

(1991) 12 MAD CK 0005
In the Madras High Court

The Superintending Engineer, National Highways	APPELLANT
Vs	
T. Chellagursamy and Another	RESPONDENT

Date of Decision : 10-12-1991

Acts Referred:

Interest Act, 1978 — Section 1(3)

Citation : (1992) 2 LW 30 : (1992) 1 MLJ 624

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—The appellant in these two civil miscellaneous appeals is the Superintending Engineer, National Highways, Tirunelveli.

C.M.A. No. 261 of 1985 arises out of the O.P.No.89 of 1981 on the file of the Subordinate Judge, Srivilliputhur filed by the appellant for passing

a decree in terms of the Award passed by the Arbitrator, who is the 2nd respondent in both the appeals. C.M.A.No.262 of 1985 arises out of

O.P. No. 108 of 1981 filed by the 1st respondent in both the appeals, to set aside the said Award in so far as it relates to paras 1, 3 and 4 of the

Award ""A Common Judgment was passed in both the original petitions on 22.10.1983.

2. The 1st respondent is the Highways contractor. As per the agreement between the appellant and the 1st respondent, the appellant gave the 1st

respondent contractor, the work of laying approach road to the bridge in question. The said work consisted of two stages. One is collecting gravel

on the said road side and the rate for doing the said work was fixed at Rs. 10.25 per cubic metre and the total gravel so collected admittedly came

to 48,490 cubic metres. The second stage of the work is spreading the said gravel and pressing it or compacting it on the said road @ Rs. 16 per

ton cubic metre. Regarding these two stages of this work, dispute arose between the said parties and the dispute was referred to the abovesaid

Arbitrator on 14.7.1978, who has passed the Award on 29.3.1979. The appellant filed the abovesaid original petition for passing a decree in

terms of the said Award, while the 1st respondent-contractor filed the abovesaid O.P.No.108 of 1981 for setting aside the abovesaid portions of

the Award as stated above.

3. The court below made modifications with reference to paragraph 1 and paragraph 3(ii) of the relief portion of the Award and set aside

paragraph 3(iii) therein. With regard to paragraph 3(iv) of the Award, the court below agreed with the Arbitrator and refused to grant interest as

claimed by the Contractor. Accordingly it passed the decree. (Though the judgment and decree passed by the court did not expressly specify the

amount decreed, from the claim petition and the counter statement we are able to gather that the amount decreed is the sum total of the two

amounts claimed in the claim petition, viz., Rs. 27,660 and Rs. 18,989.86, that is, Rs. 46,649.86. In other words, what is mentioned in Paragraph

19 of the decree would refer to the abovesaid Rs. 27,660 and what is referred to in paragraphs (3) and (4) of the decree would together refer to

the abovesaid Rs. 18,989.86. Aggrieved by the said decree, these appeals have been filed by the appellant. On the other hand, the 1st

respondent-contractor has filed cross-objection in each of these appeals. The cross-objection in C.M.A. No. 262 of 1985 relates to cost only.

The other cross-objection in C.M.A. No. 261 of 1985 relates to interest.

4. Now, let us deal with the abovesaid appeals. In the above referred to paragraph 1 of the Award, the Arbitrator came to the conclusion that the

first respondent's contention that the abovesaid work was completed, was not correct. Hence, the arbitrator refused to direct the appellant to pay

to the 1st respondent the 5% of value of work i.e., Rs. 27,660 withheld by the appellant. Consequently, the Arbitrator concluded in paragraph

3(iii) of the Award that, for the balance of the work to be done, it has to be determined in advance as to how much gravel is required. The Court

below has modified the abovesaid conclusion in paragraph 1, by holding that the abovesaid work had been completed. Hence, the Court below

directed the appellant to pay the abovesaid 5% amount (which comes to Rs.

27,660) to the 1st respondent. Further, consequently, it set aside the abovesaid conclusion reached in paragraph 3(iii) of the Award.

5. Only with reference to the modification made to the abovesaid paragraph 1 and the consequent setting aside of the conclusion reached in paragraph 3(iii) of the Award, the learned Counsel for the appellant made his submission and not with reference to the other modification made with reference to the above referred to paragraph 3(ii) of the Award. His only submission, in essence is, that the court below erred in reaching the conclusion that the work entrusted to the 1st respondent was completed by him. So, in this appeal, we are called upon to decide only with reference to the abovesaid submission. Hence, we have not set out the other pleadings of the parties or the other findings of the Arbitrator or court below in any detail.

6. The conclusion to be reached on the abovesaid submission of the learned Counsel for the appellant, even according to him, depends solely on the interpretation to be put on the relevant passage in Exs.A-23 and A-24. Ex.A-23 is the letter dated 20.2.1978 written by the Divisional Engineer to the Superintending Engineer and Ex.A-24 is the letter dated 24.2.1978 written by the abovesaid Superintending Engineer to the Chief Engineer. - The abovesaid passage which occurs in both the said letters runs as follows:

The portion of work entrusted to the contractor has been completed. As the work entrusted to the contractor has been completed, the extension of time and long time contract proposal may be sanctioned.

