In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4976 of 2013
Date of Decision: 09.07.2015.

M/s A.G.Enterprises ......Petitioner

Versus

Punjab State and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.S.Rana, Advocate
for the petitioner.

Mr. P.S.Mattewal, Addl. A.G., Punjab.

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SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the orders dated 15.10.2007 (Annexure P-5) and 8.3.2013 (Annexure P-7) and award dated 5.4.1989 (Annexure P-2).

Learned counsel for the petitioner has submitted that the *ex parte* award had been passed by the Arbitrator. The Civil Court had erred in making the same a Rule of the Court. In fact, the respondents had failed to prepare the final bill. Petitioner was ready to pay the due amount to the respondents if they had prepared the final bill. Learned counsel has further submitted that the Arbitrator had not awarded any interest on the due principal amount. The Civil Judge had erred in granting interest at the rate of 9% per annum on the principal amount from the date of the award till its realization. Learned counsel has placed reliance on

Section 29 of the Arbitration Act, 1940 ('*Act*' for short). Learned counsel for the petitioner has further submitted that the future interest could have been awarded at the rate of 6% per annum and not at the rate of 9% per annum.

Learned State counsel, on the other hand, has submitted that a perusal of the award Annexure P-2 reveals that the same had been passed after hearing both the parties. In fact, the petitioner had failed to submit any counter claim. Consequently, the claim put-forth by the State had been rightly allowed by the Arbitrator. The Civil Judge had rightly allowed interest on the principal amount.

Parties had entered into a contract for installation of pipeline in the Government Hospital at Amritsar. The tender in this regard was executed by the petitioner. Since a dispute arose between the parties qua completion of work, petitioner filed a petition under Section 20 of the Act. Vide order dated 18.11.1988, the dispute was referred to the Arbitrator.

The Arbitrator vide its award dated 5.4.1989 passed the Award in favour of the respondents to the tune of ₹ 3,04,682/-. A perusal of the said award reveals that the same was passed after hearing both the parties and considering the evidence adduced by them. A perusal of the award further reveals that the respondents had put-forth claim for ₹ 4,04,780/- whereas the petitioner had not submitted any claim. The Arbitrator allowed the claim of the respondents to the tune of ₹ 3,04,682/-. Petitioner filed objections to the said award. Respondents filed their reply to the objections submitted by the petitioner. The Civil Judge vide order dated 15.10.2007 (Annexure P-5) made the award as Rule of the Court.

The Civil Judge held as under:-

> *"The award being not suffering from any illegality as per section 30 of Arbitration act, 1940 after declining objections raised by the applicant is hereby made Rule of the Court and the claim of the respondents by treating respondents as defendants for recovery of an amount of Rs. 304682/- is decreeable by pronouncing judgment in consonance of said award against the applicants by treating the applicants as plaintiffs as per Section 17 of the Arbitration Act, 1940 alongwith interest at the rate of 9% p.a. on the said principal amount as per Section 29 of Arbitration Act, 1940 in view of aforementioned brief discussion of history of the present case because the relief sought vide clause 3 by the respondent vide said main petition filed u/s 20 of the Arbitration Act was not decided vide order dated 18.11.1988. Now the said relief sought by the defendants in the said petition of making said award as Rule of the Court has been satisfied.*
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> *The said application registered as case no. 661/28.8.1987 by treating as suit of making award dated 5.4.1989 as a Rule of the Court is hereby decreed for recovery of an amount of Rs. 304682/- alongwith interest at the rate of 9% p.a. on the said principal amount from the date of award till realization of the same by defendants Punjab State from the plaintiff M/s A.G. Enterprises. Decree sheet be prepared. The file be consigned to the record room."*

Aggrieved against the said order, petitioner preferred an appeal. Appeal filed by the petitioner was dismissed vide order dated 8.3.2013 (Annexure P-7). Hence, the present petition by the petitioner.

The argument raised by learned counsel for the petitioner that the award passed by the Arbitrator was an *ex parte* award, is without any basis as a perusal of the award Annexure P-2 reveals that the same had been passed after hearing both the parties. The petitioner had failed to put up any claim before the Arbitrator. The Arbitrator after going through the evidence on record, had allowed the claim of the respondents to the tune of ₹ 3,04,682/-, although, the respondents had put-forth the claim for ₹ 4,04,780/-. In these circumstances, the argument put-forth by the learned counsel for the petitioner that the petitioner was ready to pay the due amount after final bill was prepared by the respondents, is without any basis. The award passed by the Arbitrator can be set aside in case the Arbitrator has misconducted or it has been improperly procured or is otherwise invalid or it has been made after issue of an order by the Court superseding the arbitration. In the present case, there is nothing on record to suggest that the Arbitrator had misconducted or that the award had been improperly procured or was otherwise invalid. The matter was referred to the Arbitrator by the Civil Court and the Arbitrator has passed the award after hearing both the parties.

The next question that requires consideration is as to whether the petitioner is liable to pay the interest on the principal amount or not and whether the same was liable to be paid by the petitioner from the date of the award or from the date of the decree and at what rate the petitioner was liable to pay the interest.

Section 29 of the Act reads as under:-

> ***Interest on awards*** -- *Where and in so far is an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.*

Thus, as per the above provision, the Court can grant interest on the principal amount as adjudged by the award and confirmed by the decree from the date of decree.

Although, the Arbitrator had not granted interest on the principal amount but the Court could have granted the interest in terms of Section 29 of the Act. However, the learned Civil Judge fell in error while allowing the interest from the date of the award till its realization. As per Section 29 of the Act, the Civil Judge could have granted interest on the principal amount from the date of the decree. Accordingly, it is held that the petitioner would be liable to pay interest on the principal amount from the date of decree i.e. 15.10.2007 till its realization by the respondents.

The next question that requires consideration is as to at what rate the petitioner is liable to pay the interest. The learned Civil Judge has allowed interest at the rate of 9% per annum. As per Section 34 of the Code of Civil Procedure, 1908, future interest can be awarded by the Court at a rate not exceeding 6% per annum on the principal sum from the date of the decree till its realization. The said rate of interest can exceed 6% per annum where the liability has arisen out of a commercial transaction.

However, there is no material on record to suggest that in the present case, the rate of interest could have been awarded beyond 6%. per annum. In these circumstances, it is held that the petitioner is liable to pay the principal amount along with interest from the date of the decree till its realization at the rate of 6% per annum instead of 9% per annum.

Petition stands disposed of accordingly.

(SABINA)
JUDGE

July 09, 2015
Gurpreet