(2000) 09 AHC CK 0123

In the Allahabad High Court

Case No : F.A.F.O. No 839 of 1997

Union of India APPELLANT

Vs

Channa Brothers and Co. RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 29, 3, 41
Civil Laws (Reforms and Amendment) Act, 1976 — Section 24, 37(3)
Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1978 — Section 2, 3, 3(1)

Citation : (2000) 4 AWC 2904

Hon'ble Judges : Sudhir Narain, J;Krishna Kumar, J

Bench : Division Bench

Advocate : Addl. S.C., Central Government and Shishir Kumar, for the Appellant; V.K. Bist. Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Sudhir Narain, J.—The Union of India has filed this appeal against the order passed by the Court below dated 30.5.1997 by which the award has been made rule of the Court and the application filed on behalf of the appellant has been rejected.

2. Briefly stated the facts are that the appellant invited tender for constructing buildings at New Cantonment, Allahabad, in the year 1989. The respondent submitted tender which was accepted by the appellant. The work was to be completed within the time specified in the agreement. The respondent got the time extended and completed the work on 10.1.1990. On completion of the work, the respondent claimed that they were entitled to the prices of the material which he used for construction purposes and certain other things. This was not accepted by the appellant. The dispute was referred to the sole arbitrator. Sri B. M. Kohli, on 13.10.1994. He entered inlo reference on 1st November, 1994. The appellant also made various claims before the Arbitrator, particularly in regard to the materials supplied to the respondent, but neither the

material so supplied was returned nor its amount was adjusted.

3. The arbitrator gave award on 30.12.1995 and awarded Rs. 4,40.182.44 to the respondent and further 18% interest on such amount for the period between the 25.3.1991 to 30.12.1995. The arbitrator also accepted certain claims of the appellant and awarded a sum of Rs. 1,02,450.73 to it, but no interest was awarded on this amount. The respondent filed application before the Court below u/s 14 read with Section 17 of the Arbitration Act. 1940, for making the award dated 30.12.1995 rule of the Court. The appellant filed objection u/s 30/33 of the Arbitration Act for setting aside the award. The application was registered as Suit No. 75 of 1096. The Court below dismissed the objection of the appellant and made the award rule of the Court with further direction that the respondent shall be entitled to 6% interest on the amount awarded by the arbitrator to the respondent from the date of award dated 31.12.1995 till 30.5.1997.

4. The question involved in the present appeal is whether respondents were entitled to amount of interest and if so. what should be rate of interest which should be awarded to the parties. The period of Interest can be divided In three parts : (i) the power of the arbitrator to award interest for the period prior to the date the reference was made to him. (ii) the period the proceedings remained pending before the arbitrator (pendente lite) and (iii) the period after the award is made till the date of payment of the amount.

5. The controversy as to whether an arbitrator has a power to award interest prior to the date of making reference to him, the Supreme Court in Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, , held that after the enforcement of Interest Act. 1978. the arbitrator is entitled to award interest prior to the date of making reference to him. The arbitrator could not award interest under the Interest Act, 1939 for the period prior to making the reference to him, but in view of the provisions of Interest Act, 1978, such interest can be awarded. Section 2(a) of the Interest Act. 1978, defines the Court as it includes Tribunal and Arbitrator. Section 3(1)(b) of the said Act confers power on the Court to award interest from the date of making the claim to the date of institution of the proceedings. This decision was considered in State of Orissa Vs. Lal Chand Kapani, , and followed the view taken in Executive Engineer, Irrigation, Galimala v. Abhaduta Jena (supra). The matter again came up for consideration before the Supreme Court in State of Orissa v. B. N. Agarwal etc. JT 1097 (2) SC 51 , where the argument was raised that Jena''s case (supra) was overruled in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , and therefore, the said decision was no longer good law. The Supreme Court explained that the said case was not overruled in its entirety by the decision in G. C. Roy''s case (supra) but it was overruled only in respect of pendente lite interest. Their Lordships of the Supreme Court summarised the views as follows :

"In view of the aforesaid decisions there can now be no doubt with regard to the jurisdiction of the arbitrator to grant interest. The principles which can now be said to be well-settled are that the arbitrator has the jurisdiction to award pre-reference interest in cases which arose after the Interest Act, 1978. has become applicable. With regard to those cases pertaining to period prior to the applicability of the Interest Act, 1978, in the absence of any substantive law, contract or usage, the arbitrator has no jurisdiction to award interest. For the period during which the arbitration proceedings were pending in view of the decision in G. C. Roy''s case (supra), and Hindustan Constructions Limited case (supra), the arbitrator has the power to award interest. The power of the arbitrator to award interest for the post award period also exists and this aspect has been considered in the discussion relating to Civil Appeal No. 9234 of 1994 in the later part of this judgment."

6. In this case the reference was made on 17th October, 1994, i.e., after the enforcement of 1978 Act. The arbitrator, therefore, had Jurisdiction to award interest prior to the date of making reference to him.

