

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**CIVIL MISCELLANEOUS APPEAL NO.2208 OF 2004
AND
CIVIL REVISION PETITION NO.3613 OF 2004**

C O M M O N J U D G M E N T
(per Hon'ble Sri Justice Sanjay Kumar)

The Chief Engineer, Hyderabad Urban Development Authority (HUDA), Hyderabad, filed this revision and appeal in relation to the Arbitration Award dated 28.12.1998 in O.P.No.138 1994 and the civil proceedings arising therefrom before the learned I Senior Civil Judge, City Civil Court, Hyderabad.

The first respondent contractor in these cases was awarded the work of Forming metalling and B.T. of inner ring road from KM 28.90 to 30.00 (from Rajendra Nagar to Rethibowli) under Agreement No.56/83-84 dated 17.02.1984. The stipulated period for completion of the work was nine months from the date of handing over of the site. The site was handed over to the contractor on 12.04.1984. Hence, the work had to be completed by 11.01.1985, but it was actually completed by the end of June, 1988. The contractor raised various claims in relation to the work and issued a notice to the HUDA. However, as the said claims were not settled, he sought appointment of an Arbitrator under the Arbitration Act, 1940 (for brevity, 'the Act of 1940'). Thereupon, the second respondent in these cases, a retired Judge of this Court, was appointed as the sole Arbitrator. By Arbitration Award dated 28.12.1998 in O.P.No.138 of 1994, the sole Arbitrator awarded a sum of Rs.5,00,167/- to the contractor towards five of the claims raised by him and rejected the other two claims. The contractor was also held entitled to interest at

15% per annum on the awarded amount with effect from 08.04.1994, being the date of registration of the O.P., till the date of payment.

O.P.No.5 of 1999 was filed by the HUDA under Sections 30 and 33 of the Act of 1940 to set aside the said Award, while O.P.No.46 of 2002 was filed by the contractor under Section 17 of the Act of 1940 to make the Award a rule of the Court.

By common order dated 31.12.2002 passed in the two O.Ps., the learned I Senior Civil Judge, City Civil Court, Hyderabad, dismissed O.P.No.5 of 1999 and partly allowed O.P.No.46 of 2002, confirming the entitlement of the contractor to the awarded sum of Rs.5,00,167/- but reducing the interest payable thereon to 12% p.a from the date of the Award i.e., 28.12.1998, till the date of the decree and at 6% p.a from the date of the decree till realization.

Thereafter, the contractor filed I.A.No.840 of 2003 in O.P.No.46 of 2002 under Section 114 CPC seeking review of the order dated 31.12.2002 in so far as it modified the rate of interest and restricted it from the date of the Award. By order dated 13.04.2004 passed therein, relying on **BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA V/s. ENGINEERS DE SPACE AGE¹, STATE OF JAMMU AND KASHMIR V/s. DEV DUTT PANDIT²** and **V.C.BRAHMANN V/s. STATE OF ANDHRA PRADESH³**, the learned I Senior Civil Judge, City Civil Court, Hyderabad, held that it was not within the competence of the Court to modify the period of interest from 08.04.1994 to the period from the date of the Award. But so far as the future interest from the date of decree at 6% p.a is concerned, the same was held to be reasonable. The review petition was accordingly

¹ 1996 (1) ALT (SC) 29 = (1996) 1 SCC 519

² AIR 1999 SC 3196

³ 1996 (4) ALT 951 (DB) = 1997 (1) ALD 252

allowed only to the extent of modifying the period of interest from 08.04.1994 as fixed by the sole Arbitrator and not from the date of the Award as per the earlier common order.

Aggrieved by the order dated 13.04.2004 passed by the learned I Senior Civil Judge, City Civil Court, Hyderabad, in I.A.No.840 of 2003 in O.P.No.46 of 2002, the Chief Engineer, HUDA, Hyderabad, preferred CMA No.2208 of 2004 under Section 39 of the Act of 1940. In the meanwhile, as the contractor moved execution proceedings in E.P.No.132 of 2004 in O.P.No.46 of 2002 before the learned I Senior Civil Judge, City Civil Court, Hyderabad, for realizing the amounts due under the Arbitration Award and secured docket order dated 06.07.2004, whereby attachment warrants were issued to the HUDA in relation to the total E.P. amount, the Chief Engineer, HUDA, Hyderabad, preferred CRP No.3613 of 2004 under Section 115 CPC.

By order dated 03.08.2004 passed in CMP No.12532 of 2004 in CMA No.2208 of 2004, this Court granted stay of further proceedings in the E.P. subject to the condition that the HUDA deposit a sum of Rs.50,000/- to the credit of the E.P. within a time frame. Thereafter, by order dated 30.08.2004, the earlier order dated 03.08.2004 was modified to the extent of directing the HUDA to deposit half of the decretal amount of Rs.2,80,940/- within a time frame and permitting the contractor to withdraw the same without furnishing security.

Heard Sri Y.Rama Rao, learned standing counsel for the Hyderabad Metropolitan Development Authority (HMDA), the successor-in-interest of the HUDA, and Sri P.Vinayaka Swamy, learned counsel for the first respondent contractor.

It is not in dispute that the claim made by the contractor in the execution proceedings is as per the modified order in O.P.No.462 of

2002, in terms of the review order dated 13.04.2004 passed by the learned I Senior Civil Judge, City Civil Court, Hyderabad, in I.A.No.840 of 2003 in O.P.No.46 of 2002. Therefore, the only issue that falls for consideration presently is whether the Court below was correct in restoring the period of interest as originally fixed by the sole Arbitrator in the Arbitration Award dated 28.12.1998 in O.P.No.138 of 1994.

Sri Y.Rama Rao, learned standing counsel, does not dispute the legal position that the power and discretion of the Arbitrator to award interest for the pre-arbitration period up to the date of passing of the decree is protected and the civil Court would not be competent to interfere with the same. The Court would only be competent to adjudicate upon the validity of the interest awarded by the Arbitrator from the date of the decree.

The Court below, being aware of this legal principle, referred to various judgments of the Supreme Court and also this Court in this regard and corrected its earlier error in modifying the rate and the period of interest fixed by the Arbitrator. The interest payable from the date of the decree was however modified by the Court in exercise of its jurisdiction and power to do so.

In the light of this settled legal position, it is not open to the HMDA, the successor-in-interest of the HUDA, to challenge the power and discretion of the Arbitrator to fix the period of interest prior to the date of the decree.

As Sri Y.Rama Rao, learned standing counsel, fairly concedes this position, we find that nothing further remains to be adjudicated in the appeal and the revision. In consequence, the execution proceedings filed by the contractor on the strength of the modified

review order passed in the O.P. also do not brook interference by this Court. We therefore find no merit in the appeal and the revision.

The civil miscellaneous appeal and the civil revision petition are accordingly dismissed. Interim stay dated 03.08.2004 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

12th OCTOBER, 2017
PGS

T.AMARNATH GOUD,J

