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

+ EX.F.A. NO.27/2012

BHARAT LAL

..... Appellant

versus

MCD & ORS.

..... Respondents

Date of Decision: 12th December, 2012

Advocates who appeared in this case:

For the Appellant : Mr. Sanjay Bansal, Advocate.

For the Respondent : Mr. Himanshu Upadhyay, Advocate with
Mr. K. Kanan, Executive Engineer, MCD.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.(Oral)

Ex.FA No.27/2012

1. This appeal has been moved by the decree holder, Sh. Bharat Lal, under Order XXI Rule 58 of the CPC impugning the order passed by the court below on 7th April, 2012 while disposing off his Execution Petition by holding that the Judgment Debtor; who is arrayed as the respondent before this Court; had already paid the decretal amount to the Decree Holder/appellant as per the Award dated 26th November, 2009, which had been further modified in favour of the Decree Holder by this Court in OMP No.153/2010.

2. The appellant had been awarded a contract on 5th February, 1992 by the respondent for the construction of a pakka School Building at Madhu Vihar, West Zone, New Delhi. The contract, which was in the form of the Work Order, envisaged completion within one year. Pursuant to the issuance of the said Work Order, the requisite formal Agreement was also executed between the parties.

3. The appellant/Decree Holder had brought his claim, inter alia, on the ground that the completion of the work was inordinately delayed due to various lapses on the part of the respondent/MCD, which had resulted in huge losses to him. He had, inter alia, claimed that he was entitled to a sum of Rs.8,44,732.00 towards escalation of input costs under Clause 10 CC of the aforesaid Agreement between the parties.

4. After examining the calculations, the Arbitrator concluded that, in terms of Clause 10 CC of the Contract, the amount payable to the appellant comes to Rs.8,53,428.37. He, however, decided to restrict the amount payable to the appellant in terms of his claim to 50% of the amount which he had himself calculated as due. In addition, he also directed that an amount of Rs.8,696.25, which had already been paid to the appellant under the same Clause 10 CC, be also deducted. In this fashion, the Arbitrator concluded that the claimant/appellant would be entitled to 50% of Rs.8,53,427.37, which comes to Rs.4,26,714.18 minus the Rs.8,696.25, which already stood paid. Based on this calculation, the Arbitrator concluded that the appellant was entitled to a net sum of Rs.4,18,017.14 towards this claim. In addition, the Arbitrator also decided that the

appellant was entitled to interest @ 12% per annum with effect from 30th July, 1998 till the date of the Award, i.e., 26th November, 2009.

5. The appellant/Decree Holder, who is also the claimant, filed objections under Section 34 of the Arbitration and Conciliation Act, 1996, only with respect to the rejection of his claim for the remaining 50% of the amount claimed by him under Claim No.5 in terms of the aforesaid escalation Clause 10 CC, on the ground that, in fact, although the learned Arbitrator himself had found that Rs.8,53,428.37 are due to the appellant under Clause 10 CC of the Agreement between the parties; and yet, inexplicably, restricted the amount payable to the appellant by the respondent/MCD to 50% thereof.

6. That petition under Section 34 of the Arbitration and Conciliation Act, 1996, was examined by this Court in OMP No.153/2010 and, ultimately, the Award was modified by this Court on 25th February, 2011 by concluding that after adjusting the admitted amount of Rs.8,696.25 already received by the appellant/claimant, the net amount payable to the appellant under Claim No.5 comes to Rs.8,44,732.12. The respondent's appeal against this decision was dismissed by the Division Bench of this Court in FAO (OS) No.232/2011 on 17th August, 2011. After the dismissal of the FAO (OS) No.232/2011 by the Division Bench; the respondent MCD, who is the Judgement Debtor, has also paid the remaining 50% amounting to Rs.4,26,714.18 that was found due to the appellant/Decree Holder by the Single Judge in OMP No.153/2010.

7. The only question that now remains is whether the Award, as

modified by this Court in OMP No.153/2010, also envisages payment of any interest on the aforesaid amount of Rs.4,26,714.18 found due and also paid by the respondent/Judgment Debtor to the appellant/Decree Holder. If so, from what date, and at what rate.

