(2007) 03 BOM CK 0070

In the Bombay High Court

Case No : Appeal Under Arbitration Act No. 7 of 2005

State of Goa APPELLANT

Vs

Mr. Manohar D. Harmalkar, Civil Contractor and Builders RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2007) 3 ALLMR 459 : (2007) 4 BomCR 352 : (2007) 109 BOMLR 785 : (2007) 6 MhLj 103

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Guru Shirodkar, Additional Government Advocate, for the Appellant; Datta L. Nayak Karmali, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This appeal is filed against the judgment and order of the Adhoc Additional District Judge, Fast Track Court-I, South Goa, Margao, rejecting the application filed by the State of Goa, the appellant herein, u/s 34 of the Arbitration and Conciliation Act, 1996, for setting aside the award dated 28/02/2003, passed by the sole Arbitrator, Shri G.D. Kamat.

2. The only contention pressed by Mr. Shirodkar, the learned Counsel for the appellant is as to the rate of interest awarded by the learned Arbitrator. The learned Arbitrator has allowed interest at the rate of 12% p.a. from 1/04/1990. It is the date on which the building had been completed. This rate of interest is awarded on the sum of Rs. 45,241.28 paise in respect of claims no. 1 and 8 which pertain to escalation and the balance final bill. The Arbitrator has awarded interest at the rate of 9% p.a. from 1/04/1990, till the date of the reference i.e. 4/10/2001 and at the rate of 6% p.a. from 5/10/2000 and until payment. Interest is awarded at the above rate in respect of claim nos. 2,3,4,5 & 6 totaling to Rs. 35,463/-. The said claims are compensatory claims.

3. The dispute arose in respect of the contract for construction of the second floor of Government building, awarded by the appellant to the respondent contractor. The contract was awarded on 23/01/1988 for the sum of Rs. 11,59,680.61 paise. The building was to be completed in 360 days i.e. on or before 01/02/1989. On 01/02/1989, the extension was granted by the appellant for a period of 6 months ending on 31/07/1989. The building was, however, completed on 26/07/1989.

4. On 02/04/1992, the final bill of Rs. 15,462.23 paise was prepared by the appellant, which was forwarded to the respondent for acknowledgment and approval, so that the amount could be paid. Admittedly, the other amounts have been paid to the respondent from time to time during the contract period.

5. The respondent demanded the preparation of final bill on 11/08/1999 for an enhanced amount alongwith interest. This request was rejected on 4/10/1999. On 4/10/2001, the Arbitrator was appointed. The sole Arbitrator made his award on 28/02/2003.

6. Dissatisfied with the award, the appellant preferred an application for setting aside the award dated 30/06/2003. This was rejected on 10/02/2005. Hence, this appeal.

7. Two points were raised. The first pertaining to limitation and the second pertaining to the rate of interest awarded by the Arbitrator. Mr. Shirodkar, the learned Counsel for the appellant fairly accepted the fact that the issue of limitation is now foreclosed in view of the order of Khandeparkar, J. in R.P. Souza & Co. v. The Chief Engineer, PWD and Ors. 1999(2) GLT 142 and, hence, that point is not pressed. The only contention advanced on behalf of the appellant is as regards the rate of interest awarded by the Arbitrator. As stated earlier, the Arbitrator awarded interest at the rate of 12% p.a. from 1/04/1990 i.e. the date when the building was completed till the payment in respect of the claim pertaining to the balance of the final bill and the escalation. Mr. Shirodkar, learned Counsel for the appellant submitted that the interest at the rate of 12% is not justified, in view of the fact that the respondent made a belated claim. According to the learned Counsel for the appellant, the claim ought to have been made in the year 1992. However, it is not possible to accept this argument in view of the fact that the claim has been held to be within limitation and question of limitation is concluded by the aforesaid judgment. In any event, it appears from the award that the award of interest at the rate of 12% p.a. is not unjustified. During the course of the contract, the learned Arbitrator has found that even the escalation which was agreed to, was not paid. In fact it was an admitted position that the balance of the escalation was left unpaid. Further, the Arbitrator has found that the respondent had to purchase cement from the open market, since the appellant failed to supply cement as agreed. This cement had to be purchased at a higher rate. This item is also included. Interest at the rate of 12% p.a. is awarded on this item also. Apparently, the final bill itself was prepared on 2/04/1992, even though the building was completed on

26/07/1989. Having regard to this circumstance, I am of view that there is no merit in the contention that the award of interest is either unjustified or exorbitant. As regards the award of interest on claim nos. 2,3,4,5 and 6, which are compensatory claims, it cannot be said that the interest awarded is either exorbitant or excessive. The interest awarded is at the rate of 9% from 1/04/1990, date of completion of the building till the date of reference i.e. on 4/10/2001 and at the rate of 6% from 5/10/2001, till payment. The interest awarded appears to be reasonable.

8. Mr. Shirodkar, learned Counsel for the appellant relied on a decision of the Supreme Court in the State of Rajasthan and Another Vs. Nav Bharat Construction Co., , in which the Supreme Court has reduced the rate of interest from 15% to 6%. The Supreme Court noticed that Clause 23 of the agreement disabled the contractor from recovering any interest from delayed payment. The contractor had urged that interest should have been awarded at the rate of 18%. Having regard to the circumstances of that case, the Supreme Court reduced the rate of interest to 6%. It is not possible to agree with Mr. Shirodkar that the judgment of the Supreme Court in the M/s. Nav Bharat construction Co. case, would have the effect of reducing the interest awarded by the Arbitrator in this case. The Supreme Court has not laid down any general principle of universal application in that case. Mr. Shirodkar then referred to the judgment of the Supreme Court in Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd. AIR 2005 SCW 1966. In that case the Supreme Court reversed the judgment of the High Court, which had reduced the rate of interest. The Supreme Court observed that the contractor had to obtain the loan and, therefore, was entitled to a higher rate of interest since he had to pay interest on the said loan. According to Mr. Shirodkar, there is no such objective fact on the basis of which interest can be adjudged in this case. That judgment does not, however, help the appellant. The question of rate of interest is normally decided on the appraisal of the circumstances of a given case. In this case, the learned Arbitrator took note of the fact that the escalation was payable and in fact admittedly paid. Moreover, the contractor had to spend on the purchase of cement bags from the open market since the appellant failed to supply the said bags. It is having regard to this circumstance, that the Arbitrator awarded interest at the rate of 12% p.a. on those items. The rate of interest cannot be said to be awarded arbitrarily. Moreover, the period for which the interest is awarded is also rational. The interest is awarded for the period, after the building was ready, and in normal course, the contractor would have been entitled to receive payment, had the appellants prepared the final bill. The other terminus of the period is the date of realisation. It is difficult to find anything wrong with the award of interest at the rate of 12% in these circumstances. Further the interest awarded on the other sum that is compensatory claim, appears to be reasonable also.

9. In the result, there is no merit in the appeal which is hereby dismissed.

