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

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DECIDED ON: 24.01.2013

+ **FAO (OS) 600/2009, CM APPL.1005/2013**

M/S SUKUMAR CHAND JAIN Appellant
Through: Mr. Sandeep Sharma with
Mr. Vikas Sharma, Advocates.

versus

ATTAM VALLABH COOPERATIVE GROUP
HOUSING Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

CM APPL.1005/2013 (for early hearing)

In view of the averments made in the application, the same is allowed and the matter is taken up for final disposal today itself.

FAO (OS) 600/2009

1. The respondent, despite repeated attempts, did not appear. This Court permitted service of notice by publication, and thereafter admitted the appeal on 9.2.2011. That day, the respondent was set down *ex parte*.

2. The appellant had objected to an Award dated 17.02.2009 under Sections 30/33 (of the now repealed) the Arbitration Act, 1940. Though, its objections were upheld, it claims to be aggrieved insofar as the impugned judgment has reduced the rate of interest. The appellant is also aggrieved by the fact that the learned Single Judge erroneously failed to modify the Award whereby the Arbitrator erroneously confined the Award of interest to only two years while calculating the actual amount payable.

3. The brief facts necessary for deciding this appeal are that the appellant (hereinafter referred to as claimant) was awarded a contract for carrying out some works - which constitutes balance work for construction - of 233 flats at plot no.14, Sector 17, Rohini, Delhi vide letter dated 4.12.1987. The agreement between the parties was executed on 4.12.1987. The work stipulated had to be completed within 30 months, i.e., by 30.06.1990. The works, however, got delayed and eventually it was completed in August, 1992. The appellant made a claim in terms of the contract which enables the parties to have their disputes settled through arbitration, arguing that the delay, *inter alia*, resulted in extra works and also escalation of the costs. The claimant also sought interest on delayed payments. The respondent/society contested the proceedings. Ultimately, the claim was rejected by the Arbitrator Mr. G.S.N. Goel on 20.12.1992. The Award rejecting the claim was, however, non-speaking one.

4. The claimant felt aggrieved had approached this Court by filing objections to that Award dated 20.12.1992 under Section 30/32 being CS-2197A/95; these were pending for quite some time and ultimately allowed by an order dated 4.5.2005. The Court remitted the matter to the

learned Arbitrator to decide the disputes in terms of arbitration agreement and in accordance with law. After the remission, the said Arbitrator Mr. G.S.N. Goel had expired. Consequently, parties had to approach this Court yet again for appointment of new Arbitrator. This was done by an order dated 13.12.2005 in IA 3917/2005 in CS (OS) 2197A/1995. The new Arbitrator was Mr. Prem Kumar (retired ADJ).

5. The Arbitrator proceeded to hear the dispute and consider the submissions of the parties, after they completed the pleadings, and led the evidence. By Award dated 17.02.2009, the Arbitrator awarded the sum of ₹50,92,158.80 in respect of six claims preferred by the appellant here. This included a sum of ₹9,64,288.80 towards interest. The claimant had sought 18% interest. The Arbitrator, however, allowed it as 12% per annum on the ground that the same was the contractual rate agreed by the parties. The claimant preferred objections against the Award, *inter alia*, complaining against the rate of interest; and also the fact that in the Award the interest was confined for a period of two years on the principal amount, i.e., ₹14,17,870/-. The objector/claimant had relied upon the circumstance that in the substantive portion of the Award while dealing with Issue no.8, the Arbitrator held that the claimant would be entitled to interest @ 12% “from the date when it is due till payment of the amount due”. It was argued that the due date being the expiry of six months from the date on which the final bill was submitted, i.e., 20.08.1992. This in turn meant that the due date was 19.02.1993, in terms of Clause 16 (c) of the special terms and conditions governing the contract.

6. Learned Single Judge disposed off the objections. In principle, he upheld the Award; however, he reduced the rate of interest from 12% to 9%

per annum from the date of the reference (i.e.4.3.2005) till date of payment.

The relevant part of the impugned order reads as follows: -

“21. Accordingly keeping in view the prevalent rates of interest, I deem it appropriate to reduce the rate from 12% per annum to 9% per annum simple interest from the date the reference was made to the Arbitrator by this Court vide order dated 4th March, 2005 upto the date of payment. It is made clear that in case the aforesaid payment is not paid by the Cooperative Society within a period of 90 days from today, the post-decretal rate of interest would stand increased to 11% simple interest per annum.”

