

(1987) 12 DEL CK 0015
In the Delhi High Court
Case No : First Appeal No. 218 of 1978

Union of India

APPELLANT

Vs

Globe Trading Corporation and Another

RESPONDENT

Date of Decision : 08-12-1987

Acts Referred:

Citation : (1988) 14 DRJ 253 : (1988) RLR 148

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Arjun Bhandari and Rishikesh, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The only question that arises for decision in this appeal is if the arbitrator could award interest for the period during which arbitration proceedings were pending before him. This question has arisen in the following circumstances.

(2) M/S. Globe Trading Corporation, respondent No. I, entered into a contract with the appellant Union of India for handling of the goods in the Bikaner Division of the Northern Railway for a certain period. The contract contained a clause Constituting arbitration agreement between the parties. Disputes having arisen between the parties, respondent No. I filed a petition u/s 20 of the Arbitration Act. This was on 24-10-1969. In spite of objections by the Union of India, the petition was allowed and by order dated 23-5-1973 Mr. R.K. Sinha, Addl. District Judge, directed the arbitration agreement to be filed and referred the disputes to the sole arbitration of a person to be nominated by the General Manager, Northern Railway, as per agreement between the parties. The disputes which were referred to arbitration were set out in para 4 of the petition, and these were as under : "(a) On the false plea of demurrage charges a sum of Rs. 17000.00 was unjustifiably and arbitrarily withheld from the bills of the petitioners. (b) Instead of continuing to pay for repacking of Cr & Tr Vans at the van rates given in the schedule of rates, amounts of bills in this behalf were paid at Maundage rates

and the amounts due were illegally

(3) One of the objections to the award raised by the Union of India was that the arbitrator could not award interest. This is how the objection was taken: "That the Id. Arbitrator has exceeded his jurisdiction and has given an award which is contrary to the specific terms of the Agreement between the parties. The agreement between the parties specifically provided that no interest is to be paid by the Rly. Administration on the amounts due to the contractors. Inspire of this specific agreement between the parties, the Id. Arbitrator has awarded interest in favor of the Petitioners. Assuming though not admitting that the Arbitrator has awarded 10% interest as against 6% permissible under law (under Section 34 CPC)." The learned Addl. District Judge held that the award of interest related to the period which was after the reference and was within the jurisdiction of the arbitrator. I need not refer to other objections of the Union of India to the award as this was the only question raised before me that is the jurisdiction of the arbitrator to award interest "pendent lite". The award in question is a non-speaking one.

(4) Mr. Bhandari, learned counsel for the appellant, submitted that the arbitrator was not a court and had no jurisdiction to award interest "pendent lite". He said there was no dispute as regards claim of interest which was the subject-matter of reference. According to him, Section 34 of the CPC 1908 (for short "the Code") which provides that the court may in a decree order payment of interest from the date of the suit to the date of the decree was inapplicable in the case of arbitration proceedings as the arbitrator was not a court.

(5) Mr. Rishikesh, learned counsel for the first respondent however, referred to a bench decision of this court in V.K. Madhok Vs. Union of India, , to submit that the provisions of Section 34 of the Code were applicable and that the arbitrator could award interest pendent lite. The following observations in this decision were particularly referred to

"TO sum up. The arbitrator has power to award interest pendent lite. Bose J. in Seth Thawardas Pherumal Vs. The Union of India (UOI), said that an arbitrator is not a court and Therefore Section 34, C.P.C. does not apply to him. Later judicial decisions to which we have referred show that his view was not accepted. Though Section 34 does not in terms apply, the arbitrator has the same power as the court has. The court can award pendent life interest "at such rate as the court deems reasonable". So can the arbitrator. Though no statute gives him that power the judicial decisions recognise as of necessity that power in him as an implied term of the reference. So far as post-decretal interest is concerned Section 29 of the Act is a part of the statute law. It says that "court may in the decree order interest from the date of the decree, at such rate as the court deems reasonable". Whether it is a Judge-made law or statute law the principle is the same. In both cases-pendent lite or post-decrial-interest can be awarded at such rate as is deemed reasonable, in one case by the arbitrator and in the other by the court. The two domains are different. pendent lite is the close of the

arbitrator. Post-decree is the preserve of the court. If the arbitrator's award of interest is reasonable the law forbids the court to break and enter the close of the arbitrator."