8. The appellant contends that after the modification of the Award by the learned Single Judge on 25th February, 2011 in OMP No.153/2010 to the extent that the net amount payable under Claim No.5 is Rs.8,44,732.12, or in other words, a further amount of Rs.4,26,714.98 is due; even this balance amount ought to have attracted the same rate of interest for the same period which was awarded by the Arbitrator in the original Award. This is predicated on the assumption that what was found to be erroneous by this Court in OMP No.153/2010 was only the conclusion of the Arbitrator regarding the amount due under Clause 10 CC of the Contract between the parties, and no dispute with regard to the rate of interest awarded was raised by any party.

9. Admittedly, clause 10 CC of the Contract between the parties pertains to the liability of the respondent/employer to pay additional amounts to which the contractor may be entitled towards escalation of the cost of material and labour etc. during the pendency of the contract. Admittedly also, the scope of the objection filed by the appellant before this Court in OMP No.153/2010 was confined to the quantum of escalation claimed by the appellant and that awarded by the Arbitrator. The rate of interest, and the period for which it was found payable, by the respondent to the appellant, was never in dispute; nor was any objection raised to the same

even by the respondent. It is noteworthy that the Arbitrator had directed interest to be paid @ 12% per annum with effect from 30th July, 1998 till the date of the Award, i.e., 26th November, 2009. Admittedly, no post Award interest was awarded by the Arbitrator.

10. By the decision of the Single Judge in the OMP No.153/2010, the amount payable towards escalation as awarded by the Arbitrator stands modified from Rs.4,18,017.14 to include a further amount of Rs.4,26,714/-. It is in this manner that the said Award of the Arbitrator stands modified and the figure of Rs.4,18,018/- stands substituted by the figure of Rs.8,44,732/- (Rs.4,18,018/- + Rs.4,26,714/-). The rest of the Award remains the same. In other words, the appellant is entitled to the interest @ 12% per annum on the entire amount of Rs.8,44,732/- from 30th July, 1998 till the date of the Award, which is 26th November, 2009. To this extent, there appears to be no dispute between the parties.

However, in respect of all unpaid amounts, the respondent has chosen to pay to the appellant interest from 27th November, 2009, i.e. after the date of the award which was pronounced on 26.11.2009; till the date of the disposal of OMP No.153/2010 by the learned Single Judge of this Court on 25th February, 2011, at the rate of 12 % per annum.

11. Keeping in view the stand of the respondent at the Bar conceding that, with effect from 26th February, 2011, i.e. after the date OMP No. 153/2010 was decided by this Court, to 16th August, 2011, the appellant would be entitled to interest @ 18% per annum in terms of Section 31 (7) (b) of the Arbitration and Conciliation Act, 1996; the dispute before this

Court is confined only to the rate of interest payable by the respondent to the appellant on the outstanding amounts from the date of the Award to the date of the order passed by the Single Judge in OMP No.153/2010, which is 25th February, 2011.

12. In substance, the question that is being posited is whether this period from the date of the Award to the date of decision of the objections in OMP No. 153/2010 should be treated as a pre-award period as contended by the respondent or as a post award period as urged by the appellant. This has become crucial because in this case, while the Award grants interest @ 12% p.a. upto the date of the award, it is completely silent with regard to post Award interest, i.e. interest from the date of the Award to the date payment is made in terms of the Award by the respondent. Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, which also governs the question of post award interest, states as follows:

“31(7)(b) – A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.”

Section 31(7)(b) thus makes it obvious that in all cases, the sums directed to be paid by an arbitral award shall carry an interest @ 18% per annum from the date of the award to the date of the payment, except where the award itself directs otherwise.

13. In this case, admittedly, there is no direction under the Award for any interest at all to be paid from the date of the Award till the date of

payment. Further, the respondent appears to be misdirected into thinking that the modification in the Award carried out by the learned Single Judge in OMP No.153/2010 does not become part of the, “sum directed to be paid by an arbitral award”, and therefore, the provisions of Section 31 (7)(b) of the Arbitration and Conciliation Act, 1996 would not apply. I do not agree. What has been done by this Court under objections moved by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 was to modify the Award itself. In other words, the directions for payment of the modified sum remained the mandate of the Award itself.

