
(2000) 07 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3944 of 1996

Union of India (UOI)

APPELLANT

Vs

Harbans Singh Tuli and Sons Builders (P) Ltd.

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Arbitration Act, 1940 — Section 13

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15

Citation : (2000) 2 ILR (P&H) 397 : (2000) 126 PLR 484 : (2000) 4 RCR(Civil) 365

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Deepali Puri, for the Appellant; Party in person, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Jain, J.—This is a revision petition against the order dated 12-3-1996 passed by the Executing Court, disposing of the objection petition filed by judgment-debtor-petitioner-Union of India.

2. The facts which are relevant for the decision of the present revisiori petition are that with regard to a dispute between Union of India on the one hand and M/ s. Harbans Singh Tuli & Sons, Contractors (hereinafter referred to as the contractor), the matter was referred to the Sole Arbitrator, who gave his award dated 18-8-1989 in favour of the contractor. Thereafter the contractor moved an application under Sections 14 and 17 of the Arbitration. Act, 1940 for a direction to the Arbitrator to file the original award along with the relevant documents in the Court and to make the award as a rule of the Court. Notice of the said application was given to Union of India who filed objection petition dated 21-9-1989 challenging the award on various grounds. Various issues were framed. Thereafter, the learned trial Court vide Judgment dated 17-9-1990 made the award dated 18-8-1989 as rule of the Court except Claim No. 1 which granted pendente lite interest with effect from 15-6-1989 to 18-8-1989 @ 15%.

It was further directed that the contractor shall also be entitled to future interest @ 15% per annum on the principal sum adjudged. The appeal filed against this judgment and decree dated 17-9-1990 was upheld by the District Judge, Chandigarh vide Judgment and decree dated 31-3-1999. In the meanwhile the matter had gone to their Lordships of the Supreme Court in Civil Appeal No. 13149 of 1995 arising out of SLP (Civil) No. 8791 of 1995. M/s. Harbans Singh Tuli & Sons Builders (P) Ltd. v. Union of India (arising out of some execution proceedings) and vide order dated August 4, 1995, it was held by their Lordships that the appellant M/s. Harbans Singh Tuli & Sons would be entitled to recover interest for the period from 5-4-1973 to 15-6-1989 in execution of the decree, as grant of interest for this period had nowhere been set aside in the Judgment dated 17-9-1990. During the pendency of the execution petition, for the execution of the judgment and decree dated 17-9-1990 passed by the trial Court, Union of India (judgment-debtor) filed objection petition with regard to the calculation of the decretal amount. The objection petition was contested by the contractor (decree-holder) by filing written reply, giving his own calculations. The learned Executing Court, after hearing both sides, vide order dated 12-9-1996 disposed of the objections of the Union of India by holding that the awarded amount on the various claims in the award of the Arbitrator would become the principal sum adjudged including the interest which be-came due before the arbitration proceedings, meaning thereby that the Interest accrued would also become part of the principal sum adjudged. After giving decision with regard to the manner of calculating the amount due, the learned Executing Court also proceeded to calculate the decretal amount due and further ordered that the execution application be filed as partly satisfied, vide order dated 12-9-1996. Aggrieved against this order of the Executing Court, Union of India (judgment-debtor) filed the present revision petition in this Court.

3. I have heard the learned Counsel for the petitioner-Union of India and Shri H. S. Tuli, Managing Director of the respondent-company in person and have gone through the record carefully. Even the record of the Executing Court was also summoned and the same was also perused by me.

4. At the outset Shri H. S. Tuli, respondent in person raised a preliminary objection that the revision petition was unauthorised inasmuch as it has not been filed by a competent person, inasmuch as under the contract, only the Chief Engineer was competent to take all actions on behalf of the Government in respect of said contract, whereas the present revision petition was filed by Surveyor of Works in the Headquarter of C.W.E., Chandi Mandir, who was not competent to file the revision petition On behalf of Union of India. Reliance was placed on AIR 1971 J &K 91 Roshan Lal Sethi v. Chief Secretary. On the other hand, the learned counsel appearing for the petitioner-Union of India submitted before me that as per the notification of the Ministry of Law, as amended from time to time various M.E.S. officers were competent to sign and verify plaints and written statements in suits in Civil Courts by or against the Central Government and act for the Government in respect of any judicial proceedings.