Mr. Rishikesh also referred to a recent decision of the Supreme Court in *Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others*, . This decision of the Supreme Court, to my mind, throws doubt on the correctness of the decision of this court in *M/s. Krishan Kumar Madhok's* case (supra). The Supreme Court examined its various decisions on the question of award of interest by an arbitrator notably being *Seth Thawardas Pherumal Vs. The Union of India (UOI)*, ; *Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore*, ; *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.*, -, *Ashok Construction Company Vs. Union of India (UOI)*, : and *State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd.*, . It did not say that the decision of the Supreme Court in *Thawardas's* case (supra) was not a good law in view of the decisions of the court in *Hukumchand Mills' case* and *Bungo Steel Furniture Pvt. Ltd.'s* case (supra) as was observed by this court in *M/s. Krishan Kumar Madhok's* case. In *Executive Engineer Irrigation Galimala v. Abhaduta Jena's* case (supra), the question before the Supreme Court was regarding award of interest by an arbitrator to whom a reference was made without the intervention of the court. The question was limited to the award of interest during the period prior to the reference and during the pendency of the arbitration proceedings. Further question of award of interest subsequent to the date of the arbitrator's award was not considered by the court. In the case before the Supreme Court, under the relevant clause in the contracts enabling the Chief Engineer to refer disputes to an arbitrator, references were made. The court proceeded on the basis that in the notices of demand made by the contractors before the disputes were referred to arbitration interest on the amounts said to be payable was claimed. The court first examined the statutory provisions in regard to the award of interest by court contained in the Interest Act and the Code. It referred to the provisions of the Interest Act 1839 and the Interest Act 1978 (which came into force on August 19, 1981, repealing the earlier Interest Act of 1839) and Section 34 of the Code. The court examined its earlier judgments some of which have been mentioned above. It came to the following conclusions in regard to the pendent lite interest, i.e., interest from the date of the reference to the date of the award. (1) The claimants would not be entitled to the same as the arbitrator is not a court within the meaning of Section 34 of the Code ; nor were references to arbitration made in the course of suits. (2) In cases which arose before the commencement of the Interest Act 1978, the claimants were not entitled to claim interest either before the commencement of the proceedings or during the pendency of the arbitration. They are not entitled to claim interest for the period prior to the commencement of the arbitration proceedings for the reason that the Interest Act 1839 does not apply to their cases and there is no agreement to pay interest or any usage of trade having the force of law or any other provision of law under which the claimants were entitled to recover interest. They are not

entitled to claim pendent lite interest as the arbitrator is not a court. (3) In cases to which the Interest Act, 1978 applies, the arbitrator has jurisdiction to award interest for the period prior to the start of arbitration proceedings as "court" in the Interest Act, 1978 includes a tribunal and an arbitrator.

(6) In Thawardas's case the Supreme Court had repelled the argument that an arbitrator could award interest on the analogy of Section 34 of the Code. The court held that Section 34 did not apply because an arbitrator was not a "court" within the meaning of the Code, nor did the Code apply to arbitrator and further that but for Section 34 even a court did not have the power to give interest after the suit. In later cases (Hukumchand Mills' case and Bungo Steel Furniture Pvt. Ltd.'s case) the Supreme Court did not dispute the proposition that the arbitrator was not a court but held that in a case where the reference was made to arbitration in a suit, the arbitrator would have the same power as the court to award interest u/s 34 of the Code. The court thus in Executive Engineer Irrigation Galimala v. Abhaduta Jena's case held that even now the decision regarding award of pendent lite interest was still governed by the same principles.

(7) The Arbitration Act contemplates three kinds of arbitration: (1) arbitration without intervention of a Court dealt with in Chapter Ii of the Act (Sections 3 to 19); (2) arbitration with intervention of a Court where there is no suit pending dealt with in Chapter Iii of the Act (Section 20); and (3) arbitration in suits which is covered by Chapter Iv of the Act. A party may proceed u/s 20 of the Act instead of proceeding under Chapter II. This section confers power on the Court to order the agreement to be filed, and, further, to make an order of reference to the arbitrator appointed by the parties, or where the parties cannot agree upon an appointment, to an arbitrator appointed by the Court. Sub-section (1) of section 20 makes it plain that the provisions of the Section can be availed of only if no proceeding: under Chapter Ii has been initiated.

(8) There thus appears to be no difference when the reference is to the arbitration without intervention of a court under Chapter Ii or with intervention of a court under Chapter Iii of the Arbitration Act. In both these cases, the arbitrator will have no jurisdiction to award interest pendent lite on the analogy of the provisions of Section 34 of the Code. If, however, reference is in suit, as provided in Chapter Iv of the Arbitration Act, the arbitrator will have power to award interest pendent lite like a court u/s 34 of the Code.

(9) Applying these principles, it has, Therefore, to be held in the present case that the arbitrator had no jurisdiction to award interest and the award to that extent where by the appellant Union of India was directed to pay interest at the rate of 10% per annum on the amount of Rs. 30,545.00 for the period from 1-10-1975 to 30-11-1976 has to be set aside. I order accordingly. The appeal is, Therefore, allowed to this extent. In the circumstances of the case, however, there will be no order as to costs.