THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE T.RAJANI

CIVIL REVISION PETITION No.5540 of 2008

02.02.2017

Between:

M/s.Jeevan Diesels and Electrical Ltd., Bangalore

..Petitioner

And

Hindustan Petroleum Corporation Ltd.,
Visakhapatnam and another

..Respondents

Counsel for the petitioner: Mr.N.Ravi Prasad

Counsel for respondent No.1: Mr.M.Ravindranath Reddy

Counsel for respondent No.2: --

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Revision Petition arises out of the order, dated 05.11.2008, in E.P.No.36 of 2008 in A.O.P.No.818 of 2005 on the file of the Principal District Judge, Visakhapatnam.

2. We have heard Mr.N.Ravi Prasad, learned counsel for the petitioner and Mr.M.Ravindranath Reddy, learned counsel for respondent No.1 and perused the record.

3. The dispute between the petitioner and respondent No.1 in relation to payment of certain monies was referred for arbitration of a sole Arbitrator – respondent No.2. The claims of the petitioner were allowed in part by the Arbitrator – respondent No.2, *vide* his arbitration award, dated 21.02.2005. A.O.P.No.818 of 2005 filed by respondent No.1 under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitration award, was dismissed by the learned Principal District Judge, Visakhapatnam, *vide* his order, dated 28.01.2008. It is not in dispute that this order has attained finality. The petitioner filed E.P.No.36 of 2008 in A.O.P.No.818 of 2005 for attachment of the E.P. schedule movables for recovery of compound interest. The said E.P. was closed by the learned Principal District Judge, by the order under revision, by holding that under the arbitration award, the Arbitrator – respondent No.2 has not awarded compound interest and therefore, the E.P. was misconceived.

4. We have perused the arbitration award and we find therefrom that the Arbitrator – respondent No.2, while dealing with interest, held as under:

> "Now coming to arguments on the interest part. Respondent argued that interest payment is not a clause in either contract. The contract envisages that the payments will be made as per agreement. When payments are not released as per agreed terms the interest becomes payable under natural justice or any act available for such eventualities, as the claimant pays interest for borrowing money and he has to be compensated for the same. The fact remains that there was delay in payment. The second point is the claimant status as an SSI. Here Respondent saying that they are not aware that the Claimant is an SSI and Claimant claiming interest as an SSI is not acceptable to the Respondent. I am bound to agree with Claimant that status of being an SSI is known to Respondent from the beginning as these aspects are checked at quotation stage itself. Secondly The SSI status brings in the interest rate applicable to SSI's as per "the interest on delayed payment to small scale and ancillary industrial undertakings Act, 1993". As per this act the interest payable is "at one and a half times of Prime Lending Rate charged by the State Bank of India." The Claimant stated that for the period in Discussion the SBI PLR was 16% and hence his claim of 24%. It has been decided that The interest rate is one and half times the SBI-PLR rate for all delayed payments. Claimant is to be paid for all delayed payments under the above two orders. The period is for various bills to be taken into consideration and during the period if there is reduction/increase in SBI – PLR the interest payment be adjusted accordingly."

Having held as above, the Arbitrator – respondent No.2 has awarded interest on every claim for payment of money allowed by him at 1½ times SBI PLR (State Bank of India Prime Lending Rate).

5. It is not in dispute that respondent No.1 has paid interest at 1½ times SBI PLR as per the arbitration award. The learned counsel for the petitioner, however, has submitted that under the provisions of the Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short '1993 Act'), the petitioner, being a small

scale industry and recognized as such by the Arbitrator – respondent No.2 under the arbitration award, is entitled to compound interest. We are afraid, we cannot accept this submission for the simple reason that though, in the arbitration award, reference was made to 1993 Act and also a finding was rendered by the Arbitrator – respondent No.2 that the petitioner is a small scale industry, nevertheless, he has not awarded compound interest and instead, he has awarded interest at 1½ times SBI PLR. The petitioner, for the reasons best known to it, has not claimed relief for payment of compound interest before the competent *forum.* As the arbitration award does not suffer from any ambiguity on payment of interest at 1½ times SBI PLR, the executing Court cannot travel beyond the scope of the arbitration award and order payment of compound interest, merely because the provisions of 1993 Act provide for such payment.

6. In the premise as above, we do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

7. As a sequel to dismissal of the C.R.P., C.R.P.M.P.No.7369 of 2008 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY,J

T.RAJANI,J

02nd February, 2017
GHN