

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.1068 of 2012.
Decided on:-February 11, 2015.

Smt. Janak Dulari and othersPetitioners.

Versus

Raja Ram and anotherRespondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Vikas Bahl, Senior Advocate with
Mr. N.K. Vadehra, Advocate
for the petitioners.

Mr. Gurcharan Dass, Advocate
for respondent No.1.

Dr. Bharat Bhushan Parsoon, J.

Order dated 5.1.2012 passed by the Executing Court vide which objection petition filed on behalf of objectors Banarsi Dass, Dharam Pal, Smt. Janak Dulari and M/s Punjab Rice and General Mills, G.T. Road, Jagraon through Raja Ram, was dismissed, is under challenge in this revision petition.

2. For the disposal of the objection petition, following issues were framed by the Executing Court vide order dated 13.3.2003:

- (1) Whether the decree holder is entitled to recover interest as alleged? OP Decree-holder

(2) Whether this Court has no jurisdiction to try the present execution petition?

(3) Relief.

3. After receiving oral as well as documentary evidence, all these issues were decided by the Executing Court against the objectors and in favour of the decree-holder.

4. Award dated 23.2.1998 relating to dissolution and rendition of accounts of partnership firm M/s Punjab Rice and General Mills, G.T. Road, Jagraon, is under execution. The Arbitration Award (Annexure P-2) concedingly had its genesis in agreement dated 23.1.1998 (Annexure P-1). Admittedly, Banarasi Dass (now deceased and being represented by his LRs i.e. petitioners No.1 to 3), Dharam Pal and Smt. Janak Dulari, were held liable to make a payment of Rs.36,75,000/- to respondent Raja Ram alongwith interest @ 18% per annum in four equal installments within a period of six months from the date of pronouncement of the Award.

5. Claim of the petitioners-objectors is that the Executing Court has completely misread and mis-interpreted the facts as also the Award and has wrongly dismissed the objection petition. It is also claimed that the decree-holder was entitled to interest @ 18% per annum on the amount of the Award up to the date of filing of execution application which payment was deposited by the petitioners-objectors prior to filing of the execution application and thus, no interest was payable thereafter. It is claimed that when the decree-holder himself is responsible for delaying the proceedings, no interest is payable to him.

6. It is urged that when the Arbitrator has not allowed interest, the Executing Court cannot go behind the Award being executed as a decree and

thus, cannot grant post Award interest. Support has been sought from ***Coal Linker Versus Coal India Limited 2009(4) RCR (Civil) 372 (SC); The Haryana Sugar and General Mills Production Co-operative Industrial Society Limited, Mohra Versus Registrar, Co-operative Societies, Haryana 1990(2) RRR 28 (P&H); Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh Versus Mehma Singh 2014(2) PLR 201 (P&H)*** and ***Fiza Developers and Inter-Trade P. Ltd. Versus AMCI(I) Pvt. Ltd. and another 2009(4) RCR(Civil) 288 (SC)***. It is further urged that the Executing Court cannot settle the terms by going beyond and away from the Award while executing the same. Reference in this regard has been made to ***National Aluminium Co. Ltd. Versus M/s Pressteel & Fabrications Pvt. Ltd. & another 2004(1) RCR (Civil) 511 (SC)*** and ***Greater Cochin Development Authority Veersus Leelamma Valson 2002(2) RCR (Civil) 130 (SC)***. In short, it is claimed that when future interest was not allowed by the Arbitrator and, in fact, is not part of the Award, the same could not have been granted by the Executing Court as has been done in the impugned order while dismissing the objection petition of the petitioners.

7. Counsel for the respondent/decreed-holder, on the other hand, has urged that it is clear from the Award that interest @ 18% per annum from the date of Award was payable by the petitioner-objectors and they were to pay a sum of Rs.36,75,000/- within six months in four equal installments. It is claimed that when payment has not been made within the stipulated time, interest allowed by the Arbitrator is payable by the objectors-JDs and they cannot escape their liability therefrom.

8. Hearing has been provided to the counsel for the parties.

9. From perusal of the paper book as also the impugned order while considering the attending facts and circumstances, it clearly emerges

that the objectors had defaulted in making the payment in terms of the Award. Relevant portion of the Award is reproduced as below:

“2. That all the fixed assets and other assets including stocks and liabilities of the firm, have been given and allotted to Banarsi Dass, Dharam Pal and Janak Dulari as per ratio of their profits in the said firm. Shri Banarsi Dass, Dharam Pal and Janak Dulari, will jointly pay a sum of Rs.36,75,000/- (Rupees Thirty Six lacs and seventy five thousand only) to Raja Ram alongwith interest @ 18% per annum in four equal installments within the period of six months from the date of pronouncement of this award, towards the share of Raja Ram in fixed assets, and his capital. Banarsi Dass, Dharam Pal and Janak Dulari, shall be entitled to run the business of the said firm in any manner they like.”

