(1996) 12 MAD CK 0074

In the Madras High Court

The Tamil Nadu Cements Corporation Limited — APPELLANT

Vs

S. Albert and Co. — RESPONDENT

Date of Decision : 24-12-1996

Acts Referred:

Interest Act, 1978 — Section 3(b)

Citation : (1997) 1 MLJ 623

Hon'ble Judges : K. Sampath, J

Bench : Division Bench

Judgement

K. Sampath, J.—The appeal arises out of arbitration proceedings. The Arbitrators appointed by the parties having disagreed regarding the invoking of penal clause and the payment of interest, the matter went before the Umpire who by his award dated 25.4.1990 held that the appellant/opposite party would be entitled to invoke the penal clause in respect of 503.49 Mts. valued at Rs. 8,60,907.20 and that the claimant would be entitled to a sum of Rs. 3,06,558 with interest at 12% per annum on the said amount from the date of award till date of decree. The claimant had claimed interest at the rate of 18% per annum from 1984. The claimant preferred two original petitions, viz., O.P. No. 394 of 1991 seeking permission of the court to file the award before the court; O.P. No. 517 of 1992 under Sees.30 and 33 of the Arbitration Act to set aside the award of the Umpire and to enhance the award amount to Rs. 3,99,098 with interest at 12% per annum from 1.4.1984; and an Application No. 4607 of 1991 for a direction to the opposite party/appellant to pay the amount fixed by the Umpire in the award.

2. The learned single Judge by a common order dated 16.12.1993 varied the award by granting interest on the figure arrived at from 10.4.1984 till the date of reference and also for the pendente lite period. In so doing, the learned single Judge closed O.P. No. 394 of 1991, allowed O.P. No. 517 of 1992 to the extent indicated above and directed payment as per the award, in Application No. 4607 of 1991.

3. The appellant/opposite party has filed the present appeal questioning the

decision of the learned Judge in O.P. No. 517 of 1992.

4. Mr. Bijai Sundar, learned Counsel for the appellant/opposite party, confines his arguments to the award of interest at 12% per annum from 15.4.1984. It is his specific contention that the claimant/ respondent is entitled to claim interest under the provisions of Section 3(b) of the Interest Act, 1978 only from the date of issuance of a written notice claiming interest and in the instant case, the demand was made only in 1989. His further contention is that even as per the provisions of the Interest Act, 1978 the rate of interest payable is only the highest of the maximum rate at which interest may be paid on different classes of deposits, by different classes of scheduled banks in accordance with the directions given or issued to the banking companies generally by the Reserve Bank of India as provided u/s 2(b) of the Interest Act, 1978. According to the learned Counsel, the interest should have been fixed only at 11% per annum as held in the judgment in Shakir Ali and An,r v. The Tamil Nadu Electricity Board represented by its Chairman, Madras and Anr. (1993)1 L.W. 71

5. Per contra, the learned Counsel for the respondent/claimant Mr. Irwin Aaron contends relying on the judgment in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , that there was deprivation of the use of money to which the claimant was legitimately entitled and such a claimant had a right to be compensated for the deprivation, call it by any name.

6. The learned Judge while dealing with the question of interest has observed as follows:

The amount which has been awarded by the arbitrator was due to the petitioner even in April, 1984 when the petitioner''s contractual obligations were completed.

According to the learned Judge, the petitioner (claimant) was deprived of the use of this amount for which the petitioner (claimant) was entitled to interest. The learned Judge relied on the decision cited supra, viz., Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, and held that the agreement between the parties did not prohibit grant of interest and where a party claimed interest and the dispute was referred to the Arbitrator, he should have the power to award interest pendente lite and it was a matter within the jurisdiction to be exercised in the light of the facts and circumstances of the case keeping the ends of justice in view. Thus the learned Judge held that the interest for the period pendente lite could be awarded. The learned Judge also referred to the decision reported in Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, and held that the award of interest prior to the proceeding was not open to question and the Arbitrator was bound to make his award in accordance with law and if the arbitrator could not possibly grant interest on any permissible ground because such ground did not exist, it would be open to the court to set aside the award. So holding, the learned Judge awarded interest at the rate of 12% per annum from 10.4.1984.

7. In our view, the award of interest prior to the date of reference is not correct.

Our reasoning is as follows:

It is now well-settled that the provisions of the Interest Act, 1978 (Act 14 of 1978) are applicable to the proceedings under the Arbitration Act. Section 3(1)(b) of the Act dealing with the power of court to allow interest runs as follows:

If the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

and ''debt'' is defined in Section 2(c) as follows:

any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt.

8. In Shakir Ali and Anr. v. The Tamil Nadu Electricity Board represented by its Chairman, Madras and Anr. (1993) 1 L.W. 71, while dealing with the question of interest payable on the fees due to the legal practitioners, Srinivasan, J. (as he then was) held, that, interest would be payable only from the date of actual demand.

9. Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, already referred to is not an authority for the proposition that interest is payable even for the period prior to the date of demand. The Constitution Bench while over-ruling the Three Judge Bench decision in Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, , which held that the Arbitrator to whom the reference is made without the intervention of the Court did not have jurisdiction to award interest pendente lite, observed as follows:

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with 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.

10. We have already seen that the claimant had made a written demand for interest only on 24.10.1989. There is therefore no justification for awarding interest from 15.4.1984. We are of the view that the award of interest for the period prior to the date of reference is not sustainable and the same has to be set aside.

11. The year for which interest was fixed in Shakir Ali and Anr. v. The Tamil Nadu Electricity Board represented by its Chairman, Madras and Anr. (1993) 1 L.W. 71 is 1989, same as the one in the instant case. Srinivasan, J. (as he then was) has taken note of the then prevailing rate of interest at 11 per cent. We respectfully agree and fix the rate of interest in the present case also at 11 per cent per annum. In the result, the appeal is partly allowed and the order of the learned single judge is modified to the extent indicated above. No costs.

12. In view of the order passed in the main appeal, C.M.P. No. 4791 of 1996 is dismissed.