
(2012) 07 JH CK 0140

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5202 of 2005

Steel Authority of India Limited, BSL, Bokaro

APPELLANT

Vs

M/s Rungta Projects Limited, Ranchi

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 31(7), 31(7)(a), 34, 37
Contract Act, 1872 — Section 59, 60, 61

Citation : (2012) 4 JCR 640 : (2013) 1 JLJR 267

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : G. M. Mishra and Umesh Mishra, for the Appellant; Pandey Neeraj Rai, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The question involved in this writ petition is in respect of the calculation of the rest part of the decretal amount done by the impugned order contained at Annexure-3 to the writ petition.

2. The short facts are that an Arbitral Award was made in favour of the claimant/respondent on 10.04.1998. The Award was in following terms i.e., Rs. 63,51,087/- was held to be payable to the claimant/ respondent herein within a period of one month from the date of publication of award and if not paid, the judgment debtor/petitioner herein will pay interest on the total awarded amount @ 18 % per annum from the date of expiry of one months time till the date when the payment is made. The Award was subjected to objection u/s 34 of the Arbitration and Conciliation Act, 1996, which was rejected by the learned Sub-Judge-I, Bokaro in Title (Arbitration) Suit No. 07 of 1998 vide order dated 08.06.2000 and Award was ordered to form part of the decree. Thereafter, petitioner-SAIL had preferred a Misc. Appeal before this Court being Misc. Appeal No. 102 of 2000(R) u/s 37 of the Arbitration and Conciliation Act, 1996 aggrieved by the order of learned Sub-Judge-I, Bokaro, which was dismissed on

26.06.2002. The Special Leave Petition, against the aforesaid dismissal, preferred by the SAIL/petitioner herein being Special Leave to Appeal (Civil) No. 308/2003, was dismissed on 20.01.2003.

3. The respondent herein preferred Execution case No. 01/2001 on 27.01.2001 for realisation of amount, as under:-

(i) principle amount Rs. 63,51,087/- as awarded. (ii) interest raised on Rs. 63,51,087/- only @ 18% percent p.a. collected from 10.05.98 to 09.01.01 (2 years 8 months).- Rs. 30,48,521.60 paise. (iii) The further interest @ 18% per annum on Rs. 63,51,087 only from 27.01.01 till the date of payment.

4. Further litigation ensuing over some order passed by the Executing Court which finally ended against the SAIL/ petitioner herein. Thereafter, the Judgment debtor i.e. petitioner herein made the first payment of Rs. 87,54,000/- on 27.02.2003 as against the total decretal amount i.e. principal amount of Rs. 63,51,087/- + interest Rs. 54,90,471/- which came to Rs. 1,18,41,558/-. The Executing Court, thereafter, directed the judgment debtor to pay the rest amount i.e. Rs. 30,87,558/- together with interest calculated upto 21.03.2003 by 26.06.2003. The judgment debtor, however, failed to deposit the remaining balance amount and paid the aforesaid amount of Rs. 31,21,056/- on 10.05.2004. The decree holder/respondent herein preferred an application before the Executing Court for payment of interest due till 10.05.2004 on which date the aforesaid amount was deposited, as the petitioner/SAIL had failed to deposit the amount as directed by the Executing Court on 26.06.2003. The application was allowed by the Executing Court holding that the decree holder is entitled to interest up to date. However, the Executing Court has recorded that:-

Though the J.Dr. has not questioned the calculation of interest made by a firm of Chartered accountants but I feel expedient to provide a chance to the J.Dr. to calculate the interest up to date.

5. As recorded in the first sentence of the order, the petitioner-SAIL has come to this Court by way of this writ application alleging that the Executing Court has directed computation of interest over interest which is impermissible in law as per the Award in question and there is no contract between the parties to that effect.

6. Learned counsel for the petitioner, in support of his contention that by the impugned order the Executing Court has actually allowed the interest over interest to decree holder in respect of the award, has relied upon a decision of the Hon'ble Supreme Court in a case of State of Haryana and Others Vs. S.L. Arora and Company, , paragraph-24 which is quoted herein below:-

24. As there is some confusion as to what Section 31(7) authorises and what it does not authorise, we will attempt to set out the legal position regarding award of interest by the Arbitral Tribunals, as emerging from Section 31(7) of the Act.

24.1 The provision for interest in the Act is contained in Section 31 dealing with

the form and contents of arbitral award. It employs two significant expressions "where the arbitral award is for payment of money" and "the Arbitral Tribunal may include in the sum for which the award is made, interest... on the whole or any part of the money", (emphasis supplied) The legislature has thus made it clear that award of interest under sub-section (7) of Section 31 [and award of costs under sub-section (8) of Section 31 of the Act] are ancillary matters to be provided for by the award, when the Arbitral Tribunal decides the substantive disputes between the parties. The words "sum for which the award is made" and "a sum directed to be paid by an arbitral award" contextually refer to award on the substantive claims and not ancillary or consequential directions relating to interest and costs.

24.2 The authority of the Arbitral Tribunals to award interest u/s 31(7)(a) is subject to the contract between the parties and the contract will prevail over the provisions of Section 31(7)(a) of the Act Where the contract between the parties contains a provision relating to or regulating or prohibiting interest, the entitlement of a party to the contract to interest for the period between the date on which the cause of action arose and the date on which the award is made, will be governed by the provisions of the contract, and the Arbitral Tribunal will have to grant or refuse interest, strictly in accordance with the contract. The Arbitral Tribunals cannot ignore the contract between the parties, while dealing with or awarding pre-award interest. Where the contract does not prohibit award of interest, and where the arbitral award is for payment of money, the Arbitral Tribunal can award interest in accordance with Section 31(7)(a) of the Act, subject to any term regarding interest in the contract.