She further submitted that Surveyor of Works besides Chief Engineers and others were amongst those M.E.S. officers who were competent to sign and verify the complaints and written statements etc. It was submitted that in view of the said notification of the Ministry of Law, it could not be said that the present revision petition filed by the Surveyor of Works was not competent or unauthorised.

5. After hearing both sides, I am of the opinion that preliminary objection raised on behalf of the respondent is misconceived. So far as the contract between the parties is concerned, no doubt the Chief Engineer would be competent to take all actions on behalf of the Government in respect of the said contract. However, so far as filing of civil revision is concerned, the terms and conditions laid down in the said contract would not be relevant to determine, as to who was competent to file civil revision on behalf of Union of India. If the Ministry of Law has issued a notification and has authorised various M.E.S. officers including Chief Engineers and Surveyors of Works etc. being competent to sign and verify complaints and written statements in suits in Civil Courts by or against the Central Government and to act for Government in respect of any judicial proceedings, then it could not be said that the present revision petition filed by the Surveyor of Works was incompetent or unauthorised. The authority AIR 1971 J & K 91 (supra) relied upon by the respondent would have no application to the present case. In the reported case, the lease was terminated by an officer, who was not having any power to do so under the agreement and it was under those circumstances that it was held by the Jammu and Kashmir High Court that said officer had prejudged the whole matter in issue by expressing opinion thereon and thus he was disqualified to act as an arbitrator in dispute arising under that lease. Thus, the law laid down by the Jammu and Kashmir High Court in this authority would have no application to the point in issue before me. Thus, the preliminary objection raised by the respondent is without any merit and is rejected as such.

6. Coming on merits, the learned counsel appearing for the petitioner-Union of India submitted before me that as per the award dated 18-8-1989, the Union of India was liable to pay to the contractor pendente lite simple interest @ 15% per annum on some of the amounts awarded to the contractor from 15-4-1973 to 15-6-1989 and that the total amount towards claims No. 2 to 20 as awarded by the arbitrator would come to Rs. 2,19,891.34 while the total amount under claim No. 21 would come to Rs. 4,74,437.55 towards escalation. It was submitted that vide judgment and decree dated 17-9-1990 passed by the trial Court (and in the meanwhile upheld by the District Judge in appeal), the contractor (decree-holder) is entitled to future interest @ 15% per annum on the principal sum adjudged. It was further submitted that only the amount of Rs. 2,19,891.34 would be the principal sum adjudged as it was awarded in respect of claims No. 2 to 20, whereas claim No. 21 for the sum of Rs. 4,74,437.55 was towards escalation and that being so, future interest would be payable only on Rs. 2,19,891.34 being the principal sum adjudged. It was further submitted that in any case, the future interest would be payable only on the amount of Rs. 6,94,328.89 (Rs. 2,19,891.34 + Rs. 4,74,437.55), being the total amount of

claims No. 2 to 21 and in no case the future interest would be payable on the amount of pendente lite interest awarded to the contractor under claim No. 1 for the period from 5-4-1973 to 15-6-1989 as amount on pendente lite interest awarded to the contractor could not be included in the term "principal sum adjudged." Reliance was placed on (1996) 2 Pun LR 398 : (AIR 1996 Punj & Har 195) Mehar Chand v. Tulsi Ram, Andhra Civil Construction Co. Vs. State of Orissa and Others, and Executive Engineer, Rural Engineering Division, Dhenkanal Vs. Biswanath Agarwalla, .

