
(2014) 02 BOM CK 0197
In the Bombay High Court
Case No : First Appeal No. 296 of 1998

Union of India

APPELLANT

Vs

M/s. Bajaj and Co. Civil Engineers and Contractors

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Arbitration Act, 1940 — Section 14(2) 15 39

Citation : (2014) 4 BomCR 354

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : A.H. Mishra holding for Mr. S.K. Mishra, A.S.G.I, for the Appellant;
A.V. Khare, Advocate and Ms. Vidya Umale, for the Respondent

Final Decision : Partly Allowed

Judgement

S.B. Shukre, J.—This is an appeal filed u/s 39 of the Arbitration Act, 1940 against the judgment and order passed on 06/3/1998 by the Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 1138 of 1992. In the year 1986, the appellant had awarded contract for executing the work of construction of Air Route Surveillance Radar building at Civil Aerodrome, Nagpur to the respondent-firm after following the tender procedure. The contract was executed by the respondent but some dispute arose between the appellant and the respondent. As per the terms of the agreement between these parties, the dispute was referred to the sole arbitrator. The sole arbitrator delivered the award by which he ruled that the appellant shall pay to the respondent a sum of Rs. 3,10,754.27 Ps. together with interest as awarded by him under column No. 13. The respondent had claimed, vide column No. 13, interest @ 18% per annum on various amounts claimed by it from the appellant from the date they became payable till the date of payment. As against this claim, the arbitrator awarded the interest @12% per annum for the period from 31/8/1989 to 15/11/1990 on the amount under the award. The arbitrator further awarded interest @ 12% on the amount of award from the date of the award till the date of payment of the

award amount or decree of the Court, whichever was earlier.

2. The respondent filed a suit against the appellant for making the award as a rule of the Court and also for making some modifications to the award. In this suit, the respondent had taken various objections as regards the interest rates granted under the award and the liability of the appellant regarding delay on it's part to execute the award. However, during the course of the arguments, learned Counsel for the respondent gave up all the objections taken by it in respect of various claims granted under the award and only submitted that the award be modified by giving the respondent interest @ 18% per annum for a period of eleven months starting from 16/11/1990 to 31/10/1991 and he further submitted that the award be made absolute in these terms. Learned Civil Judge, therefore, proceeded to make the award absolute and while doing so, also partly modified the award by substituting the direction for payment of interest @ 12% per annum by the direction for paying the same @ 18% per annum, by his judgment and order passed on 06/3/1998. Not satisfied with this judgment and order, the appellant has preferred the present first appeal before this Court.

3. I have heard learned Counsel appearing for the respective parties. Now, the only point which arises for my consideration is; "Whether the direction issued by the Civil Judge, Senior Division, Nagpur in his judgment dated 06/3/1998 for part modification of the award is in excess of his power u/s 15 of the Arbitration Act, 1940?"

4. It is the contention of the learned Counsel for the appellant that the impugned direction is beyond the powers of the Civil Court conferred upon it u/s 15 of the Arbitration Act, 1940 (hereinafter referred to as "the said Act"). He further submits that the reliance placed by the learned Civil Judge upon the law laid down by the Hon'ble Supreme Court in the cases specifically referred to in the impugned judgment is misplaced as the law is on different point and not as to the power of the Civil Court u/s 15 of the said Act. According to him, these judgments only refer to the power of the Civil Court to grant pendent lite interest on the principal amount and are not on the scope of it's power u/s 15 of the said Act and by modifying the award, the learned Civil Judge has exceeded his jurisdiction. On the other hand, learned Counsel for the respondent has submitted that the impugned direction is within the power u/s 15 of the said Act.

5. In order to consider the rival argument, it would be necessary to refer to the power of the Civil Court to modify the award as given u/s 15 of the said Act. Section 15 of the said Act reads as under.:

15. Power of Court to modify award-The Court may by order modify or correct an award-

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake of an error arising from an accidental slip or omission.

It is clear from the language of Section 15 that power to modify the award is available to the Civil Court only when one or more of three conditions mentioned in clauses (a), (b) and (c) is or are fulfilled. These conditions are; (a) when the award has been passed upon a matter not referred to arbitration and it is possible to separate this part from the other part and such separation does not affect the decision on the matter referred; (b) when the award is imperfect in form or contains any obvious error, which can be amended without affecting such decision, and (c) when the award contains clerical mistake or error accidentally made. These conditions would show that power to award vests in the Civil Court only when any of the situations as enumerated by these conditions exists and the modification that is going to be carried out does not affect the decision of the matter referred to the arbitrator. In other words, the Civil Court has to satisfy itself about the existence of any of these situations and also about the possibility of rectifying these situations without affecting the merits of the award. If the Court is of the opinion that such situations do exist, but cannot be corrected without affecting the merits of the award, the power to modify the award would not be available to the Court.