24.3 If the contract provides for compounding of interest, or provides for payment of interest upon interest, or provides for interest payable on the principal up to any specified stage(s) being treated as part of principal for the purpose of charging of interest during any subsequent period, the Arbitral Tribunal will have to give effect to it. But when the award is challenged u/s 34 of the Act, if the court finds that the interest awarded is in conflict with, or violating the public policy of India, it may set aside that part of the award.

24.4 Where an Arbitral Tribunal awards interest u/s 31(7)(a) of the Act, it is given discretion in three areas to do justice between the parties. First is in regard to rate of interest. The Tribunal can award interest at such rate as it deems reasonable. The second is with reference to the amount on which the interest is to be awarded. Interest may be awarded on the whole or any part of the amount awarded. The third is with reference to the period for which the interest is to be awarded. Interest may be awarded for the whole or any part of the period between the date on which cause of action arose and the date on which the award is made.

24.5 The Act does away with the distinction and differentiation among the four interest-bearing periods, that is, pre-reference period, pendente lite period, post-award period and post-decree period. Though a dividing line has been

maintained between pre-award and post-award periods, the interest-bearing period can now be a single continuous period the outer limits being the date on which the cause of action arose and the date of payment, subject to however to the discretion of the Arbitral Tribunal to restrict the interest to such period as it deems fit. 24.6 Clause (b) of Section 31(7) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the "sum directed to be paid by an arbitral award" shall carry interest at the rate of 18% per annum from the date of award to the date of payment if the award does not provide otherwise in regard to the interest from the date of the award. This makes it clear that if the award grants interest at a specified rate up to the date of payment, or specifies the rate of interest payable from the date of award till the date of payment, or if the award specifically refused interest, clause (b) of Section 31 will not come into play. But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post-award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest, the claimant will be entitled to post-award interest at the higher rate of 18% per annum. The higher rate of interest is provided in clause (b) with the deliberate intent of discouraging award-debtors from adopting dilatory tactics and to persuade them to comply with the award.

7. On the other hand, learned counsel for the respondents does not dispute the principle of law laid in the Judgment quoted supra, but has submitted that the instant case is not one where interest has been awarded over interest. He has relied upon a decision in a case of M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, , in support of his contention that any payment made by a Judgment Debtor against a decree is adjusted firstly in payment of interest and costs and thereafter the payment of principal amount and in the present case there is no agreement to the contrary between the parties. Based on the ratio laid down in the instant judgment, it is submitted that the amount of Rs. 87,54,000/- deposited by the petitioner was adjusted against the interest part of decree out of total sum outstanding as on 27.02.2003 and the rest unpaid amount of Rs. 30,87,558/- as on 27.02.2003 was only the principal over which the petitioners was directed to pay interest @ 18% as calculated upto 21.03.03 and directing him to deposit the same i.e. Rs. 31,21,056/- by 26.06.2003 which he failed to do and ultimately deposited after a delay on 10.05.2004. As such the claimant was entitled to interest @ 18% over the unpaid principal of Rs. 30,87,558/- till 10.05.2004 i.e. the date of deposit. Para 14 of the judgment is quoted herein below:-

14. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly, strictly in accordance with the directions contained in the

decree and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e. that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act-are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt.

8. After hearing counsel for the parties and going through the records and the impugned order, it is apparent that the judgment debtor/ petitioner herein has not disputed the calculation of Rs. 31,21,056/- as earlier fixed by the Court for payment by stipulated date 26.06.2003. However, by the impugned order the learned Executing Court had directed that the decree holder is entitled to pay interest up to date and given the chance to the judgment debtor to calculate the amount up to date. The petitioner has moved this Court on the basis of his apprehension that the amount required to be deposited by the judgment debtor as per the impugned order-is by way of calculating interest over interest.

9. After carefully listening to the parties and going through the judgment cited on their behalf, I fail to appreciate the contention of the petitioner as in view of the categorical ratio decided by Hon"ble Supreme Court of India in the decision reported in M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, on the date on which Rs. 87,54,000/- was deposited by the judgment debtor i.e. 27.02.2003, the first adjustment was required to be made against interest part of the decree and the rest part; remaining was required to be further paid as principal + interest @ 18% thereon calculated upto the date i.e. 21.03.2003 as determined by the Executing Court and further directing the judgment debtor to deposit the same within stipulated date i.e. 26.06.2003. The judgment debtor had not disputed the said amount i.e. Rs. 31,21,056/-, which he was earlier directed to deposit on 26.06.2003. However, since he delayed in depositing the said amount, which was finally deposited on 10.05.2004, the decree holder was right in requesting the Executing Court to direct the Judgment Debtor to pay the amount by calculating interest @ 18% over the balance principal amount of Rs. 30,87,558/- remaining on 27.02.2003 till the date of actual payment i.e. 10.05.2004. However, learned trial Court instead of quantifying the decretal amount to be paid as on 10.05.2004, left certain vagueness in the final decretal amount which was required to be deposited by the judgment debtor in execution of Award in question by 10.05.2004.

10. In view of the aforesaid reason, the matter is remanded back to the executing Court to quantify the outstanding decretal amount by calculating the interest @ 18% on the balance amount may of Rs. 30,87,558/- as existing on

27.02.2003 against the judgment debtor till 10.05.2004 by subtracting the amount of Rs. 31,21,056/- which the judgment debtor deposited on 10.05.2004, although he was directed to deposit it by 26.06.2003. The aforesaid calculation needs to be worked out after hearing to the parties within a period of three months from the date of receipt/production of the copy of this order. With the aforesaid observation and direction, this writ petition stands disposed of.