

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ EFA(OS) No.1/2006

M/S. JAGAN NATH ASHOK KUMAR	 Appellant
Through:	Mr. Ram Kumar Gupta, Partner of Appellant Firm

versus

DELHI DEVELOPMENT AUTHORITY	Respondent
Through:	Ms. Anusuya Salwan, Adv.

% Date of Hearing : August 19, 2009

Date of Decision : September 16, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE V.K. JAIN

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the Judgment should be reported in the Digest? | No |

VIKRAMAJIT SEN, J.

1. The present Appeal impugns the Order dated 21.11.2005 passed by the Execution Court, declining the prayer of the present Appellant seeking pre-suit and *pendente lite* interest on the Arbitral Award published by the learned Arbitrator on 25.9.1997. This was pursuant to the Order dated 19.5.1997 passed by the Division Bench of this Court remanding the matter for reconsideration. The plea of the Appellant before the Execution Court and also before us has been that the Award

dated 25.9.1997 is only a part of the claim earlier awarded by the learned Arbitrator vide Order dated 22.3.1991. Thus, the two Awards had merged and that the Order dated 7.7.1994 whereby the learned Single Judge was pleased to allow the pre-suit and *pendente lite* interest at the rate of 12 per cent per annum from the date of the Award would apply on the subsequent Award dated 25.9.1997 as well.

2. Mr. Ram Kumar Gupta, Partner of the Appellant Firm, who has appeared in person, has sought to urge that vide Award dated 25.9.1997, the learned Arbitrator awarded a sum of Rupees 3,19,333/- as pre-suit and *pendente lite* interest which would have, in fact, been payable on 22.3.1991 and thus making him entitled to interest thereon. Reliance has been placed on a decision of the Division Bench of this Hon'ble Court in ***DDA -vs- Saraswati Construction Company***, 114(2004) DLT 385(DB) where it has been held that the interest awarded in lieu of compensation or damages become principal amount for which the party would be entitled for interest on account of it being withheld by opposite party.

3. The learned counsel for the Respondent has stated that pursuant to the Order dated 7.7.1994, wherein the learned Single Judge made the initial Award rule of Court, the Appellant has been paid the entire decretal amount of Rupees 5,18,714/-

on 9.12.1994 inclusive of up-to-date interest. The reference made to the learned Arbitrator by the Division Bench vide Order dated 19.5.1997 was limited to specific issue of determination of pre-suit and *pendente lite* interest. The Arbitrator vide its Award dated 25.9.1997 awarded Rupees 1,65,248/- as pre-suit interest on Rupees 3,57,295/- at the rate of 15 per cent per annum and Rupees 37,963/- as *pendente lite* interest on the same Award. A Decree was passed with modification in the Award on 5.2.2001 and this amount as per that Decree has been calculated and has been paid. In light of these facts the learned counsel for the Respondent has urged that the subsequent reference to the learned Arbitrator by the Division Bench of this Court was, in fact, for determination of pre-suit and *pendente lite* interest accruing to the Appellant and thus the demand for *pendente lite* and pre-suit interest on this amount now does not arise at all.

4. We find ourselves in agreement with the learned counsel for the Respondent and it is our considered view that the ratio of ***Saraswati Construction*** is not attracted in the present case as in that case the Award that got merged in the original Award was the compensation under a Clause of the Agreement. In the present case, the subsequent Award was in reference to the *pendente lite* and pre-suit interest in which case the merger of the two Awards for levying interest cannot be allowed.

5. Section 47 of the Code of Civil Procedure, 1908 contains the salutary principle that the Execution Court cannot go behind the Decree passed by the Court of competent jurisdiction. The scope of interference by the Executing Court in a Decree passed by a competent court has been recounted in *Darshan Singh -vs- State of Punjab*, (2007) 14 SCC 262, paragraph 16 and 17 of which are reproduced below:-

16. This Court held in *Vasudev Dhanjibhai Modi -vs- Rajabhai Abdul Rehman*, (1970) 1 SCC 670 that the executing court cannot go behind the decree unless it is shown that it was passed by a court inherently lacking jurisdiction and thus was a nullity. The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the decree on the face of it was shown to be without jurisdiction. It is not the case of the respondent that the court which passed the decree was lacking inherent jurisdiction to pass such a decree.

17. This Court in *Bhawarlal Bhandari -vs- Universal Heavy Mechanical Lifting Enterprises*, (1999) 1 SCC 558 and in *C. Gangacharan -vs- C. Narayanan*, (2000) 1 SCC 459 has also taken the same view that the executing court cannot go behind the decree of a court of competent jurisdiction except in the decrees void ab initio without jurisdiction.

6. In light of the facts of the case and above-mentioned exposition of the law by the Apex Court, we hold that no

grounds have been made out by the Appellant who essentially would like us to go behind a Decree which he has already accepted and benefitted from to the tune of Rupees 5,18,714/-.

7. Appeal stands dismissed. Parties to bear their own costs.

(VIKRAMAJIT SEN)
JUDGE

September 16, 2009
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(V.K. JAIN)
JUDGE