

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EX. APP. (OS) 144/2009 IN EX.P. 196/2006

M/S PT. MUNSHI RAM &
ASSO.P.LTD.

Through

..... Decree Holder
Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Debasish Moitra,
Advocate

versus

DELHI DEVELOPMENT
AUTHORITY

Through

..... Judgement Debtor
Mr. Ashwani Kumar with
Mr. Akshay Sahai, Advocates

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Date of Decision : 27th October, 2009**CORAM:****HON'BLE MR. JUSTICE MANMOHAN**

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

J U D G M E N T**MANMOHAN, J : (Oral)**

1. Present application has been filed by the judgment debtor claiming refund of alleged excess payment of Rs. 60,01,823.18 along with interest at the rate of 16% p.a. w.e.f. 4th October, 2006 till the date the amount is refunded to judgment debtor-DDA.

2. At the outset, learned counsel for judgment debtor-DDA fairly stated that in view of non-encashment of DDA's cheque No. 090317 dated 27th September, 2006 for Rs. 43,20,531.00/-, he is not claiming refund of the said amount.

3. Consequently, the only issue that arises for consideration before this Court in the present proceedings is as to how much interest is payable to the decree holder.

4. In the Award, learned Arbitrator has awarded interest in the following manner :-

“11.3. A W A R D :

It is seen that the work has been completed by the Claimants on 4.8.90. Assuming a reasonable period of 3 months for preparation of the Final Bill and another 6 months for passing of the same, the interest is due from 1.9.1991. The Claimant has demanded interest from 22.12.91 (Exhibit C-82) @ 24% per annum. A rate of 15% simple interest per annum is considered reasonable in the case of abnormal delay in the payment of the Final Bill.

(i). For the pre-suit period :- According to the Interest Act, 1978, interest is payable for the pre-suit period i.e. 22.12.91 to 10.5.93 (16.5 months) simple interest @ 15% per annum on an amount of Rs.25,64,362/- will be payable i.e. Rs.5,28,900/-.

(ii). For the pendentalite period :- According to the latest judgment of the Supreme Court, i.e. from 11.5.93 upto 30.9.95 (28.5 months) simple interest @ 15% per annum on an amount of Rs.25,64,362/- will be payable i.e. Rs.9,13,554/-.

(iii). For future interest from 1.10.95 onwards till the date of payment or decree whichever is earlier for an amount of Rs.25,64,362/- a simple interest of 15% per annum shall be payable.

Accordingly, I award that the Respondents to pay the Claimants an amount of Rs.14,42,454/- as pre-suit and pendentalite interests and future interest as simple interest @ 15% per annum on an amount of Rs.25,64,362.00 from 1.10.1995 onwards till the date of payment or decree whichever is earlier.”

(emphasis supplied)

5. Learned Single Judge while disposing of the judgment debtor-DDA's objection petition observed with regard to interest as under :-

“32. The objections having been disposed of, the award of the sole Arbitrator Shri C. Rama Rao dated 30.9.1995 is made rule of the court with the modifications whereby the award in respect of the claim for escalation, being claim No.1 is set aside and part of the amount towards the final bill dealing with cutting and straightening of reinforcement steel bars is also set aside and the interest is awarded on the awarded amounts at simple rate of interest of 12% per annum for past and pendent lite period. The petitioner shall also be entitled to future interest at the rate of 9% simple interest from the date of decree till date of realization. However, if the respondent pays the decretal amount within 60 days from today, the respondent would be exempted from payment of future interest. Parties are left to bear their own costs.”

(emphasis supplied)

6. Mr. Sudhir Nandrajog, learned senior counsel for decree holder submitted that the decree holder is not claiming interest on interest from the date of Award to the date of decree but is only claiming interest on interest from the date of decree to the date of payment as according to him, learned Single Judge has awarded 9% per annum simple interest on the decretal amount, which amount would include interest for the pre suit, pendente lite and post-Award period up to the date of decree. In this connection, Mr. Nandrajog relied upon the direction of the learned Single Judge to the effect that in case respondent-DDA did not pay the decretal amount within sixty days, it would have to pay future interest @ 9% simple interest on the entire decretal amount.

7. Mr. Nandrajog also placed reliance upon a judgment of the Supreme Court in ***Oil & Natural Gas Commission Vs M/s. M.C.***

Clelland Engineers S.A. reported in **AIR 1999 SC 1614** wherein it has been held as under :-

“4. There cannot be any doubt that the Arbitrators have powers to grant interest akin to Section 34 of the CPC which 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 under invoices and letter dated February 10, 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. Therefore, the first contention raised by Shri Datta, though interesting, deserves to be and is rejected.”

8. Having perused the Award passed by the learned Arbitrator as well as the judgment passed by the learned Single Judge while disposing of judgment debtor-DDA's objection petition, I am of the view that learned Single Judge has only varied the rate of interest awarded by the learned Arbitrator. In fact, the learned Arbitrator in his Award stipulated a uniform rate of 15% per annum simple interest for different periods on specified amounts mentioned in the Award. It is pertinent to mention that pendente lite and future interest up to the date of payment was on the same awarded sum. The learned Arbitrator nowhere directed that interest would be payable on the pre-suit and pendente lite interest that had accrued till the date of Award.

