(2018) 12 CAL CK 0047

In the Calcutta High Court

Case No : General Application No. 2737 Of 2018, Appeal From Order No. 236 Of 2018, Execution Case No. 110 Of 2018

S. S. Mandal & Co. — APPELLANT

Vs

State Of West Bengal — RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Arbitration and Conciliation Act, 1996 — Section 31

Citation : (2018) 12 CAL CK 0047

Hon'ble Judges : Sanjib Banerjee, J;Suvra Ghosh, J

Bench : Division Bench

Advocate : Kumkum Das, Sakya Sen, Paritosh Sinha, Arindam Mondal

Final Decision : Dismissed

Judgement

The Court : In view of the good grounds shown, the order dated August 23, 2018 dismissing the appeal for default is recalled and the appeal is re-admitted.

GA No. 2737 of 2018 is disposed of but without any order as to costs.

The appeal is by an award-holder upon being dissatisfied with the final amount directed to be paid by the executing Court in course of the execution of an arbitral award rendered under the Arbitration Act, 1940. The arbitrator was clear and unequivocal in the award of the principal amounts and interest in the arbitral award of November 10, 2010. The same will be evident from the operative part of the arbitral award quoted below:-

"I, HEREBY, direct that the RESPONDENT shall pay to the CLAIMANT, the following amounts in full and final settlement of all the claims placed before me by the CLAIMANT, save and except what is awarded hereunder, no party shall have any other claim whatsoever against the other in the instant arbitration case.

(A) FIRSTLY an amount of Rs.5,70,500/- (Rupees Five lakhs Seventy thousand five hundred only) for works done but not paid including all supplementary claims as assessed by me and be fair and legitimate.

(B) SECONDLY, the Security Deposit of Rs.46,586/- (Rupees Forty six thousand Five hundred eighty six only) being held by the Respondent.

(C) THIRDLY, the cost of Arbitration incurred by the CLAIMANT of an amount of Rs.2,80,000/- (Rupees Two lakhs Eighty thousand only) as assessed by me to be fair and legitimate.

(D) FOURTHLY, an amount of Rs.5,00,000/- (Rupees Five lakhs only) for all other losses claimed by the CLAIMANT as assessed by me to be fair and legitimate.

(E) FIFTHLY, INTEREST @ 16% (sixteen percent) per annum for the period from 1st October, 1993 to the date of this 'AWARD' on an amount of Rs.6,17,086/- (Rupees Six lakhs Seventeen thousand Eighty six only) (A+B above), allowing 6(Six) months from the date of completion i.e. 31st March, 1993, for processing the supplementary claims, excess statements and the final bill.

(F) SIXTHLY, interest at 16% (sixteen percent) per annum on Rs.13,97,086/- (Rupees Thirteen lakhs Ninety Seven thousand Eighty six only)(A+B+C+D) from 3(Three) months after the date of this "AWARD" to the date of payment or DECREE."

The award-debtor challenged the award by way of proceedings under Sections 30 and 33 of the said Act of 1940. Such challenge to the arbitral award was repelled to the extent that the principal amounts awarded were questioned. However, the order of this Court of November 3, 2016 modified the quantum of interest and reduced the same from 16% to 10%.

It is evident from the award that interest had been awarded on simple basis and the rate fixed was specified to be per annum. Though the order of this Court of November 3, 2016 did not expressly record "per annum", in the light of the arbitral award that was sought to be modified by such order, it goes without saying that the rate of interest was reduced from 16% per annum to 10% per annum.

On the basis of the arbitral award as modified, the award-debtor respondent herein sought to make payment of a sum of Rs.32,62,162/- by September 20, 2017 after deducting tax at source in accordance with law. The basis of such payment was indicated in a calculation-sheet produced before the executing Court from which it appeared that a sum of Rs.49,376/- had not been paid on account of interest. Accordingly, by the order impugned dated July 3, 2018, the decree-holder's claim in the execution for a sum in excess of Rs.50 lakh on account of unpaid interest was disposed of by directing the judgment-debtor to pay the balance sum of Rs.49,376/-. The calculation-sheet has been produced in course of the appeal and the same appears to be unexceptionable.

It is also evident from column 7 of the tabular statement that was taken out by the decree-holder in the execution that interest was sought to be charged at an exorbitant level and the total quantum of interest due till September 20, 2017 was indicated to be Rs.66,92,217/-. In support of such calculation, a certificate of a chartered accountant has been produced before this Court, though such certificate may not have been presented before the executing Court. It is apparent from the certificate and the calculations in support thereof that interest has been assessed at a compound rate with yearly rests. Clearly, the calculations in such regard are at variance with the plain and unambiguous words of the award which provided for simple interest. At any rate, unless an award or a decree or an order specifically provides for compound interest and indicates the periodicity of the interest being compounded, ordinarily the interest awarded has to be seen as simple interest.

The appellant has relied on a judgment reported at (2016) 6 SCC 362 where the propriety of a previous decision of the Supreme Court fell for consideration in the context of the interest awarded by an arbitrator under Section 31 of the Arbitration and Conciliation Act, 1996. Apart from the fact that the principle would not apply to a case governed by the 1940 Act which did not have a provision similar to Section 31 of the 1996 Act, it is plain to see from the award quoted in the report that the arbitrator had provided for interest to be compounded with quarterly rests.

The award in the present case did not provide for compound rate of interest or for the interest to be compounded after any specified period. The judgment cited is clearly inapposite in the context of the present case.

For the reasons aforesaid, there does not appear to be any error or illegality in the order impugned dated July 3, 2018 and the amount directed to be paid by such order has not been shown to be erroneous.

For this completely misconceived appeal and the waste of time, the appellant herein will pay costs assessed at Rs.50,000/- to the respondent within a fortnight from date, failing which the respondent will be entitled to execute the order in accordance with law.

APO No. 236 of 2018 is dismissed.

