IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision-23.11.2016

1. CR No.3158 of 2016

Moti Ram ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CR No.3254 of 2016

Moti Ram ... Petitioner

Versus

State of Haryana and others ... Respondents

3. CR No.3260 of 2016

Moti Ram ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Mannat Anand, Advocate for
Mr. Deepak Saini, Advocate for the petitioner.

Mr. Pramjeet Singh, AAG, Haryana.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. Vide this common order three revision petitions i.e. CR No.3158 of 2016, CR No.3254 of 2016 and CR No.3260 of 2016 are being disposed of. Facts are being taken from CR No.3158 of 2016 as common questions of law and facts are involved.

[2]. Petitioner has assailed order dated 05.03.2016 passed by Additional District Judge, Mewat vide which execution application was dismissed being fully satisfied.

[3]. The question arises for determination of this Court is whether the respondents have made lawful payment of the decretal amount of the award of the Arbitrator? Arbitrator passed an award thereby awarding interest on the amount @ 9 % per annum w.e.f 05.11.2009 till the passing of the award. After the interest was awarded, the Arbitrator passed the award, claim No.7 of which is produced hereasunder:-

> *"**Claim No.7***
>
> *The claimant argued that as per Section 31(7)(a)(b) of the Arbitration and Conciliation Act, 1996, interest @ 18% per annum is payable to the claimant. In view of the judgment of the Hon'ble Supreme Court of India titled as **T.P. George Vs. State of Kerala and other published in 2001(1) Arbitration Law Reporter 490 (SC)**, it has been held that arbitrator is competent to award interest on all four stages (copy of the judgment is produced & placed on the arbitrator case file). The claimant further argued that the legal notice was served on 05.11.2009 for settlement of the claims within 30 days failing matter be referred in arbitration but the respondent failed to settle the case, hence the claimant is entitled for the payment of interest. On the other hand, respondent submitted that there is no clause in the agreement to pay the interest and the service of the legal notice dated 05.11.2009 is admitted. The respondent has also claimed 18% interest in the counter claim submitted before me. On the other hand the respondent submitted that there is no clause in the*

agreement to pay the interest. Further the claimant argued that in case the agreement is silent regarding the payment of interest, the Arbitrator is competent to allow the interest as per Section 31(7)(a)(b) of the Arbitration and Conciliation Act, 1996. After examining and considering all the relevant records, evidence and arguments advanced by both parties, I find the force on the argument of the claimant. I therefore, allow the interest @ 9% per annum from 05.11.2009 till the date of award."

[4]. Award of total sum of Rs.19,15,172/- was passed in favour of the claimant to be paid by the respondents. If the amount of award was paid within 90 days from the date of passing of the award, no further interest was payable, but in case the amount was not paid within 90 days, the respondents were required to pay interest @ 9% per annum from the date of award till actual payment.

[5]. In view of aforesaid, it is apparent that interest @ 9% per annum was allowed as per claim No.7 from 05.11.2009 till the date of award. This interest can be termed as pre-award interest. Similarly, in the event of not making payment of award within 90 days, the respondents were held liable to pay interest @ 9% per annum from the date of award till actual payment. This interest is known as post-award interest. The question for interpretation arises whether pre-award interest has to be merged with principal

amount for the purposes of calculating principal due as on date of passing of award which would carry post-award interest.

[6]. Execution was filed by the petitioner under Section 36 of Arbitration and Conciliation Act, 1996 read with Order 21 Rule 11 CPC for enforcement and execution of the arbitral award dated 18.11.2013. Executing Court dismissed the execution petition being fully satisfied on the premise that arbitrator had awarded a sum of Rs.19,15,172/- in favour of the claimant/decree holder and since the amount has already been paid by the judgment debtor along with interest, therefore, executing Court cannot go beyond the award passed by the Arbitrator.

[7]. Learned counsel for the petitioner vehemently contended that pre-award interest from 05.11.2009 @ 9 % was required to be added in the principal amount and thereafter, post-award interest was to be calculated on the sum so adjudged on account of merger of pre-award interest in the principal sum.

[8]. Learned counsel relied upon ***M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa through Chief Engineer, 2015(3) ArbiLR 1 (SC)*** to contend that pre award interest is not independent of the sum awarded. Award is made in respect of a sum which includes within the sum component of interest, if awarded. Once interest is included in the sum for which the award is made, the original sum and the interest

component cannot be segregated and be seen independent of each other. The interest component then losses its character of an interest and takes colour of sum for which award is made. Learned counsel submitted that pre-award interest has to be added in a sum adjudged as principal and cannot be treated to be independent for the purposes of awarding post-award interest on the principal sum only. It would be necessary to cull out necessary observations made by the Apex Court in the aforesaid judgment.

[9]. Section 31(7)(a) of The Arbitration and Conciliation Act, 1996 deals with grant of pre-award interest, while sub Clause (b) of the aforesaid section deals with grant of post-award interest. Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay. Post-award interest is to ensure speedy payment in compliance of the award. Pre-award interest is at the discretion of Arbitral Tribunal, while the post- award interest on the awarded sum is mandate of statute. Arbitral Tribunal may include interest in the sum for which the award is made.

[10]. Para Nos.82 to 85 of the aforesaid judgment are reproduced hereasuder:-

> *"82. Section 31(7)(a) of the Act deals with grant of pre-award interest while sub-clause (b) of Section 31(7) of the Act deals with grant of post-award interest.*

Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay. Longer the proceedings, would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance of the award. Pre-award interest is at the discretion of Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of statute - the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act, i.e., 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.

*83. Section 31(7)(a) employs the words "...the arbitral tribunal may include in the sum for which the award is made interest...". The words "**include** in the **sum**" are of utmost importance. This would mean that pre-award interest is not independent of the "**sum**" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "**sum**" which includes within the "**sum**" component of interest, if awarded.*

*84. Therefore, for the purposes of an award, there is no distinction between a "**sum**" with interest, and a "**sum**" without interest. Once the interest is "included* *in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then looses its character of an "**interest**" and takes the colour of "**sum**" for which the award is made.*

*85. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "**interest**". This award of interest would itself then become the "**sum**" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum award and the interest component in it."*

[11]. While making award, there is no distinction between sum with interest and sum without interest. In view of observations made by the Hon'ble Apex Court in ***M/s Hyder Consulting (UK) Ltd. case (supra)*** that pre-award interest is not independent of the sum awarded. In any case original sum and the interest component cannot be segregated and be seen independent of each other. If the pre-award interest cannot exist independent of principal sum, then it has to be included towards the sum to be aggregated for the purposes of carrying future interest from the date of passing of award till final realization of the amount.

[12]. In considered opinion of this Court, trial Court needs to re-visit the import in view of ratio laid down in ***M/s Hyder***

Consulting (UK) Ltd. case (supra). The impugned order dated 05.03.2016 passed by Additional District Judge, Mewat is therefore set aside. The aforesaid cases are remanded back to the executing Court to apply ratio of ***M/s Hyder Consulting (UK) Ltd. case (supra)*** strictly in terms of observations made in para Nos.82 to 85 of the said judgment.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

23.11.2016
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No