

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL NO.824 OF 2007**

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996'), arises out of the judgment and decree dated 05.12.2006 of the learned I Additional District Judge, Visakhapatnam, in A.O.P.No.1316 of 2004. The said O.P was filed by the appellants herein under Section 34 of the Act of 1996 to set aside the award dated 17.07.2004 passed by the learned Arbitrator, the second respondent herein.

By order dated 29.10.2007, this Court granted interim suspension of the judgment and decree under appeal subject to the condition that the appellants deposit half of the awarded amount within a time frame. The said order was made absolute on 04.03.2008 permitting the first respondent/claimant to withdraw the amount deposited without furnishing security.

Heard Sri B.Narayana Reddy, learned Assistant Solicitor General for India, appearing for the appellants, and Sri V.Ravinder Rao, learned senior counsel appearing for the first respondent.

The learned Assistant Solicitor General would submit that the scope of this appeal is limited to the compensation awarded for delay and the award of interest at the rate of 18% per annum by the learned Arbitrator.

The claim for compensation towards undue prolongation of the completion of the project due to delays was raised under Claim No.9. The claim in this regard was for a sum of Rs.8,46,241/-. The original

contract contemplated the date of completion of the project as 04.04.1991. However, the actual date of completion was 11.02.1995. The learned Arbitrator found on facts that there was a delay in furnishing the soil testing report by the authorities to the contractor. That apart, they also ordered huge variations in respect of all provisional items by exceeding permissible deviation limits. Though they threatened cancellation of the contract, they granted extension of time till 31.03.1994. Significantly, no payments were made by them towards the running account bills from 14.02.1991 to 22.11.1993. After cancellation of the contract with effect from 18.11.1994, they themselves revoked the same on 07.02.1995.

On the other hand, the contractor fell ill and stopped the work from 19.02.1991 to 24.11.1993, himself contributing to the delay in completion of the work.

Taking note of these aspects, as both parties were at fault for the delay in the completion of the project, the learned Arbitrator struck a balance by limiting the loss of profit claimed by the contractor to 10% instead of the 20% claimed by it. By doing so, the amount payable under this claim was limited to Rs.3,72,346/-.

As regards the payment of interest at the rate of 18% per annum, it is relevant to note that Section 31(7)(b) of the Act of 1996, as it stood at that point of time, provided that a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 18% per annum from the date of the award till the date of payment. Discretion was therefore vested in the Arbitrator to reduce the rate of interest or enhance it beyond or above the statutorily envisaged rate of 18% per annum. In the present

case, the learned Arbitrator chose to adopt the statutorily fixed rate of 18% p.a. and directed payment of interest at the said rate.

Perusal of the order dated 05.12.2006 passed by the learned I Additional District Judge, Visakhapatnam, in A.O.P.No.1316 of 2004 reflects that the contention of the appellants was that the learned Arbitrator had acted beyond the scope of the contract by overlooking the delay on the part of the contractor in completing the work while awarding compensation. In this regard, the Court below found that the contractor was entitled to make a claim under Claim No.9 and as the finding arrived at thereon by the learned Arbitrator was based on evidence and after considering the arguments and objections raised by the authorities, the said aspect did not merit consideration in exercise of power under Section 34 of the Act of 1996. The Court below therefore held that the learned Arbitrator had not acted beyond the scope of the contract. Even on merits, the Court below found that there was no conflict in the findings of the learned Arbitrator, in terms of disallowing Claim No.1 while allowing Claim No.9. Claim No.9 was therefore held to be within the scope of the arbitration.

Significantly, the authorities did not allege that exorbitant interest was awarded by the learned Arbitrator in their petition filed before the Court below under Section 34 of the Act of 1996.

Section 34 of the Act of 1996 provides limited grounds for a party aggrieved by an arbitral award to seek setting aside of such award. The grounds provided thereunder are that the party coming forth with such prayer must have been under some incapacity; or the arbitration agreement was invalid in law; the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or the

arbitral award dealt with a dispute not contemplated by or not falling within the terms of submission to arbitration; or it contained decisions on matters beyond the scope of the submission to arbitration; or the composition of the arbitral tribunal was not in accordance with the agreement; or if the Court finds that the subject matter of the dispute was not capable of settlement by arbitration in law or the Court finds that the arbitral award is in conflict with the public policy of India.

In the present case, the claim of the authorities before the Court below was that the learned Arbitrator had acted beyond the scope of the reference. However, on facts, the Court below found that Claim No.9 was well within the reference and there was no conflict in the disallowing of Claim No.1 and acceptance of Claim No.9.

Sri V.Ravinder Rao, learned senior counsel, placed reliance on ***ASSOCIATE BUILDERS V/s. DELHI DEVELOPMENT AUTHORITY¹***, wherein the Supreme Court pointed out that when a Court is applying the 'public policy' test to an arbitration award, it does not act as a Court of appeal and consequently, errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.

¹ (2015) 3 SCC 49

Though we find that the petition filed by the authorities under Section 34 of the Act of 1996 fleetingly referred to the arbitration award passed by the learned Arbitrator being in violation of 'public policy', no specific grounds in this regard were raised in the context of Claim No.9. The award in relation to this claim was only assailed on the ground that the learned Arbitrator had acted beyond the scope of the arbitration in awarding compensation for prolongation of completion of the project. However, as already pointed out, the learned Arbitrator found that this claim fell squarely within the reference and the Court below also upheld the amount awarded under this claim. As pointed out, the learned Arbitrator struck a balance by reducing the claim by limiting the entitlement of the contractor to 10% of the loss of profit claimed by him instead of 20%. Further, as noted *supra*, the issue of interest was not even raised by the authorities in the petition under Section 34 of the Act of 1996.

The award therefore did not brook any interference and the order of the Court below holding to this effect and refusing to set it aside does not warrant interference.

The appeal is devoid of merit and is accordingly dismissed. The interim suspension granted on 29.10.2007 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

22nd AUGUST, 2017

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