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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : September 26, 2016

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EFA(OS) 22/2016

UNION OF INDIA

..... Appellant

Represented by: Mr.R.V.Sinha, Advocate with
Mr.R.N.Singh and Mr.A.S.Singh,
Advocates

versus

M/S JAYASWALS NECO LTD

..... Respondent

Represented by: Mr.Shatadru Chakraborty, Advocate
with Ms.Kartika Chaudhary,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant (UOI) and the respondent (JNL) entered into a contract bearing No.99/Track-II/22/14/8/70248 dated June 18, 1999 in terms of which JNL agreed to supply and the railways agreed to purchase 7 lakh pieces of SGCI inserts. The railways short closed the contract and that gave birth to a dispute between the parties. The contract contained an arbitration clause and, accordingly, the disputes were referred to arbitration. The arbitration proceedings culminated in an award dated October 09, 2002 in favour of JNL; the operative parts of which is reads as under:-

“8.1 Claim no. 1

...Therefore, the Respondents shall pay to the Claimants the difference between the rate agreed between the parties in their

agreement dated 18.6.1999 and the rate as actually paid for 98,219 nos. inserts.

8.2 Claim No. 2

Simple interest of 12% over and above the price differential between the amount due and the amount actually paid from 45 days after the above payment become due till the date of declaration of the award is considered to be reasonable and is, therefore, allowed.

xxxxx xxxxxx xxxxx xxxxx

11. Respondents are directed to arrange payment of this award as stated within a period of 90 days from the publication of this award, failing which interest @ 18% shall be payable by the Respondents to the Claimant till the payment of this arbitration award."

2. Challenge to the award by the railways failed before the learned Single Judge of this Court, the Division Bench as also the Supreme Court.
3. JNL sought execution seeking recovery of ₹1,12,01,529.32 which included the sum awarded together with interest thereon till February 17, 2010.
4. JNL's main claim in the arbitration : Claim No.1 - related to loss arising out of abrupt short closure of the contract. The arbitrator awarded the aforesaid claim in favour of JNL and held that expected supplies from JNL till March 09, 2000 should have been to the order of 6,48,219 inserts against 4,90,000 inserts actually accepted; therefore, the learned arbitrator held that JNL's loss be computed as the difference between the rate agreed between the parties as per the contract and the rate actually paid for 98,219 inserts.
5. There were certain controversies regarding the above calculation of loss; the railways asserted that JNL had, admittedly, supplied 5,85,000 inserts and not 4,90,000 inserts and, therefore, the loss as awarded was to be

computed only in respect of 63,219 and not 98,219 inserts as stated in the award. The railways further claimed that the loss was to be computed @ ₹3.22 per insert and not ₹6.80 per insert as indicated in the award.

6. By an order dated July 17, .2013 the learned Single Judge accepted the railways' stand that the figure of 98,219 inserts as stated in the award was an obvious error and the loss awarded was to be computed for 63,219 inserts and not 98,219 inserts. However, the contention that the difference in the price per insert was ₹3.22 and not ₹6.80 was rejected.

7. In the meantime, the railways remitted a draft in sum of ₹6,24,119/- to JNL under the cover of remittance note dated June 18, 2010 along with a calculation sheet. The said calculation sheet indicated that the railways computed the loss awarded at ₹2,03,565/- (for 63,219 inserts at the rate of ₹ 3.22 each) and had, accordingly, worked out that a sum of ₹6,19,086/- would cover the entire awarded amount including interest upto May 10, 2010.

8. Immediately on receipt of the aforesaid remittance, JNL filed an application dated August 02, 2010 under Order XXI Rule 11(2) read with Order XXI Rule 2(1) of the Code of Civil Procedure inter- alia, pleading that it had accepted the said remittance of ₹6,24,119/- as part payment without prejudice to its rights and contentions and further prayed that this Court may record the said receipt as part payment towards the amount due from the railways.

9. The said application was disposed of by an order dated August 13, 2010.

10. The railways paid a further sum of ₹8,71,791/- on November 18, 2013 and this according to the railways fully satisfied the award. JNL disputed the aforesaid contention as according to it, a further sum of ₹2,11,753/- was

payable as on that date. In view of the difference in calculation of the amount payable, the learned Single Judge by an order dated November 20, 2014 directed the parties to appear before the Registrar General, who was directed to examine their respective calculations and submit a report. In compliance with the aforesaid order, the Registrar General heard extensive arguments on behalf of the parties and submitted a report on September 18, 2015, inter-alia, accepting the stand of the railways that an excess payment in sum of ₹12,483/- had been paid to JNL.

