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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 30, 2009
Date of Order: September 25, 2009

+EA No.417 of 2005 in Ex.P. 123/2002

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25.09.2009

K.R. Builders

...Decree Holder

Through: Mr. Raman Kapur with Ms. Honey Taneja, Advocates

Versus

DDA

...Judgment Debtor

Through: Ms. Geeta Malhotra, Advocate

AND

+EA No.290 of 2005 in Ex.P. 28/2003

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K.R. Builders

...Decree Holder

Through: Mr. Raman Kapur with Ms. Honey Taneja, Advocates

Versus

DDA

...Judgment Debtor

Through: Ms. Geeta Malhotra, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

These applications under Section 151 CPC raise an issue up to what date the Judgment Debtor was liable to pay interest to the Decree Holder.

2. This Court while entertaining the applications framed following two issues:

“(a) whether this application is maintainable as the payment was not pursuant to any orders passed in this execution petition, but by the judgment debtor of its own;

(b) in case this applicable is held to be maintainable, other question relates to the date upto which the interest is to be payable.”

3. As far as issue “(a)” is concerned, a perusal of record would show that it is only during the pendency of the Execution Petition before this Court that an order was made by the Court directing Judgment Debtor to deposit the amount in the Court and the amount was deposited by the Judgment Debtor in Court. Thereafter, under the instructions of this Court the Decree Holder was paid this amount. I therefore consider that the application filed by the Judgment Debtor for refund of excess amount was entertainable since the decretal amount was paid under the instructions of this Court to the Decree Holder.

4. The second issue (“b”) is about the date up to which the interest is payable. The award in question was passed under the Arbitration Act, 1940 since the reference was made to the Arbitrator under the old Arbitration Act. The Arbitrator while passing the awards dated 27.8.1996 & 12.8.1996 made an order that the Decree Holder will be entitled to 12% p.a. interest from 1.1.1994 & 16.11.1993 respectively till date of award and, interest @ 16% p.a. from the date of award till the payment of the amount or date of decree whichever was earlier. Since the award was passed under the Arbitration Act, 1940, the Decree Holder filed petitions under Section 14/17 of the Arbitration Act, 1940 and Judgment

Debtor filed objections to the awards under Section 30/33 of the Arbitration Act, 1940. This Court however dismissed the objections of the Judgment Debtor vide an order dated 19.3.2002 by deciding an issue whether the objection proceedings were governed by the Arbitration Act of 1940 or the Arbitration & Conciliation Act, 1996. The Court observed that the objections had been filed under Section 30/33 of the Arbitration Act, 1940 but the plaintiff (Decree Holder) had taken the plea that the objections, if any, could have been filed only under the provisions of Section 34 of the Arbitration & Conciliation Act, 1996 as the award was passed after coming into force of the Arbitration & Conciliation Act, 1996. The Court upheld the plea taken by the Decree Holder and dismissed objections under Section 30/33 of the Arbitration Act, 1940 on the grounds that these objections were not maintainable. The court also dismissed the petition under Section 14/17 of the Arbitration Act, 1940 made by the Decree Holder on the same ground. The reason for this Court to pass such an order were the various judgments of Supreme Court holding ground at that time wherein a view was taken that if an award was passed after coming into force of the Arbitration & Conciliation Act, 1996 the provisions of the Arbitration & Conciliation Act, 1996 would govern the objections. This order of the Court became final and the objections of the Judgment Debtor were not entertained even under Section 34 since they were barred by time. However, the view of Supreme Court changed later on in decision rendered in Milkfood Ltd. v. M/s GMC Ice Cream (P) Ltd. JT 2004 (4) sc 393.

5. In view of the above situation, the order dated 19.3.2002 passed by this Court having become final inter se parties, the award passed by the learned Arbitrator became a decree of the Court as no objections were preferred against

this award under Section 34 the Arbitration & Conciliation Act, 1996 after the expiry of the period as provided under the Act. In terms of the award, the Judgment Debtor was liable to pay interest either up to the date of decree or up to the date of payment whichever was earlier. In this case, the date of decree was earlier. Since the award became decree after expiry of 90 days from the date of its passing as no objections under Section 34 of the Arbitration & Conciliation Act, 1996 were filed by the Judgment Debtor and nor the objections of Judgment Debtor under Section 30/33 of the Arbitration Act, 1940 were entertained.

6. It is argued by the Counsel for the Decree Holder that Decree Holder would be entitled to interest up to the date of payment. Decree Holder relied on Shankar Construction Company v. National Building Construction Corporation Ltd. 2003(3) Arb. L.R. 333 (Delhi) and S.Kumar v. DDA & Anr. 103 (2003) DLT 502 wherein the Court observed that date of award cannot be treated as date of decree for the purpose of awarding future interest when there is a specific provision made for payment of interest from a stipulated date to the date of payment.

7. The Judgment Debtor on the other hand relied on a Division Bench of this Court's decision in EFA (OS) No. 12/2006 decided on 22nd July, 2008 wherein this Court observed that a decree became executable on dismissal of Section 34 and if the Arbitrator had observed that the interest was payable by Judgment Debtor till the date of payment or decree whichever was earlier then the date till Judgment Debtor was liable to pay interest was the date when objections under Section 34 were dismissed and the order of Single Judge

holding that the applicant would be entitled to interest up to 15th December, 2003 i.e. date of dismissal of objections was upheld.

8. In the present case the situation is more peculiar. I consider that the Judgment Debtor cannot be put to double jeopardy. The objections raised by the Judgment Debtor were dismissed on the ground that the Judgment Debtor should have approached the Court under Section 34 of the Arbitration & Conciliation Act, 1996 and not under the old Act of 1940 whereas in view of the Supreme Court's later Judgment, the Judgment Debtor had rightly filed objections under Section 30/33 of the Arbitration Act, 1940. Thus, the Judgment Debtor was put under incapacity to file objections against the award and the award became a decree under the Arbitration & Conciliation Act, 1996 on expiry of three months' period. Now, the Judgment Debtor cannot be told that the Decree Holder was not bound by the judgment and the Judgment Debtor would be liable to pay interest even after the award became decree till the payment is made.

9. I consider that the Judgment Debtor was liable to pay interest only in accordance with the terms of the decree. The decree in this case became final once the Court did not entertain objections of the Judgment Debtor under Section 30/33 and observed that the award could only be challenged under Section 34 and this Court dismissed the petition of Decree Holder under Section 14/17 of Arbitration Act, 1940 also. Thus, the award passed by the Arbitrator on 27.8.1996 became decree of the Court after expiry of 90 days i.e. 27th November, 1996 and the Judgment Debtor was liable to pay interest up to 27th November, 1996. The Decree Holder could have executed the award after 27th November, 2006. It is also settled law that the Executing Court cannot go behind the decree

and cannot change the decree even on the issue of interest. The Decree Holder is entitled to receive the principal amount and interest only as per decree and if decree provides that interest is payable either up to the date of payment or up to the date of decree whichever is earlier, the Court cannot converse the date of payment of interest. I, therefore, allow the applications of the Judgment Debtor for refund of excess amount paid by the Judgment Debtor. The Decree Holder is directed to refund the excess amount to the Judgment Debtor as stated in the applications after verifying the calculations, within four weeks.

September , 2009
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SHIV NARAYAN DHINGRA, J.