

(2012) 12 AP CK 0080
In the Andhra Pradesh High Court
Case No : CMA No. 1044 of 2012

Union of India and Another	Vs	APPELLANT
V.K. Engineering Constructions and Another		RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Citation : (2013) 3 ALD 112 : (2013) 4 ALT 168

Hon'ble Judges : G. Krishna Mohan Reddy, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : C.V. Vinitha Reddy, for the Appellant; K. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

G. Krishna Mohan Reddy, J.—This appeal is filed against order dated 7.12.2009 passed in OP No. 1621 of 2007 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad (O.P). The appellants herein are the petitioners whereas the respondents herein are also the respondents in the O.P. For convenience sake, we refer the parties as arrayed in the O.P.

2. Certain disputes arose between the petitioners and the first respondent following which the first respondent filed Arbitration Application No. 45 of 2003 before this Court for appointment of an Arbitrator. Accordingly this Court by order dated 18.12.2003 appointed the second respondent as the Arbitrator, who after conducting necessary enquiry, passed the award dated 15.12.2006 as follows:

The claimant is entitled to a sum of Rs. 38,84,344/- i.e., Rs. 36,63,000/- under Claim No. 1(a), a sum of Rs. 2,21,344/- under Claim No. 1(b) and a sum of Rs. 3,00,000/- under Claim No. 3.

In the result, the claim petition filed by the claimant is partly allowed holding that the claimant is entitled for the amounts claimed under Claim Nos. 1(a), 1(b) and Claim No. 3 with interest at 18% p.a., from the date of cause of action i.e.,

25.4.1997 till the date of its payment. The claim of the claimant under Claim No. 2 is disallowed.

The claimant is also entitled to a sum of Rs. 20,000/- (Rupees twenty thousand only) towards costs of this arbitration proceedings.

Regarding the fee of the Arbitrator, on the first date of hearing both sides have agreed that the same be fixed at Rs. 3,00,000/- (Rupees three lakhs) which will be paid by both sides at the rate of Rs. 1,50,000/- (Rupees one lakh and fifty thousand) each. The claimant had paid his part of the fee of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only, whereas the Advocate for the respondent has requested for a weeks time to pay the fee of the Arbitrator payable by the respondents, in case of failure, the same be included as part of the award, which the claimant is entitled to claim if in case he pays the same to the Arbitrator.

3. Aggrieved by the award of the Arbitrator to the extent of awarding interest from the date of cause of action i.e., 25.4.1997, the petitioners filed the O.P. before the Court below. The Court below after hearing the parties dismissed the O.P. Aggrieved thereby, the present appeal is filed

4. Learned Counsel for the appellants-petitioners contends that the Arbitrator awarded the interest from the date of cause of action whereas as per clause 16(2) of the General Conditions of the contract, interest should be awarded from the date of award only and no pre-reference and pendente lite interest should be awarded. He has placed reliance upon the decisions reported in Sree Kamatchi Amman Constructions Vs. The Divisional Railway Manager (Works), Palghat and Others, and Union of India (UOI) Vs. Krafters Engineering and Leasing (P) Ltd., wherein the Hon''ble Supreme Court held accordingly that interest should be awarded from the date of award and no pre-reference and pendente lite interest should be awarded as per clause 16(2) of the General Conditions of the contract.

5. In fact, while following the above decisions of the Supreme Court, earlier we have passed an order dated 31.10.2012 in CMA (SR) No. 27686 of 2009 holding that clause 16(2) of the General Conditions of the contract prohibits awarding of interest for the periods pre-reference and pendente lite and thereby awarded interest from the date of award.

6. Hence, it is held that awarding of any interest for the periods pre-reference and pendente lite is not tenable whereas it is tenable from the date of passing of the award.

7. Accordingly, the order of the Court below is set aside and the civil miscellaneous appeal is allowed. Consequently, the O.P. is allowed holding that the first respondent-company (claimant) is entitled to interest from the date of passing of the award only. No costs. Consequent upon the disposal of the C.M.A., miscellaneous petitions, if any, pending shall stand closed.