7. The appellant argues through his counsel that the reduction of interest to 9% is contrary to the terms of the agreement, which clearly stipulated the payment of 12% interest on the amounts due. He also argues that once the Arbitrator held - in relation to Issue no.8 - that the interest was payable from the due date which in fact was 19.02.1993; the assumption that interest was payable only for two years while working out the amount due in a later paragraph of the same award, was an obvious error appearing on the face of the record and ought to have been rectified by the learned Single Judge. Counsel argued that unfortunately the impugned judgment - in paragraph 19 - proceeded on the assumption that the Award was unexceptionable on this aspect.

8. This Court has considered the submissions of the appellant and also considered the Award. The relevant part of the Award which deals with interest is Issue no.8, the said discussion in the Award is as follows: -

“ISSUE NO.8

Claimant has asked for interest from the respondent at the rate of 18% per annum from the date of certification till the date of

payment. I do not think that for the outstanding amount payable to the claimant the interest should be awarded at the rate of 18% per annum. In fact, the agreement between the parties provides that the rate of interest shall be 12% p.a. (simple) I therefore hold that the claimant would be entitled to interest at the rate of 12% per annum from the date when it is due till payment of the amount due.”

9. In paragraph 28, the Arbitrator noticed that the final bill had been submitted and was passed for payment by the Architect on 20.11.1992. The reference to the date of the final bill is found in paragraph 7 of the Award as follows: -

“It is also stated that the claimant had forwarded the final bill dated 22.7.1992.....”

In this background, even while awarding interest @ 12% from the “ due date”; which under the contract was 6 months from the date of the final bill; the Arbitrator proceeded to restrict the amount while quantifying it in the operative portion (the discussion of claim no.5) as follows: -

“CLAIM NO.5

As regards interest I have already held that the claimant is entitled to interest @ 12% p.a. The amount of pendente lite interest on the amount of Rs.40,17,870/-, i.e., aggregate of claim Nos. 1 to 5 @ 12% p.a. for two years comes to Rs.9,64,288.80/-.”

10. The juxtaposition of the findings in the Award on the one hand and the conclusive or operative portion - immediately extracted above - would reveal that even while granting the interest @ 12% from the due date, which works out to 19.02.1993, the Arbitrator fell into an obvious and patent error in confining the *pendente lite* interest claim to two years, while arriving at a

figure of Rs.9,64,288.80. The learned Single Judge, in our opinion appears to have over looked this aspect altogether, although, the claimant had objected to the Award precisely on this score. This is clear from reading of paragraph 18 of the impugned judgment.

11. Section 15 (b) of the Arbitration Act, 1940, empowers the Court to modify an Award if it contains “any obvious error which can be amended without affecting such decision”. The claimant’s grievance before the learned Single Judge, when it preferred its objections, was that the Arbitrator’s conclusions were inconsistent with the findings - the former had clearly found the claimant entitled to the Award of interest from the due date. In this case, the due date was 19.02.1993. The Award did not contain any reasoning much less a justifiable one, confining the Award of interest to two years. Therefore, the error, in the opinion of this Court, is an obvious one which does not in any manner alter the principle of decision underlining the Award or the merits thereof.

12. As far as the objection of the appellant with regard to the reduction of interest is concerned, even though, the respondent society appears to have objected to the rate of interest, the learned Single Judge appears to have overlooked the fact that the Arbitrator himself had rejected the claim for 18% and granted 12% on the ground that the latter was the contractual rate. Having regard to these circumstances, the reduction of interest, by reference to decided authorities was not justified under the circumstances.

13. In view of the above discussion, we are of the opinion that the appeal has to succeed. In the circumstances, the Award to the extent it grants ₹9,64,288.80 (Refer paragraph 44), being 12% interest for the two years period, shall hereby be substituted with the direction that interest payable on

the amount of ₹40,17,870/-, shall be calculated @ 12% from 19.02.1993 till the date of the Award, i.e., 17.02.2009. As far as the grant of 9% interest from the date of the Award till payment goes, the Court sees no reason to interfere with the same. The appeal succeeds to the above extent. The Award and decree flowing from them shall be modified accordingly. The impugned judgment is set aside to the above extent.

14. In the circumstances, there shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

JANUARY 24, 2013
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