

(1993) 11 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1120 of 1992

Shiva Udyog Mandal

APPELLANT

Vs

Haryana Urban Development Authority and Another

RESPONDENT

Date of Decision : 01-11-1993

Acts Referred:

Arbitration Act, 1940 — Section 29
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1993) 105 PLR 680

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : S.R. Kanwar and Sanjay Majithia, for the Appellant; Deepak Sibal, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This revision petition has been filed on a limited point, that is regarding the grant of interest during the pendency of the proceedings before the arbitrator. Lower appellate court has denied the interest pendente lite on the basis of the decision of the supreme Court in State of Orissa Vs. Dandasi Sahu, , in which it was held that interest pendente lite is not within the jurisdiction of the arbitrator.

2. In the later judgment by Constitution Bench of the Supreme Court in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, it has been held that arbitrator can grant both the interest pendente lite and for future as well. Impliedly the judgment in Dandasi's case (supra) stands overruled. I do not find any logic in the argument of the counsel for the respondents that the impugned order of the lower appellant Court cannot be set aside because it does not suffer from any material irregularity as it has applied the law as it stood on the date, the order was passed by the lower appellant Court. It is correct that the lower appellate Court had applied the law as it stood on the date, it rendered the judgment but the judgment on which reliance was

placed by the lower appellate Court stood impliedly overruled and the law is to be applied as it stood declared by the Supreme Court of India. In G.C. Roy's case (supra), the Supreme Court held as Under: -

"Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period) for doing complete justice between the parties, such power has always been inferred.

Having regard to the above considerations, we think that the following is the correct principle which should be followed in this behalf:

"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (alongwith the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes or refer the dispute as to interest as such to the arbitrator, he shall have the power to award interest. This does not mean, that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view".

3. For the reasons recorded above, this revision petition is allowed. The impugned order of the lower appellate Court is set aside. The petitioner shall be entitled to the interest pendente lite as well as the future interest till the payment of the amount awarded. The rate of interest is fixed at Rs. 12% P.A. No costs.