11. In the impugned order the learned Single Judge has noted that JNL had quantified the amount recoverable under the award at ₹1,12,01,529.32 as under:-

S.No.	Particulars	Amount (In ₹)
1.	i) Cost of 60,000 Inserts (58219-98219) @ ₹31.95	₹19,17,000.00
	ii) Cost of 98219 inserts @ ₹6.80 (Amended Contract price 31.95 – paid price 27.45)	₹ 6,67,889.20
	Total Payable to NJL	₹25,84,889.20
2.	Interest for 960 days @ 12% Award allows payment if interest @ 12% from 45 days after the due date of payment to be made. As per award, last supply date taken 09.03.2000. Due date of payment taken as 09.04.2000 45 days after the due taken as 24.05.2000. Award allows this interest to be paid up to 90 days after the award. Award date is 09.10.2002. 90 days after the award is 09.01.2003. Therefore interest is for the period 24.05.2000 to 09.01.2003 which comes to 960 days.	₹8,15,833.52
3.	Interest for 2617 days @ 18%	₹78,00,806.00

	Award allows payment of interest @ 18% after 90 days of the award, if not paid within this time, till the date of payment. Hence, interest from 10.01.2003 to 17.02.2010.	
	Total amount with interest ₹01,12,01,529.32	

12. The learned Single Judge has noted that in so far as the sum of ₹19,17,000/- on account of the cost of 60,000 inserts is concerned, there is no dispute that the same has not been awarded in the award. Against the aforesaid claim, the railways remitted a sum of ₹6,24,119/- on June 18, 2010 enclosing therewith a calculation sheet which was captioned 'Tentative calculation of Liabilities arising out of Arbitration Award'. The said calculation sheet is as under:-

S.No.(1)	Claimant by claimant (2)	Amount as per claimant (3)	Amount as per award (4)
1.	i) Cost of 60,000 Inserts (58219-98219) @ ₹31.95 ii) Cost of 98219 inserts @ ₹6.80 (Amended Contract price 31.95 – paid price 27.45)	₹19,17,000.00 ₹6,67,889.20	Not part of award. Hence, disallowed. ₹2,03,565 (63219 x 3.22) Ref. Annexure 'C' for details
	Total payable to JNL	₹25,84,889.20	₹2,03,565
2.	Interest for 960 days @ 12% Award allows payment if interest @ 12% from 45 days after the due date of payment to be made. As per	₹8,15,833.52 (on item 1 for 960 days)	₹58,091.32 (on item 1 for 868 days from 25.5.2000 to

	award, last supply date taken 09.03.2000. Due date of payment taken as 09.04.2000 45 days after the due taken as 24.05.2000. Award allows this interest to be paid up to 90 days after the award. Award date is 09.10.2002. 90 days after the award is 09.01.2003. Therefore interest is for the period 24.05.2000 to 09.01.2003 which comes to 960 days.		09.10.2002) Total 1+2 ₹2,61,656.32 To be verified by FA & CAO, C.Rly
3.	Interest for 2617 days @ 18% Award allows payment of interest @ 18% after 90 days of the award, if not paid within this time, till the date of payment. Hence, interest from 10.01.2003 to 10.03.2010.	₹78,00,806.00	₹3,57,429.70 (on ₹2,61,656.32 for 2770 days @ 18% from 10.10.2002 till 10.05.2010) To be verified by FA & CAO, C.Rly
	Total	₹1,12,01,529.32	Tentative ₹6,19,086/-

			upto 1.05.2010
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13. Admittedly, the amount awarded to JNL in terms of the award is ₹5,52,567/- (₹4,29,889 plus ₹1,22,677/- being interest @ 12% p.a. for 868 days). On the aforesaid basis, JNL submitted its calculation for the amount due till February 11, 2015. The said calculation has been reproduced by the learned Single Judge and we do so. It reads:-

