

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.01.2015

+ **FAO(OS) 28/2015**

DDA

... Appellant

versus

M/S PARAGON CONSTRUCTION(INDIA)PVT LTD... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Anupam Sharma

For the Respondent : Mr Sandeep Sharma

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 926/2015

The delay of 4 days in filing the appeal is condoned.

This application stands disposed of.

CM 928/2015

Allowed subject to all just exceptions.

CAVEAT 67/2015

The learned counsel for the respondent/ caveator is present.

The caveat stands discharged.

FAO(OS) 28/2015 & CM 927/2015

1. The only point raised in this appeal with regard to the order dated 10.11.2014 passed in OMP 365/2010 pertains to the question of interest.

2. Earlier, an Award was made under the Arbitration Act, 1940 on 29.03.1986. That was set aside and the matter was remanded to the Arbitrator by virtue of an order of a Division Bench of this Court dated 03.11.2009 in FAO(OS) 695/2006. On that occasion, the Arbitrator had awarded an interest at the rate of 10% per annum. The same has been enhanced by the learned Single Judge to 12% per annum. However, the Award and the order passed by the learned Single Judge were set aside and the matter was remitted to the Arbitrator, as indicated above.

3. The learned Arbitrator, on the second round, awarded the interest at the rate of 12% per annum. The learned counsel for the appellant submits that the rate of interest should be 10% and not 12% inasmuch as the appellant had deposited the principal amount along with interest at the rate of 12% in April, 2007, when the matter was pending before the Division Bench.

4. The learned counsel for the appellant submits that since the amount had already been deposited in Court, the rate of interest should not be enhanced to 12% and the appropriate rate of interest should be 10% per annum.

5. The learned counsel for the respondent submitted that, although the principal amount, along with interest at the rate of 12%, was deposited in April, 2007 during the pendency of the matter before the Division Bench, the same was not allowed to be withdrawn by the respondent and, therefore, the respondent did not have the advantage of the said sum at any point of time.

6. We would like to point out the observations of the Supreme Court in the case of *P.S.L. Ramanathan Chettiar and Others v. O. Rm. P. Rm. Ramanathan Chettiar*: (1968) 3 SCR 367, wherein the Supreme Court observed as under:-

“12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.

13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of

his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.

14. The observations in Chowthmull's case I.L.R. 51 Cal. 1010 do not help the respondent. In that case, the appeal was not proceeded with by the Official Assignee. Consequently, the decree-holder could not be deprived of the money which had been put into court to obtain stay of execution of the decree as but for the order, the decree-holder could have levied execution and obtained satisfaction of the decree even before the disposal of the appeal.

15. The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21 rule 1 C.P.C. and as such, there is no question of the stoppage of interest after the deposit."

(underlining added)

Since the respondent was not at liberty to withdraw the said amount, which was deposited before the Division Bench, the same cannot be regarded as payment in satisfaction of the decree and, therefore, the appellant would be liable to pay interest.

7. The learned counsel for the appellant referred to the decision of the Supreme Court in Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and Another: (2007) 2 SCC 720 and, in particular, to paragraph 11

thereof, which reads as under:-

“11. On the merits of the claims made by the contractor we find from the impugned Award dated 25.6.2000 that it contains several Heads. The Arbitrator has meticulously examined the claims of the contractor under each separate Heads. We do not see any reason to interfere except on the rates of interest and on the quantum awarded for letting machines of the contractor remaining idle for the periods mentioned in the Award. Here also we may add that we do not wish to interfere with the Award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the Arbitrator at 18% for the pre-arbitration period, for the *pendente lite* period and future interest be reduced to 9%.”

According to the learned counsel for the appellant, the rate of interest should likewise be reduced in the present case. We see no merit in the contention raised by the learned counsel for the appellant inasmuch as we agree with the finding of the learned Single Judge that the rate of 12% per annum is a reasonable rate and is not so outlandish or high pitched as a rate of interest of 18% would be.

8. Accordingly, we see no reason to interfere with the impugned order passed by the learned Single Judge. The appeal is dismissed.

BADAR DURREZ AHMED, J

JANUARY 19, 2015
SR

SANJEEV SACHDEVA, J