14. By pronouncing judgment on 25th February, 2011 in OMP No.153/2010, the learned Single Judge was not pronouncing any fresh award, he was merely modifying the Award already in existence. If he was not pronouncing any award, the date of the Award could not change. It would remain 26th November, 2009. To my mind, the stand of the respondent to the contrary does not have much force, also for the reason that the determination by the learned Single Judge is quite like determination of any court with regard to any amount found due and payable by one party to the other. In all such cases, the date when that amount was due and payable is also determined; and interest is awarded retrospectively either from the date from which the amount was due and payable, or from the date when the claim was filed; and not merely prospectively after the finding has been arrived at, unless it is so specifically ordered. In this case, finding of the learned Single Judge is silent on that aspect. Consequently, one can only conclude that the additional sum found due by the Single Judge also became payable from the same date, and on the same terms regarding interest etc.,

as the sum originally declared as due and payable by the arbitrator.

15. For example, if a suit is decreed by a trial court for Rs.100/- along with interest @ 7% per annum payable from the date of the institution of the suit till the date of decree, and thereafter @ 10% per annum from the date of decree till realization of the payment; and on appeal by the Decree Holder, the decree stands modified only to the extent that the principal amount found due by the court below is changed, let us say, from Rs.100/- to Rs.200/-; in such a case obviously the rate of interest payable on the enhanced amount of the decree would remain 7% per annum from the date of filing of the suit till the decision thereof by the first court; and for the entire period, after the decision of the first court till the ultimate realization of the entire decretal amount, as modified in appeal, would carry higher interest of 10% per annum. The fact that the appellate court thought fit to enhance the principal amount decreed by the first court at a later point of time, would have no effect on the terms relating to payment of interest on that amount, either with respect to the points in time when it became payable in terms of the decree of the first court, or with respect to the rate thereof, unless these questions are also specifically addressed by the appellate court.

16. To elucidate further, even the respondents concede that the additional amount found due to the claimant by the court in OMP 153/2010 would carry interest @ 12% p.a. The only thing being that according to them, this is payable not upto the date of the award; but upto the date of the judgment in the said OMP 153/2010. In other words, the respondents

consider this period to be part of the pre-award period. This is unacceptable because interest at the rate of 12% p.a. is awarded upto the, “date of the Award”, and not upto the date the amount is found due. The date of the award does not change by the decision of OMP 153/2010 which only finds a further amount due.

17. In this case, therefore, the Award in question, when read with Section 31 (7) (b) of the Arbitration and Conciliation Act, 1996, makes it clear that interest has to be paid @ 12% per annum with effect from 30th July, 1998 till 26th November, 2009, which was the date of the Award, and thereafter, since no post Award interest has been awarded to the contrary, the rate of 18% per annum, envisaged under Section 31(7)(b), gets attracted. In other words, the modification of the Award in OMP No.153/2010 would have had no effect on the rate of interest, or the dates from which it is payable, on the amount found due under claim No. 5.

18. It follows, therefore, that the amount enhanced by the Single Judge in OMP No.153/2010 would also carry interest @ 12% per annum up to 26th November, 2009 when the Award was given; and @ 18% per annum thereafter.

19. Since the respondents themselves have taken the view that they are liable to pay interest @ 18% per annum from 26th February, 2011 onwards till the date of actual payment; it only remains to be clarified that even for the period from 26th November, 2009 to 25th February, 2011, the rate of interest payable by the respondent would be 18% per annum by the respondent.

20. Calculated in this manner, both sides admit that an amount of Rs.9,04,723/- is due and payable to the appellant.

21. Counsel for the appellant, on instructions, states that if the amount of Rs.9,04,723/- is paid to his client within 10 days from today, his client shall treat the decree as fully satisfied.

22. Mr. K. Kanan, Executive Engineer, MCD, who is present in court, and is identified by his counsel, undertakes to this Court that the said amount shall be paid to the appellant within 10 days from today.

23. In this view of the matter, the appeal stands disposed off.

24. Dasti.

SUDERSHAN KUMAR MISRA, J.

DECEMBER 12, 2012

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