10. This Award is of 23.2.1988. The payment was to be made by the Objectors-JDs in four equal installments within the period of six months from the date of pronouncement of the Award. It is a conceded fact that payment in tune with the terms and conditions of the Award had not been made by the Objectors resulting in filing of execution petition by the Awardee/decreree-holder. It also transpires that the parties had many rounds of litigation even in this Court.

11. Concedingly, first installments was payable on 7.4.1998. This first payment was of Rs.9,18,750/- plus interest @ 18% per annum. It has clearly emerged that the JDs had committed default in payment of the first installment itself in terms of the Award. When default was made and the objectors had not adhered to the terms and conditions of the Award, they were liable to make the payments with interest. It is clear from order dated 7.5.2001 (Ex.A4) of this Court that the objectors were directed to bring with them a draft of Rs.36,75,000/- alongwith interest @ 18% per annum as was determined in the Award dated 23.2.1998 but even this order was not complied with by the objectors.

11. Counsel for the revisionist-petitioner has urged that Rs.20 lacs were deposited by the JDs in the form of FDR issued on 23.3.2002 but it is a conceded fact that even this amount was not allowed to be withdrawn by decree-holder Raja Ram. When the continuous default in compliance of terms and conditions of the Award was made by the objectors, the decree holder claimed principal amount of Rs.36,75,000/- alongwith interest @ 24% per annum from the date of the Award till the payment.

12. Main contention of the decree-holder is that the rate of interest was fixed as 18% per annum by the arbitrators in the Award and if the payment has not been made in due time, the decree-holders are entitled to enhanced interest @ 24% per annum. It is contended that in no manner, the JDs are justified in withholding this amount while using the same for themselves depriving the decree-holder of user of the amount. Conduct of the JDs was adversely commented by the Executing Court. Relevant observations of the Executing Court in para 17 of the impugned order dated 5.1.2012 are reproduced as below:

“In this regard, Hon'ble High Court has kindly passed order dated 7.5.2001 directing the judgment-debtors for bringing payment of Rs.36,75,000/- whole of the award money, but again objectors/JDs have failed to take whole of the award money in the Hon'ble High Court. As such the matter could not be settled in Hon'ble High Court. Later on judgment-debtors under the order of Hon'ble High Court have deposited Rs.20,00,000/- but that was not full and final payment. Till that time, decree-holder has already challenged award by filing petition under Section 34 of the Arbitration and Conciliation Act, 1996. Perhaps that was the reasons that decree holder has not accepted the money of Rs.20,00,000/- in the Hon'ble High Court. Thereafter that money was deposited in FDR with the Registrar, Punjab & Haryana High Court, Chandigarh. So objectors/JDs have made default on each and every step in making the payment.

x

x

x

“Rather in this case objectors/JDs themselves have made the default and in any point of time, they did not offer the whole money with interest. Rather at later stage in 2003, they have paid Rs.16,13,909/-. By going through the terms and conditions of Award Ex.A5, it is clear that scope of passing such award was to make payment of Rs.36,75,000/- within six months in four equal installments, i.e. every 1-1/2 months from the date of award which was passed on 23.2.1998; so whole of the payment has to be made upto 23.8.1998. Even arbitrator in the award dated 23.2.1998 has fixed rate of interest @ 18% per annum on this amount.”

13. Appreciating the entire evidence brought on record by the objector as also by the decree-holder and considering the attending facts and circumstances as also orders passed by this Court from time to time in collateral matters, the learned lower court has come to a firm finding in the impugned order dated 5.1.2012, the relevant part of which is reproduced as under:

“So as per settled law as discussed above, decree holder is entitled for interest @ 18% per annum on the amount of Award i.e. Rs.36,75,000/- upto the date of filing present execution application. The amount of Rs.20,00,000/- which has been deposited by the judgment-debtors in the Hon'ble High Court on 4.3.2002 has to be deducted and to be adjusted against the interest. Similarly, Rs.16,13,909/- which has been deposited by the judgment-debtors again during the pendency of petition under Section 34 of the Arbitration and Conciliation Act, 1996 has to be adjusted against further interest. As per pendente lite interest, this Court, hereby, consider that rate of interest as 18% per annum is on higher side and this Court, hereby grants pendente lite interest @ 12% per annum on the amount after deducting abovesaid amount which was due upto date on the date of filing the present execution application which was filed on 10.1.2003 and this Court, hereby, grants future interest @ 6% per annum on this amount which was due upto 10.1.2003 from today till actual realization of the final amount.”

14. Calculations submitted by the objectors were found to be correct. Once the Award has contemplated and fixed the interest @ 18% per annum and the payment has not been made within the stipulated time, rate of interest settled vide the Award is to be applicable till the payment is received by the decree-holder. The Executing Court, however, has been very considerate and pendente lite interest has not been allowed to be paid @18% per annum but @ 12% per annum and future interest has been allowed to be paid @ 6% per annum from the date of execution application i.e. 10.1.2003.

15. Sequelly, there is no factual or legal error in the impugned order dated 5.1.2012 passed by the Executing Court; affirming the same, this revision petition, being devoid of any merit, is dismissed.

February 11, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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