

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 12269 of 2022

Petitioner :- Union Of India And 2 Others

Respondent :- M/S Vikash Electricals

Counsel for Petitioner :- Ajay Singh

Counsel for Respondent :- Vinay Kumar Pandey

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Ajay Singh, learned counsel for the petitioner and Sri Vinay Kumar Pandey learned counsel for the sole respondent.

This writ petition has been filed under Article 227 of the Constitution of India assailing the order dated 21.11.2022 passed by Commercial Court, Jhansi in Execution Case No.8 of 2014.

In the earlier round of litigation the opposite party had approached this Court through Matter under Article 227 No.8203 of 2022 which was disposed of on 14.11.2022 as both the parties had agreed to honour the award made by the arbitrator. In the aforesaid matter following order was passed:

"Heard Sri V.K. Pandey, learned counsel for the petitioner and Sri Ajay Singh, learned counsel for the respondents.

On 29.09.2022 following order was passed by this Court;

"1. Heard Sri Vinay Kumar Pandey, learned counsel for the petitioner and Sri Ajay Singh learned counsel for the opposite party.

2. This is a case where the petitioner had filed arbitration claim and the matter was referred to the Arbitrator in the year 2008. An award was made by the Arbitrator on 7th July, 2008. Against the award, an objection under Section 34 was preferred by the respondent before the District Judge being Misc. Case No.73 of 2008. The objections were dismissed on 05.07.2014. A recall application under Order 9 Rule 9 C.P.C. was moved which was dismissed on 12.3.2021. In the meantime the claimant -petitioner had moved an execution case No.8 of 2014. The Execution Court on 26.8.2022 while deciding the objection 29C, held that the petitioner was only entitled to simple interest at the rate of 16% per annum and not compound interest.

3. Learned counsel for the petitioner contended that the award categorically provides that in case the respondents failed to deposit the amount awarded to the claimant within 30 days, the future interest on the

entire awarded amount shall be paid at the rate of 16% per annum from the date of award to the date of payment.

4. Prima facie the petitioner has made out a case.

5. Learned counsel for the respondent prays for and is granted a week's time to seek instructions in the matter.

6. Put up this case as fresh on 14th October, 2022."

Today Sri Ajay Kumar Singh, learned counsel for the respondents, has placed before the Court the instructions, so received by him, which is taken on record. Sri Singh states that his client is ready to pay the amount of interest at the rate of 16% awarded by the Arbitrator to the petitioner and in case the calculation sheet of the amount to be paid to the petitioner is placed before the executing court, the respondents shall deposit the said amount within three weeks from the date of submission of calculation sheet submitted by the petitioner.

Learned counsel for the petitioner does not dispute the fact that the award was made by the Arbitrator awarding 16% of the interest to be paid to the petitioner on the delayed payment as well as interest at the rate of 16% w.e.f. 18.01.2000 till the date of award and, thereafter, 16% interest per annum from the date of award till the date of payment.

As learned counsel for both the parties had agreed to the fact that award has to be honoured and payment has to be made according to the Arbitrator's award, which is not disputed by either of the parties, petitioner is directed to furnish a calculation sheet of the amount of interest to be paid within a period of one week before the executing court, the executing court, thereafter, shall pass necessary orders directing the respondents to pay the amount of interest within three weeks.

In view of above, writ petition stands disposed off."

It transpires that a calculation sheet was submitted by the respondent before the Executing Court bringing an amount to the tune of Rs.1,38,50,897.09. The Court below on 21.11.2022 proceeded with the matter and directed the petitioner to deposit the said amount and fixed 12.12.2022.

Learned counsel for the petitioner states that calculation made by the respondent is not correct and according to the petitioner, the amount comes to around Rs.25 lakhs. He further contends that an application has been filed by the petitioner before the Court concerned.

This Court, after hearing learned counsel for the parties, finds that arbitrator has already given an award which has been put to execution by the respondent. The matter is subjudice before the Executing Court who has to take final call after considering the calculation submitted by the respective parties.

The present writ petition, assailing the interlocutory order dated 21.11.2022 whereby direction was issued requiring the petitioner to deposit the amount, needs no interference by this Court exercising jurisdiction under Article 227 of the Constitution of India.

The writ petition fails and is hereby dismissed.

Interim order, if any, stands vacated.

Order Date :- 24.11.2023

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