

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION No.281 of 2013

ORDER: *(Per Hon'ble Sri Justice Dr. B. Siva Sankara Rao)*

This revision is arising against the impugned dismissal order dated 02.08.2012 passed by the learned I Additional Senior Civil Judge, City Civil Court, Hyderabad, in I.A.No.832 of 2011 in O.P.No.1 of 2009, filed under Section 152 CPC to correct the decree and judgment dated 25.02.2011 as per the terms of the Arbitration award.

The O.P.No.1 of 2009 was filed under Section 17 of the Arbitration Act, 1940 (for short 'the Act') to pass decree and judgment in terms of the award of the Arbitrator dated 02.02.2008 to make the award as rule of the Court to enforce/execute.

2. The operative portion of said award of the Arbitrator dated 02.02.2008 at Para 29 in answering the Point No.2 reads as follows:

"In view of the aforesaid findings the award is made in following terms:

- (i) The claimant is entitled to refund of EMD and FSD amount of Rs.78,935/- with interest @ 16% p.a. from 1.7.1985 to 18.8.96 thereafter @ 18% p.a. from 19.8.96 to till the date of the payment.
- (ii) The claimant is entitled to an amount of Rs.1,50,000/- towards execution of extra work done with interest @ 16% p.a. from 1.7.1985 to 18.8.96 thereafter @ 18% p.a. from 19.8.96 to till the date of the payment.
- (iii) The claimant is entitled to a sum of Rs.80,000/- for the work done as per the specifications and not paid with interest @ 16% p.a. from 1.7.1985 to 18.8.96 thereafter @ 18% p.a. from 19.8.96 to till the date of payment.
- (iv) The claimant is not entitled to any amount under the heads of escalation charges and idle labour.
- (v) The claimant is also entitled to the costs of this arbitration for Rs.45,000/- and the department shall bear their own costs.
- (vi) The claimant is also entitled to incidental expenses of advocate fee and other expenses

quantified at Rs.10,000/- and the department is directed to pay the amounts mentioned supra within two months from the date of this award.”

3. It is pursuant to the arbitration award under the Act to make the award as rule of the Court, the petition in O.P.No.1 of 2009 was filed. It is after hearing and in passing the judgment/award as per Section 17 of the Act, the learned I Additional Senior Civil Judge having allowed the application in making the award as rule of the Court, directed the respondent Nos.1 to 3 as follows:

- (i) “To pay an amount of Rs.78,935/- towards refund of EMD and FSD.
- (ii) To pay an amount of Rs.1,50,000/- towards execution of work done.
- (iii) To pay an amount of Rs.80,000/- towards the work done as per the specification and not paid.
- (iv) To pay an amount of Rs.45,000/- towards costs of the petition and Rs.10,000/- towards incidental expenses and advocate fee and other expenses.
- (v) The petitioner shall be entitled to interest @ 18% p.a. from the date of decree till realization.”

4. It is for not granting the pre-lite and pendent-lite interest that is even granted by the Arbitrator in his award, in the judgment/award passed by the learned Senior Civil Judge under Section 17 of the Act by making the award as rule of the Court, said application in I.A.No.832 of 2011 was filed under Section 152 CPC, mentioning that even in the award of the Arbitrator, interest is granted (pre-lite, pendent-lite and post-lite) instead of granting as prayed for in the application under Section 17 of the Act making the award as rule of the Court, the Court mistakenly or inadvertently failed to mention so far as pre-lite and pendent-lite interest concerned. The application in I.A.No.832 of 2011 however was dismissed on 02.08.2012 after hearing by holding that the petitioner failed to make out a case of the same is outcome of a clerical or an arithmetical mistake, by accepting the contest of respondents. Same is now impugned in the revision with the contentions that the impugned order is unjust, erroneous and

nothing but non-exercise of jurisdiction conferred by law and thereby liable to be set aside and consequently, the amendment of the decree sought for in I.A.No.832 of 2011 is to be allowed. The learned counsel for the revision petitioner reiterated the same. Whereas it is the contention of the counsel for respondents 1 to 3 that, the revision is unsustainable and the impugned order holding not prone to correction as a clerical mistake under Section 152 CPC no way requires interference otherwise even on merits.

5. Heard both sides and perused the material on record.

6. So far as pre-lite interest, which is the substantive interest that is awarded by the Arbitrator concerned, there is no dispute on the entitlement by the petitioner. It is pursuant to the award of the arbitrator in making the application in O.P.No.1 of 2009 under Section 17 of the Act, for passing decree and judgment making the award as rule of the Court, there is a prayer even and thus should have been allowed. Even, so far as pendent-lite and post-lite interest known as procedural interest concerned governed by Section 34 CPC, which even speaks of omission amounts to refusal, here it is not a case of omission in the award of the Arbitrator, but for in the judgment and decree passed in making said award as rule of the Court to enforce under Section 17 of the Act, which is a mistaken outcome on its face for the learned I Additional Senior Civil Judge did not even say any reasons for not granting pre-lite and pendent-lite interest, while awarding post-lite interest after the date of award till realisation at the rate of 18% p.a. as granted by the Arbitrator.

7. Thus, from the above facts and from perusal of the record supra, it clearly shows it is a mistaken outcome by a slip in not mentioning the entitlement of pre-lite and pendent-lite interest, which is prone to correction. It is needless to say a mistake of the court once brought to its notice to correct, it is the duty of the court to correct and rectify

based on the principle of act of court shall prejudice no one unless sanctioned by law as per the latin maxim ***actus curiae neminem gravabit*** from the inherent power under Section 151 CPC which inheres in every civil court from its very constitution, since same is saved by the provisions of CPC. The learned Senior Civil Judge therefore should have been allowed the application for incorporating in the decree/judgment, entitlement of the pre-lite and pendenti-lite interest as per the award of the Arbitrator, by rectifying its mistake to correct as sought, if not under Sections 152 or 153 CPC at least invoking Section 151 CPC.

8. Having regard to the above, the revision is allowed and in the decree and judgment passed in O.P.No.1 of 2009 dated 25.02.2011, what is omitted to incorporate from the award of the Arbitrator in making it as a rule of the Court to enforce, so far as pre-lite and pendenti-lite interest concerned, same is incorporated as prayed for in I.A.No.832 of 2011, while allowing the same by setting aside the impugned order therein dated 02.08.2012.

Pending Miscellaneous Petitions shall stand closed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 07.06.2016

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