According to the learned Counsel for the appellant, this statement means that only a portion of the work entrusted to the 1st respondent has been completed. But, we are unable to accept this interpretation. The abovesaid passage does not use the expression ""a portion"", but uses the expression ""the portion"". That means the whole of the work entrusted to the 1st respondent, even though it may be a portion of the entire work necessary for laying the abovesaid approach road to the bridge in question. This interpretation of ours is fortified by the subsequent statement in the abovesaid passage, which begins by saying ""as the work entrusted to the contractor has been completed"". So, it is clear that the work entrusted to the 1st respondent had already been completed. If that is so, automatically, the

abovesaid 5% amount has to be paid by the appellant to the 1st respondent. Consequently, further, there is no question of balance work to be done. Therefore, the court below is right in having modified the abovesaid paragraph 1 of the Award and in having set aside paragraph 3(iii) of the Award as stated above and both the civil miscellaneous appeals are liable to be dismissed.

7. Now, coming to the above referred to cross-objections, so far as the cross-objection relating to cost is concerned, it has to be dismissed since even before the court below the learned Counsel for the 1st respondent admitted that it was within the discretion of the Arbitrator and since on the ground, the Court below also held that the decision of the Arbitrator regarding the cost was correct. The learned Counsel for the 1st respondent also did not advance any argument on the question of cost. Therefore, the cross-objection in C.M.A. No. 262 of 1985 is liable to be dismissed.

8. So far as the cross-objection in C.M.A. No. 261 of 1985 is concerned, the only point argued by the learned Counsel for the 1st respondent is

that the court below should have also modified the relief-portion of paragraph 3(iv) of the Award by granting the interest claimed by the 1st

respondent, viz., 17% interest on the abovesaid amounts of Rs. 27,660 and Rs. 18,989.86 withheld by the appellant. Admittedly, there was no

agreement between the parties for the interest claimed. The court below also observes so. But, the learned Counsel for the 1st respondent-cross-

objector relies on three recent decisions of Lakshmanan, J., in Goutham Constructions & Fisheries (P) Ltd v. National Bank for Agri. & Rural

Development (1991)1 L.W. 421, P. Shanmugha Sundaram v. Bharat Petroleum Corporation Ltd. (1991)1 L.W. 481 and V.V. Raghavan v.

Madras Refineries Ltd. and Anr. (1991)1 L.W. 536, and claims that interest should be awarded as per the said judgments rendered relying on

recent Supreme Court decisions. But, the above referred to judgments of this Court by Lakshmanan, J., and the Supreme Court decisions only

explained the legal position regarding grant of interest in arbitration proceedings, where reference to arbitration was made after the coming into

force of the Interest Act, 1978. The said Act came into force only on 19.8.1981 pursuant to the notification issued u/s 1(3) of the said Act. But, in

the present case, as already stated, the reference to arbitration was much

earlier, that is, on 14.7.1978 itself. So, the said Interest Act, 1978 and the said decisions will have no application to the present case.

9. As per the law which stood prior to the commencement of the said Act, the position is as follows: (1) With reference to interest prior to the date

of reference and from the date from which the money became due, the Arbitrator may grant such interest. But, since there is no agreement

between the parties regarding the same, we are not inclined to interfere with the finding of the Court below in this regard. (2) Then, regarding the

interest pendente lite, that is, from the date of reference to arbitration till the date of award, the Supreme Court has held in State of Madhya

Pradesh Vs. Saith and Skelton (P) Ltd., , that where the dispute relating to payment of interest was also referred to arbitration, the Arbitrator

could decide that dispute and grant such interest just as court could do u/s 34, C.P.C. We find that with reference to the above referred to sum of

Rs. 46,649.86 withheld by the appellant, reference was made to the Arbitrator for giving a decision regarding the same. So, we grant interest with

reference to the abovesaid amount withheld, from the date of reference to the date of Award. The reasonable rate of interest which could be

awarded for this period could be fixed at 12% per annum. Accordingly we grant interest at the said rate for the said period.

10. Further, regarding the interest from date of the Award to the date of decree also, the Supreme Court has held in Union of India (UOI) Vs.

Bungo Steel Furniture Pvt. Ltd., , in the same manner. So, here also we grant interest at 12% per annum with reference to the abovesaid amount

withheld by the appellant.

11. Regarding the interest after the date of the decree, the court below has already granted 6% interest per annum. In the circumstances, we think

it would be reasonable to substitute this by 9 per cent per annum. Accordingly this cross objection has to be allowed to the extent mentioned in the

abovesaid paragraphs 9 and 10 and this paragraph.

12. In the result, both the civil miscellaneous appeals and the cross objection in C.M.A. No. 262 of 1985 are dismissed. The cross-objection in

C.M.A. No. 261 of 1985 is allowed in part by granting interest at the rate of 12% per annum from the date of reference till the date of decree with

reference to the abovesaid amount withheld by the appellant and by granting 9%

p.a. interest for the period subsequent to the decree of the court

below. In other respects, the said cross-objection is dismissed. In the circumstances of the case, there will be no order as to costs both in the appeals and in the cross-objections.