7. On the other hand, Shri H.S. Tuli, respondent in person, submitted before me that in the first objection petition dated 15-1-1992, it was admitted by the Union of India itself that the principal amount would come to Rs. 6,96,328.89 including Rupees 2000/- towards cost of reference. It was submitted that now the Union of India could not be allowed to urge that escalation amount would not be included towards principal sum adjudged. It was further submitted that earlier when the attachment order was passed in respect of the property of Union of India, no objections were filed by Union of India and now the Union of India was debarred from challenging the calculation of the decretal amount as calculated by the Executing Court. Reliance was placed on Genda Lal Vs. Hazari Lal, , Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others, Rocky Tyres v. Ajit Jain Jagannath Ramanuj Raj Deb Vs. Sri Lakshmi Narayan Tripathy and Others, and Baijnath Prasad Sah Vs. Ramphal Sahni and Another, . It was further submitted that since the provisions of Interest Act were not applicable to the present case, the decree-holder was entitled to claim interest on the pendente lite interest as well, considering that it was damages or compensation for the delayed payment and it would also become part of the principal sum adjudged. Reliance was placed on Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., Oil and Jugal Kishore Prabhatilal Sharma and others Vs. Vijayendra Prabhatilal Sharma and another,) Jugal Kishore Prabhatilal Sharma v. Vijayendra Prabhatilal Sharma and [1999] 2 SCC 58 : AIR 1999 SC 1101 It was further submitted that the second objection petition filed by the Union of India would not be maintainable. Reliance was placed on R.P.A. Valliammal Vs. R. Palanichami Nadar and others, .

8. After considering the various submissions raised before me and perusing the entire record, in my opinion the Union of India (judgment-debtor) would be liable to pay future interest to the contractor (decree-holder) not only on the amounts under items 2 to 20 and item No.21 but also on item No. 1 which was the amount awarded to the contractor for the pendente lite interest. In Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., , it was held by their Lordships of the Supreme Court as under :--

"4. There cannot be any doubt that the arbitrators have powers to grant interest akin to Section 34 of the C. P. C. which is the power of the Court in view of Section 29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the

proceedings is under two heads -- one is the balance of amount claimed under invoices and letter dated 10-2-1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by the time the claim was filed before the arbitrators. Therefore the power of the arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case. . . .

9. In Jugal Kishore Prabhatilal Sharma and others Vs. Vijayendra Prabhatilal Sharma and another, it was held by their Lordships of the Supreme Court that there was no reason to modify the award on the question of interest either in regard to the rate of interest or in regard to the addition of interest till the date of award to be principal sum determined as payable to the applicants which is permissible u/s 34, C.P.C. In AIR 1999 SC 1101 , it was held by their Lordships of the Supreme Court that the provisions of Interest Act, 1978 would not be applicable to the legal proceedings including arbitration proceedings pending before the commencement of the Act on 19-8-1981.

10. In view of the law laid down by their Lordships of the Supreme Court in Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., , holding that the arbitrator had power to grant interest on the amount of interest which may be termed as interest on damages or compensation for delayed payments, which would also become part of the principal sum adjudged. In my opinion, the petitioner-Union of India was liable to pay interest even on the pendente lite interest, which would be taken as damages or compensation of delayed payment and In this manner it would also become part of the principal sum adjudged. In this view of the matter, the authorities Mehar Chand Vs. Tulsi Ram, , Andhra Civil Construction Co. Vs. State of Orissa and Others, and Executive Engineer, Rural Engineering Division, Dhenkanal Vs. Biswanath Agarwalla, , relied upon by the learned counsel for the petitioner, would be of no help to petitioner-Union of India, nor on the basis of these authorities could it be said that the pendente lite interest could not be included in the principal sum adjudged for the purpose of granting future interest, in view of the law laid down by their Lordships of the Supreme Court in Oil and Natural Gas Commission Vs. M.C. Clelland Engineers S.A., .

11. So far as claim No. 21 in the principal sum adjudged is concerned, in my opinion, this amount had to be included in the principal sum adjudged considering that this was the amount which was awarded by the arbitrator to the contractor being the amount payable under the award besides the items covered by claims 2 to 20 and thus this amount had to be included to the principal sum adjudged. In this view of the matter, the contractor would be entitled to claim future interest not only in respect of claims 2 to 20 but also in respect of claim

No. 21. Besides that the contractor would also be entitled to claim future interest on the pendente lite interest awarded to the contractor under claim No. 1.

12. For the reasons recorded above, in my opinion, the learned Executing Court was right in holding that the principal sum adjudged would include not only claims 2 to 20 and 21 but also claim No. 1. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed, but with no order as to costs.