7. The second question is whether the pendente lite interest can be awarded by the arbitrator. In Abhadula Jena''s case (supra), the Supreme Court had taken the view that the arbitrator is not a Court and. therefore, Section 34 of the CPC was not applicable. The arbitrator has no power to award any interest pendente life. This decision was overruled in Secretary, Irrigation Department, Government of Orissa and others (supra). The Supreme Court took the view that even Section 34 of CPC in terms may not apply but the principle contained in Section 34 is applicable to the proceedings pending before the arbitrator. The reasons were summarised by the Supreme Court itself in State of Orissa Vs. B.N. Agarwalla, etc., of the said judgment, it has been summarised as follows :

"A careful reading of G. C. Roy''s case (supra) clearly shows that, insofar as award of interest is concerned, this Court was only required to consider whether the arbitrator had jurisdiction to award pendente lite interest. This is so stated in the judgment at more places than one. Apart from noting that the appellants had challenged the validity of the award on two grounds, one of which was that "arbitrator had no jurisdiction to award pendente lite interest", it was noted that the case had been referred by order dated 15.3.1991 by the Division Bench to the Constitution Bench as "the learned Judges were of the view that the correctness of the view taken by this Court in Abhaduta Jena''s case (supra), insofar as it held that arbitrator has no power to award pendente lite interest, required consideration by a larger Bench".

This Court, accordingly, considered the various decisions which had been referred to by Chlnnappa Reddy, J. in Abhaduta Jena''s case (supra) and also considered other decisions and at page 532 summarised its decision as follows :

"The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such Interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge :

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name, it may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, CPC and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative from (sic forum) for resolution of disputes arising between the parties, if so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente Vie, the party claiming it could have to approach the Court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribed such procedure for him to follow, as they think fit. so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and the Indian Courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. Thawardas has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case, there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until Jena case almost all the Courts in the country had upheld the power of the arbitrator to award interest pendents lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendents lite is not a matter of substantive law, like Interest for the period anterior to reference (Pre-reference period). For doing complete Justice between the parties, such power has always been inferred."

It is now well-settled that the arbitrator is empowered to grant pendente lite Interest.

8. The third period is from the date of award to the date of decree or date of realisation. Section 29 of the Arbitration Act provides that where and insofar as the award is for the payment of money, the Court may, in the decree, order interest from the date of decree at such rate as the Court deems reasonable to be paid on the principal sum as adjudged by the award and confirmed by the

decree. Future interest will run from the date of decree and not that of the award. The award of future interest is in the discretion of the Court. In view of the above, the arbitrator was justified in awarding interest prior to the date of reference and pendente lite interest and the Court had power to award interest till the date of decree.

9. The next question is as to the rate of interest. Section 3(1) of the Interest Act provides that the Court can award interest not exceeding the current rate of interest. Section 34 of the CPC provides that the Court may order payment of interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of suit to the date of decree. In addition to any interest adjudged on such principal sum for any period prior to Institution of suit with further Interest at such rate not exceeding 6% per annum as the Court deems reasonable on such principal sum. The Court is empowered to grant interest for a period prior to the date of decree as it deems reasonable to be paid on the principal sum adjudged, but after the date of decree not more than 6 %.

10. Section 24 of U.P. Civil Laws (Reforms and Amendment) Act, 1976, amended first Schedule of the Arbitration Act, 1940 and after paragraph 7, paragraph 7A was inserted providing that the rate of interest shall not exceed 6% per annum as the arbitrators or umpire may deem reasonable on such principal sum from the date of award to the date of payment or to such earlier date as the arbitrators or umpire may think fit but in no case beyond the date of decree to be passed on the award. Para 7A reads as under :

"7A. Where and in so far as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration, as defined in subsection (3) of Section 37, to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six per cent per annum as the arbitrators or umpire may deem reasonable on such principal sum from the date of the award to the date of payment or to such earlier date as the arbitrators or umpire may think fit, but in no case beyond the date of the decree to be passed on the award."

In view of this amended provision, the arbitrator had no jurisdiction to award interest exceeding 6% for the period prior to date of making reference or pendente lite. Learned counsel for the respondent has relied upon the decisions M/s. Krishan Kumar Madhok v. Union of India AIR 1982 Del 332 . where interest of 18% was awarded and State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd., , where the interest was awarded at 9%. These cases have no application after addition of para 7A in the Schedule of the Arbitration Act, 1940, referred to above.

11. The last submission of the learned counsel for the appellant is that the

arbitrator had accepted the claim of the appellant to the extent of Rs. 1,02,457.73, but he has not awaided any interest on such sum while on the amount awarded to the respondent, interest has been awarded. There is no justification to make any such discrimination. Learned counsel for the respondent submitted that Union of India has been awarded the amount for the materials which were supplied to the respondents and the amount was to be adjusted or for non-return of Government stores and certain other items. The arbitrator found that the appellant was also entitled to the amount because the respondent was liable to return the material, etc. to the appellant. The respondent having not complied with the terms of contract was liable to pay the amount. There was no justification for the arbitrator not to award the interest on such sum adjudged while awarding interest to the respondent on the amount adjudged as against the appellant. The arbitrator thereby misconducted itself. The appellant was also entitled to the interest at the rate of 6% as in the case of the respondent.

12. In view of the above the appeal is partly allowed. The order of the Court below dated 30.5.1997 is modified to the extent that the respondent shall be entitled to interest at the rate of 6% for the entire period, i.e., prior to the date of making reference and thereafter and similarly, the appellant shall also be entitled to the interest at the same rate for the period prior to making of reference pendente lite and thereafter as decreed by the Court below.

13. Considering the facts and circumstances, the parties shall bear their own costs.