6. Having considered the nature of power available to the Civil Court u/s 15 of the said Act, it would now be necessary to examine as to whether the learned Civil Judge has exceeded his jurisdiction in modifying the award or not. The award dated 30/10/1991 is forming part of the paper book. The direction impugned herein modifies the interest granted under the award under column No. 13. The arbitrator granted future interest @ 12% p.a. whereas, learned Civil Judge by his impugned judgment, modified this grant of interest by substituting it for a direction to pay interest @ 18% p.a. for the period stated in part 3 of the operative part of the impugned judgment and order. No reasons have been stated in the entire judgment and order for modifying the award of the arbitrator in such terms. Section 15 power is judicial and therefore, must be exercised judiciously and for reasons to be recorded. Reasons are the heart and soul of any judicial order and without them, the order loses its character as judicial and assumes form of a fanciful and arbitrary order. The impugned direction being unreasoned, is one such capricious order and must go. That apart, it is also not covered by any of the clauses (a) to (c) of Section 15, and how it is so, let us see now.

7. The arbitrator granted interest at certain rate after considering material before him and, therefore, to seek modification of such an award, it was necessary for the respondent to show that there was some imperfection in its form or some obvious error or some clerical mistake. But, there was neither any pleading in this behalf nor any material produced to establish existence of any of these

situations. Then, it was also nobody's case that award of interest made by the arbitrator was something not referred to the arbitration. Therefore, the modification carried out to the arbitration award by the learned Civil Judge in his impugned judgment and award was in excess of his power u/s 15 of the said Act. Such an order, therefore, cannot be sustained in law.

8. The learned Civil Judge has placed reliance upon the law laid down by the Hon'ble Supreme Court in the cases of Secretary to Government of Karnataka and another Vs. V. Harishbabu, , Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, and has also followed the decision rendered by learned Single Judge of this Court in the case of Maharashtra State Electricity Board Vs. Khare and Tarkunde, . The reliance placed upon these cases, as rightly submitted by learned Counsel for the appellant, is misplaced. While the case of Secretary to Govt. of Karnataka & another vs. V. Harishbabu has been on an entirely different set of facts and principles of law, not germane to adjudication of the controversy involved in this case, the law laid down by the Hon'ble Supreme Court in the case of Secretary, Irrigation Department, Government of Orissa & others vs. Raghunath Mohapatra laying down the principle that interest pendent lite can be awarded by the arbitrator, not disputed by anybody, would have no application to the power of the Civil Court u/s 15 of the said Act.

9. In the said case of Secretary to Govt. of Karnataka & another vs. V. Harishbabu, the Apex Court has held that u/s 14(2) of the said Act, notice of filing of award in Court either in the form of a specific notice or in the nature of some intimation or communication is required, although, same need not be in writing. This law, obviously, could not have been usefully referred to by the learned Civil Judge, given the nature of controversy involved in the case. Similarly, in the second case of Secretary, Irrigation Department, Government of Orissa & others vs. Raghunath Mohapatra also, the principle stated is that arbitrator can award interest pendent lite and in this case, the arbitrator had also awarded future interest and the issue involved was not about obvious error or clerical mistake in grant of future interest. Therefore, even this case could not have been resorted to by the learned Civil Judge so as to exercise his power for modification of the award u/s 15 of the said Act. The law laid down by the Hon'ble Supreme Court in the afore stated case of Secretary, Irrigation Department, Government of Orissa & others vs. Raghunath Mohapatra has been followed by the learned Single Judge of this Court in the case of Maharashtra State Electricity Board vs. M/s. Khare & Tarkunde, referred to in the impugned judgment and order. Since the law, as already stated, is upon a different principle, there was no scope for the learned Civil Judge to place his reliance upon this law, in the instant matter. In the circumstances, I find that there is substance in the argument advanced before me by the appellant and no merit in the argument canvassed on behalf of the respondent in respect of legality of the direction impugned herein. As discussed earlier, learned Civil Judge has exceeded his jurisdiction in exercising his power u/s 15 of the said Act to partly modify the award of the arbitrator. In the facts and circumstances of the case, I am of the

view that the award could not have been modified by the impugned judgment and order in the manner it has been done. Such an order, therefore, needs to be quashed and set aside. The point is answered accordingly. The appeal deserves to be partly allowed with directions as follows:

I. The appeal is partly allowed with costs.

II. The impugned direction as contained in part 3 of the operative order of the judgment dated 06/3/1998 is hereby quashed and set aside and it is directed that the respondent shall pay an amount of Rs. 3,10,754/- (rupees three lac ten thousand seven hundred & fifty four only) with future interest @12% per annum for the period of 111/2 months starting from 16/11/1990 and ending on 31/10/1991 together with future interest at the same rate from the date of the award till its realisation.

III. Rest of the impugned judgment and award is confirmed.