9. The learned Single Judge while disposing of Judgment Debtor-DDA's objection petition only varied the rate of interest. While learned Single Judge directed that for pre-suit and pendente lite period interest would be payable at the rate of 12% simple interest per annum, he directed that simple interest at the rate of 9% per annum would be payable for future period i.e. post award. In my opinion, learned Single Judge nowhere directed that interest would be payable on decretal amount inclusive of interest for pre-reference, pendente lite and post-award period.

10. Learned Single Judge also nowhere stated that in case the Judgment Debtor-DDA did not pay the decretal amount within sixty days, the Judgment Debtor would have to pay future interest on the decretal amount inclusive of interest amount that had accrued till date. In my view, had the learned Single Judge granted interest on interest, he would have either specifically stipulated so or would have used the expression 'compound interest'. Moreover, as stated hereinabove, learned Single Judge only varied the rate of interest as awarded by the Arbitrator on the different amounts awarded for different stages.

11. Decree holder's reliance upon *Oil & Natural Gas Commission's* case (Supra) is misplaced in the present case as in the said matter, interest claims were major heads of claim and the arbitrator had awarded interest on the sum awarded which included the principal claims of interest as compensation. This would be apparent from

paragraphs 1 and 2 of *Oil & Natural Gas Commission's case* (Supra),
which are reproduced hereinbelow:-

“ This appeal arises out of certain arbitration proceedings between the parties to this appeal resulting in an award made on February 29,1988. The Arbitrators by their award directed that the appellant shall pay to the respondent as follows :

“(i) US \$ 1004.50 being interest on US \$ 40, 102.97 at 12% p.a. from 10.12.1985 to 16.4.1986.

(ii) US \$ 59, 583 being interest on US \$ 3,12,011.00 at 12% p.a. from 3.5.1983 to 5.11.1984.

2. On these two items of claim the Arbitrators also awarded interest at 12% per annum from the date of award till realisation. The award so made by the Arbitrators was filed into the Court. Objections filed thereto stood dismissed and decree was passed in terms of the award. Against that order made by the learned Single Judge in his original jurisdiction an appeal was carried to a division bench which also dismissed. Hence this appeal.”

12. In fact, a Constitution Bench of the Supreme Court in the case of *Central Bank of India Vs. Ravindra and Ors.* reported of (2002) 1 SCC 367 held that 1956 amendment in Section 34 of Code of Civil Procedure was intended to deprive the Court of its power to award interest on interest, that means, interest on the interest adjudged. The relevant portion of the said judgment reads as under :-

“45. The 1956 amendment serves a twofold purpose. Firstly, it prevents award of interest on the amount of interest so adjudged on the date of suit. Secondly, it brings the last clause of Section 34, by narrowing down its ambit, in conformity with the scope of the first clause insofar as the expression "the principal sum adjudged" occurring in the first part of Section 34 is concerned which has been left untouched by amendment. The meaning to be assigned to this expression in the first part remains the same as it was even before the amendment. However, in the third part of section 34 the words used were "on the aggregate

sum so adjudged". The judicial opinion prevalent then was (to wit, see Prabirendra Mohan Vs. Berhanpore Bank Ltd. AIR 1954 Cal 289) that 'aggregate sum' contemplated the aggregate of (i) the principal sum adjudged, (ii) the interest from the date of the suit to the date of decree, and (iii) the pre-suit interest. Future interest was capable of being awarded also on the amount of pre-suit interest - adjudged as such, that is, away from such interest as was adjudged as principal sum having amalgamated into it by virtue of capitalisation. The amendment is intended to deprive the court of its pre-amendment power to award interest on interest i.e. interest on interest adjudged as such. The amendment cannot be read as intending, expressly or by necessary implication, to deprive the court of its power to award future interest on the amount of the principal sum adjudged, the sense in which the expression was understood, also judicially expounded even before 1955; the expression having been left untouched by the 1956 amendment."

13. Consequently, in my opinion, the amount payable under the Award and decree passed by this Court is as under :-

Sl. No.	Description	Amount (in Rs.)
1.	Principal amount Less B.G. Net amount	18,45,957.52 1,00,000.00 17,45,957.52
2.	Pre-suit interest @ 12 % p.a. on Rs. 18,45,957.52 w.e.f. 22.12.1991 to 10.5.1993 (505 days)	3,06,479.52
3.	Pendente lite @ 12 % p.a. on Rs. 18,45,957.52 w.e.f. 11.5.93 to 4.1.06 (4623 days)	28,05,653.13
4.	Future interest @ 9 % p.a. on Rs. 18,45,957.52 w.e.f. 5.1.06 to 17.11.06 (313 days)	1,42,467.46
5.	Total amount payable (1+2+3+4)	50,00,557.63
6.	Amount released by way of getting attachment orders to decree holder	63,09,537.60
7.	Amount excess received by decree holder (6 - 5)	13,08,979.97

14. Accordingly, the decree holder is directed to refund the amount of Rs. 13,08,979.97 to judgment debtor-DDA.

15. Learned counsel for judgment debtor-DDA prayed that interest should be awarded on the excess amount paid to the judgment debtor. In my opinion, since the excess amount had been retained by the decree holder and as the said amount has been recovered by way of an attachment order, the decree holder must refund the said amount of Rs. 13,08,979.97 with simple interest at the rate of 9% per annum to judgment debtor-DDA from 17th November, 2006 till the date of payment. Ordered accordingly. I may mention that while awarding 9% p.a. simple interest I have taken into account the lowest rate of interest awarded by this Court for different periods of time to the decree holder. With the aforesaid directions, present application stands disposed of.

MANMOHAN,J

OCTOBER 27, 2009

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