law and give such relief with regard to interest as a court could give. If it decided the dispute. Though, in terms Section 34 of the CPC does not apply to arbitration proceedings, the principle of that section will be applied by the arbitrator for awarding interest in cases where a court of law in a suit having jurisdiction of the subject-matter covered by Section 34 could grant a decree for interest." The learned Judge approved the principles enunciated by the Court of Appeal in Chandris v. Isbrandtsen-Moller Co. 1951 1 KB 240 wherein it was held that: "though in terms Section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 giving the Court power to award interest on any debt or damages did not apply to an arbitrator, it was an implied term of the contract that the arbitrator could award interest in a case where the Court could award it. It was pointed out by the Court of Appeal that the power of an arbitrator to award interest was derived from the submission to him, which impliedly gave him power to decide ''all matters in difference'' according to the existing law of contract......"

6. The facts of those two Supreme Court cases, of course, are not similar to the case on hand. But it is now well settled that an Arbitrator could call into aid the principles of Section 34 of the CPC for awarding interest, when one of the disputes referred to him for adjudication relates to the liability of any party to

pay interest.

7. The next question is about the correctness of the rate and the period for which the interest was awarded. The arbitrator has given interest at 12 per cent for the entire period upto the recovery of the award amount. It may be relevant to state that though the Society claimed the sum as its loss occasioned by the petitioner in supplying the rice, in substance, it was a claim for damages arising out of a breach of the agreement. In Union of India (UOI) Vs. West Punjab Factories Ltd., , the Supreme Court has clearly laid down that interest cannot be awarded by way of damages for the period upto the date of the suit. At paragraph 16, it is stated thus:--

"The next contention is that no interest could be awarded for the period before the suit on the amount of damages decreed. Legal position with respect to this is well settled: (See AIR 1938 67 (Privy Council) That decision of the Judicial Committee was relied upon by this Court in Seth Thawardas Pherumal Vs. The Union of India (UOI), . The same view was expressed by this Court in Union of India (UOI) Vs. A.L. Rallia Ram, . In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest, it is not possible to award interest by way of damages. Also see recent decision of this Court in Union of India (UOI) Vs. Watkins Mayor and Co., In view of these decisions no interest could be awarded for the period upto the date of the suit and the decretal amount in the two suit will have to be reduced by the amounts of such interest awarded."

If the court cannot award interest by way of damages upto the date of the suit, much less could the Arbitrator do so by the principles of Section 34 of the Code of Civil Procedure. It therefore, follows that the sum of Rs. 1352/- being the interest awarded upto the date of filing, the dispute must be held to be illegal and without jurisdiction. But that principle does not come in the way of the Arbitrator awarding future interest on the award amount. But that power is subject to the limitations imposed by Section 34 of the Code of Civil Procedure. He cannot award future interest at a rate exceeding 6 per cent per annum. The impugned award therefore must be modified by reducing the rate of interest from 12 per cent to 6 per cent.

8. The principles being thus stated, we requested counsel for the parties to file a joint memo calculating the interest payable by the petitioner at the rate of 6 per cent per annum from the date of the award till the date of realisation of the amount, taking into consideration the periodical payments made by the petitioner and also the amount which the petitioner was entitled to by way of set-off. At this stage, they in order to avoid further complications, agreed for our passing the following order:

(1) The petitioner shall pay Rupees 8050-18 to the Society (Rs. 6938-18 being the balance) principal award amount plus Rs. 1112/- the interest at the rate of 6 per cent upto date.

(2) The petitioner Shall make payment by four months from today; and on default to make the payment within the abovesaid period, the petitioner shall pay interest from the date of expiry of 4 months at the rate of 6 per cent on Rs. 6938/- or any of its portion due on that date, till it is recovered.

9. In the result, we allow the writ petition to the extent indicated above, without an order as to costs.