
(2004) 07 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 79 of 1994

Union of India

APPELLANT

Vs

Shastri Construction Co.

RESPONDENT

Date of Decision : 01-07-2004

Acts Referred:

Citation : (2005) 1 LJR 684 : (2004) 4 RCR(Civil) 258

Hon'ble Judges : Surya Kant, J

Advocate : Mr. Kamal Sehgal, Advocate. Mr. Raman Mahajan, Advocate.,
Advocates for appearing Parties

Judgement

Surya Kant, J.

1. Union of India has come up in this civil revision impugning the order dated September 16, 1993 passed by the Executing Court at Chandigarh whereby the respondent, namely, M/s Shastri Construction Co. has been held entitled for recovering the interest amounting to Rs. 5,42,840.58 from the petitioner.

2. The brief facts are that pursuant to certain arbitration proceedings between the parties, an Award was passed by the Arbitrator on June 29, 1987 whereby the respondent, namely, M/s Shastri Construction Co. was held entitled for payment of Rs. 7,95,051/ from the petitioner. This Award was made rule of the Court by the Civil Court at Chandigarh vide judgment and order dated December 2, 1988, however, with modification to the following extent :

"I do not find any reason to interfere in the award given by the Arbitrator Sh. A.K. Mullick except to set aside the award allowing pendente lite interest. The petitioner will be liable to pay the interest @ 12% p.a. in case the objector petitioner failed to make the payment within a period of one month."

3. It would, thus, be seen that the grant of interest pendente lite by the Arbitrator was set aside by the Civil Court though the petitioner (Union of India) was held liable to pay interest @ 12% p.a. in the event of its failure to make payment within a period of one month.

4. Aggrieved by the aforesaid order, both the parties went in appeal, which were, however, dismissed by the Appellate Court on April 2, 1990. Still aggrieved, the respondent herein, namely, M/s Shastri Construction Co. approached this Court in Civil Revision No. 2112 of 1990 which, as admitted by the learned counsel for both the parties, was dismissed on 23.8.1990. The present petitioner, namely, Union of India also felt aggrieved by the judgment and order dated April 2, 1990 and preferred Civil Revision No. 2493 of 1990 which was, however, dismissed by this Court on March 13, 1992. Since the interpretation of the aforementioned order has led to the rise of present controversy, it will be apposite to reproduce its following paragraphs :

"4. The contractor had put forward claim No. 3 pertaining to reimbursement of damages suffered due to breach or in other words the delay for which the Union of India was responsible inasmuch as though the claimant wanted to complete the work within 15 months as stipulated in the contract yet on account of the delay caused by the Department the work in question could be concluded in a period of 22 and half months. This necessitated additional establishment in the form of extension which he had to arrange for the Engineer, Supervisor, StoreKeeper, Clerk, Accountant and two chowkidars etc. All these details were worked out in column No. 3(a)(b)(c) of claim No. 3 and the Arbitrator accepted that there was prolongation of the contract and for that the Union of India was responsible and the claim was partially sustained to the extent of Rs. 2,70,000/. It may also be mentioned here that no arguments were addressed in respect of the other minor items though a general figure, say 15 items, were alleged to be in dispute. These were not specifically enumerated even in the grounds of revision. It was not a case of wrong statement of law or even procedure at any stage and there was no infringement of any clause of arbitration agreement and as observed in Food Corporation of India v. Joginderpal Mohinderpal, no interference is called for in the decision of the learned Additional District Judge who too rightly has rejected the objections put forward by the Union of India. There was no misconduct in not giving detailed reasons while deciding claims No. 2 and 3. The learned counsel for the revisionist could not find out or show as to where and at what occasion opportunity was not given to the Union of India to rebut the claim in respect of the items in question.

5. The actual date of completion of work was 30.9.1980 and the award in this case was made on 29.6.1987. As regards interest the learned counsel for the respondentcontractor has referred to Secretary to Government of Orissa v. Raghunath Mahapatra, wherein it has been held that in every case the arbitration agreement does not exclude the jurisdiction of the Arbitrator to award interest pendente lite such powers much be inferred and the award as such is maintained. The conclusion is that the present revision does not call for interference and the same is dismissed."

5. To be fair to the learned counsel for the respondent, it may also be stated at this stage that C.M. No. 739C of 1992 was moved by the present respondent (M/

s. Shastri Construction Co.) in the above mentioned Civil Revision filed by the Union of India on January 7, 1992, for granting interest pendente lite as in the meanwhile their Lordships for the Supreme Court in Secretary, Irrigation Department, Government of Orissa & others v. G.C Roy, JT 1991(6) SC 349 have held that in the absence of an express contrary clause, the Arbitrator shall have inherent and implied power to grant interest pendente lite.

6. It appears that immediately after the dismissal of its Civil Revision on March 13, 1992, the Union of India made payment of Rs. 11,19,693/ to the respondentcontractor in the execution proceedings on 28.4.1992. It did not, however, satisfy the claim of the respondentdecreeholder, who on an interpretation of operative part of order dated March 13, 1992 passed by this Court while dismissing Civil Revision No. 2394 of 1990, asserted that the judgmentdebtor, namely, the Union of India (present petitioner) was also liable to pay interest pendente lite amounting to Rs. 5,42,840.58. The afore mentioned claim of the decreeholder (respondent herein) was accepted by the Executing Court, who vide its impugned order dated September 16, 1993 held the decreeholder/respondent entitled to recover the above stated amount of Rs. 5,42,840.58 as outstanding on April 23, 1992 from the Union of India, i.e. the judgmentdebtor. Aggrieved by this order of the Executing Court, the present civil revision has been filed.