S.No.	Particulars	Interest (In ₹)	Amount (In ₹)
1.	Cost of 63,219 inserts @ ₹6.80(differentia between rate agreed to be paid and the rate actually paid)		4,29,889
2.	Interest for 868 days @ 12% (begins to run 45 days from due date of payment i.e. from 24.05.2000 till the date of award i.e. 09.10.2002)	1,22,677	5,52,567
3.	Interest for 2715 days @ 18% (begins to run 90 days after the date of award i.e. 10.01.2003 till 17.06.2010 since in the present case, the part payment of ₹ 6,24,119/- was received on 18.06.2010	7,39,834	
		Total interest ₹8,62,511	₹12,92,400
4.	Payment received from Judgment Debtor on 18.06.2010	₹6,24,119	
5.	Balance as on 18.06.2010	₹2,38,392	₹6,68,281

6.	Interest for 1247 days @ 18% (from 19.06.2010 till 17.11.2013 since in the present case, part payment of ₹ 8,71,791/- was received on 18.11.2013)	₹4,10,966	₹10,79,247
7.		Total interest – ₹6,49,358	₹ 10,79,247
8.	Payment received from judgment debtor on 18.11.2013	₹8,71,791	
9.	Balance as on 18.11.2013	0	₹2,07,456
10.	Interest for 42 days @ 18% from 19.11.2013 till 31.12.2013	₹4,297	₹2,11,753
11.	Interest for 365 days @18% from 01.01.2014 till 31.12.2014	₹37,342	₹ 2,49,095
12.	Interest for 42 days @ 18% from 01.01.2015 till 11.02.2015	₹4,386	₹2,53,481

14. The railways also forwarded its calculation sheet according to which the entire decretal amount stood paid. The said calculation has been noted by the learned Single Judge. It reads:-

<u>S.No.</u>	<u>Admissible Claim</u>	<u>Amount</u>
1.	Cost of 63219 insert @ ₹3.58 (6.80-3.22+3.58); payment @ ₹3.22 has already been done by Central Railway for total ₹6,24,119/- vide cheques dated 18.06.2010	₹2,26,324.02
2.	Interest for 868 days @ 12%.	₹64,586.06 (on S.

	Award allows payment of interest @ 12% from 45 days after due payment to be made. As date of award is 09.10.2002 interest @ 12% is payable from 24.05.2000 to 09.10.2002 i.e. 868 days	No.1 for 868 days from 25.05.2000 to 09.10.2002 total (1) + (2) = 2,90,910.075
3.	Interest for 4036 days @ 18% Award allows payment @ 18% after 90 days of award if not paid within this time till date of payment. Say it will be paid by 31.10.2013, hence interest from 10.10.2002 till 31.10.2002	₹5,79,014.66 Total (1)+(2)+(3)= ₹8,69,924.74 say ₹8,69,925/-
4.	Extra interest beyond 31.10.2013 @ ₹1435 per day for 13 days as payment done on 13.11.2013	₹1866/- Total = ₹8,69,925 + 1866 = ₹871791

15. Before the learned Single Judge the railways relied upon the decision reported as 2006 (8) SCC 457 Gurpreet Singh Vs. UOI, which has been distinguished by the learned Single Judge in para 26 of the impugned order which reads as under:-

*“26. Further, the Supreme Court held in **Gurpreet Singh** (supra) that Sections 59 to 61 of the Contract Act “would not get attracted when there is only one debt due. Nor have they any direct application in a case where the debt due has merged in a decree and the applicable rule then would be what is provided in the decree itself or the general rule applicable in execution of money decrees.”*

16. We agree.

17. The learned Single Judge has rightly held that the law as to appropriation of payments towards decretal amount is now well settled as per the decision of the Supreme Court reported as (1999) 3 SCC 80 M/s Industrial Credit and Development Syndicate v. Smithaben H. Patel and Ors; wherein it was held:-

“In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments, be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e. that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt.”

18. Contention of the railways that Section 59 of the Contract Act is applicable to part payments made towards a decree and, therefore, JNL would be obliged to apply the payments made by the railways towards the specified heads has rightly been held to be without merit for the reason in the decision of the Supreme Court in Industrial Credit and Development Syndicate’s case (supra) the Supreme Court held:-

“.....We are of the opinion that Sections 59 and 60, Contract Act, would be applicable only in pre-decretal stage and not thereafter. Post-decretal payments have to be made either in terms of the decree or in accordance with the agreement arrived at between the parties though on the general principles as mentioned in Sections 59 and 60 of the

Contract Act. As and when such an agreement either express or implied is relied upon, the burden of proving it would always be upon its propounder. The judgment debtors, in the instant case, are proved to have failed in discharging such an onus. There does not appear to be any obligation on the decree holder to intimate the judgment debtor that the amount paid to him had not been accepted in the manner specified by him in the letter accompanying the payment insisting upon such a course would result in unnecessary burden upon the financial institutions and conferment of unwanted unilateral discretion in favour of the defaulters. Acceptance of the plea that the amount paid first should be adjusted in the principal amount would not only be against the provision of law but against the public policy as well. To provide security, continuity and certainty in business transaction, the Legislature has been making specific provisions in that regard which may be found in various provisions of the Negotiable Instruments Act or Order 37, CPC and other statutory provisions.”

19. The learned Single Judge has correctly noted the observations made by the Supreme Court in the decision reported as (1969) 2 SCC 274 Meghraj & Ors. v. Mst. Bayabai & Ors. as under:-

"..... any payment made by the Debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal. It was for the mortgagors to plead and prove an agreement that the amount which were deposited in Court by the Mortgagors were accepted by the Mortgagees subject to a condition imposed by the Mortgagors....."

20. We agree with the rationale culled out by the learned Single Judge behind the principle of permitting JNL to appropriate the amounts received, first towards interest in view of the law declared by the Supreme Court in the decision reported as 2012 (1) SCC 302 Leela Hotels Ltd. Vs. Housing and Urban Development Corporation Ltd., wherein it was held:-

“The philosophy behind the principle set out in Meka Venkatadri's case (supra) and as reiterated in Rai Bahadur Seth Nemichand's case (supra) and also in Smithaben's case (supra) and then consistently followed by this Court, is that a debtor cannot be allowed to take advantage of his default to deny to the creditor the amount to which he would be entitled on account of such default, by way of elimination of the principal amount due itself, unless, of course, the provisions of Section 59 of the Indian Contract Act, 1872, were attracted or there was a separate agreement between the parties in that regard. That is not so in the instant case and, accordingly, the creditor cannot be denied its dues on a unilateral stipulation that the amount of ₹89.78 crores was being deposited as against the principal sum due in terms of the Award. Since the said amount was accepted by the Appellant on protest, it would be entitled to appropriate the same against the interest which was due and payable till that date on the principal amount, as has been asserted by it.”

21. Contention of the railways that accepting the JNL's calculation would amount to directing payment of interest on interest has also rightly been held to be unsustainable because the arbitrator had awarded loss due to abrupt short closure of the contract as well as simple interest @ 12% over the price differential between the amount due and actually paid from 45 days after the above payments became due till the date of declaration of the award. The railways were directed to make the payment of the aforesaid sum (that is loss, plus interest) within a period of 90 days, failing which the Arbitrator directed that railways would be liable to pay interest @ 18% till the date of payment. The claims awarded by the arbitrator namely loss on account of abrupt short closure of contract and simple interest at the rate of 12% indicated the amount awarded by the Arbitrator. The amount so awarded is

not amenable to being split into principal and interest. This accords with the law declared by the Supreme Court in the decision reported as 2014 (5) SCC 577 V.Kala Bharthi & Ors. Vs. Oriental Insurance Co. Ltd. wherein the Supreme Court held:-

“The next finding of the High Court is with regard to interest on interest. In money suit, the amount consists of principal and interest till the suit is filed. But, in case of award passed under the Act, the question of inclusion of any interest on the decretal amount does not arise. Unfortunately, the High Court proceeded on the assumption that it amounts to interest on interest which is prohibited under Section 3(3)(c) of Interest Act, 1978 (for short, 'the Interest Act'). This is not so, as in the facts and circumstances of the present case, the decree passed by the trial Court or the appellate Court does not contain the mode of appropriation and in the absence of any such direction, the decree-holder is entitled to appropriate the amount deposited by the judgment debtor first towards interest, then cost and thereafter towards principal.”

22. We thus dismiss the appeal but without any order as to costs.

CM No.34710/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 26, 2016

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