7. This civil revision came up for motion hearing before a learned Judge of this Court on January 7, 1993. After taking notice of the fact that Civil Revision No. 2112 of 1990 filed by the respondentcompany had already been dismissed by this Court on August 23, 1990, further proceedings before the Executing Court were stayed. Vide a subsequent order passed on February 1, 1994, the civil revision was admitted and operation of the impugned order dated September 16, 1993 was stayed.

8. I have heard Shri Kamal Sehgal, learned counsel for the petitioner and Shri Raman Mahajan, learned counsel for the respondent and have also perused the record.

9. Shri Kamal Sehgal, learned counsel for the petitioner has assailed the sustainability of the impugned order by raising two fold submissions; firstly, that the Executing Court while awarding interest pendente lite on a wrong interpretation of order dated March 13, 1992 passed by this Court in Civil Revision No. 2394 of 1990, has gone beyond the decree passed by the competent Court; secondly, that the claim of the respondent for award of interest pendente lite had already been declined by this Court while dismissing the Civil Revision No. 2112 of 1990 on August 23, 1990 and, as such, the claim to this effect neither could be raised nor decided in the Civil Revision filed by the Union of India.

10. On the other hand, Shri Raman Mahajan, learned counsel for the respondent, contends that the claim for grant of interest pendente lite was specifically raised

by the respondent through C.M. No. 739C1992 filed on 27.1.1992 in the Civil Revision filed by the Union of India as during the pendency of the said revision, the controversy stood resolved by the Apex Court in Secretary, Irrigation Department, Government of Orissa & others v. G.C. Roy, JT 1991(6) S.C. 349, therefore, the Executing Court rightly awarded the amount in question.

11. It is the admitted case that the Arbitrator had originally held the respondentcompany entitled to interest pendente lite. However, his Award to this limited extent was set aside by the Civil Court while making the Award rule of the Court vide order dated December 2, 1988. Feeling aggrieved of this order, an appeal was filed by the respondentcompany which was dismissed by the Appellate Court on 2.4.1990. It preferred Civil Revision No. 2112 of 1990 before this Court which also met with the same fate on August 23, 1990. No further petition was filed by the respondentcompany and, thus, the order dated August 23, 1990 passed by this Court attained finality. In my view, with the dismissal of the Civil Revision of the respondentcompany on August 23, 1990, it was neither entitled in law to set off a counter claim, nor was such claim entertained by this Court in Civil Revision No. 2394 of 1990 filed by the Union of India against the Award itself. The order dated March 13, 1992 passed by this Court while dismissing Civil Revision No. 2394 of 1990 filed by the Union of India and reference therein to the judgment of the Apex Court in G.C. Roy's case (supra) is merely a statement of law and not the re adjudication of right of the respondent to claim interest pendente lite. From the plain language of the judgment also, it cannot be construed that it contradicts the order dated August 23, 1990 passed earlier by this Court while dismissing the Civil Revision of the respondentcompany (Civil Revision No. 2112 of 1990). As can be seen from the impugned order of the Executing Court, it has laid much emphasis on the words "and the Award as such is maintained" which find mention in the order dated March 13, 1992 passed by this Court in Civil Revision No. 2394 of 1990. In my view, the Executing Court misdirected itself by wrongly interpreting these words. Firstly, the aforementioned words are in continuation of a passage taken from the judgment rendered by the Apex Court in G.C. Roy's case (supra). These words have not been, thus, incorporated for resolving any issue interse parties of the present case. Secondly, assuming that the words have been introduced by this Court in relation to the interse dispute between the parties, yet the word "Award" as mentioned by this Court, has to be taken the "Award" as modified by the Civil Court's judgment dated December 2, 1988 and upheld by this Court vide order dated August 23, 1990 passed in Civil Revision No. 2112 of 1990. It cannot be interpreted to mean that by incorporating the words "and the Award as such is maintained", this Court intended or actually set aside and/or recalled the judgment dated December 2, 1988 passed by the Civil Court or judgment dated April 2, 1990 passed by the Appellate Court or its own order dated August 23, 1990 passed in Civil Revision No. 2112 of 1990. Thus, in my view the impugned order is based entirely on wrong interpretation of the order dated March 13, 1992 passed by this Court in Civil Revision No. 2394 of 1990 and

cannot be sustained.

12. Coming to the ancillary argument that during the pendency of Civil Revision of the Union of India, since their Lordships of the Supreme Court in G.C. Roy's case (supra), have held that where the agreement between the parties does not prohibit grant of interest, the arbitrator shall have the power to award interest pendente lite, if it is claimed by the party, the respondent herein has also been rightly held entitled for the same. Their Lordships of the Supreme Court, in para 46 of the judgment, have held as under :

"Even though we have held that the decision in Jena's case does not lay down good law, we would like to direct that our decision shall only be prospective in operation which means that this decision shall not entitle any party nor shall it empower any Court to reopen proceedings which have already become final." (emphasis supplied)

13. In the present case, the claim of the respondentcompany in relation to the grant of interest pendente lite stood rejected with the dismissal of its Civil Revision on August 23, 1990 by this Court and the said order had attained finality much before the Hon"ble Supreme Court pronounced its judgment in G.C. Roy's case (supra) on 12.12.1991. Thus, I am of the view that in terms of the law laid down prospectively by the Apex court in the aforesaid judgment, this Court or the Executing Court had no occasion to reopen the proceedings and to award the interest pendente lite to the respondent company.

14. For the aforementioned reasons, this civil revision is allowed, the impugned order dated September 16, 1993 passed by the Executing Court at Chandigarh is set aside and the application moved by the respondentcompany claiming interest pendente lite before the Executing Court is rejected. No order as to costs.

Revision allowed.