IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 03.03.2017

1. CR No.6765 of 2015 (O&M)

Virender Kumar

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

2. CR No.5198 of 2015 (O&M)

Sunil Goyal

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

3. CR No.5199 of 2015 (O&M)

Minakshi Gupta

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

4. CR No.5200 of 2015 (O&M)

Kulwant Singh

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

5. CR No.5201 of 2015 (O&M)

Hema

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

6. CR No.5202 of 2015 (O&M)

Hema

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

7. CR No.5203 of 2015 (O&M)

Yashender Sharma

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

8. CR No.5204 of 2015 (O&M)

Piyush Gupta

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

9. CR No.5205 of 2015 (O&M)

Vijay Kumar

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

10. CR No.5510 of 2015 (O&M)

Rajesh Kumar

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

11. CR No.5511 of 2015 (O&M)

Ajay Chaudhary

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

12. CR No.5512 of 2015 (O&M)

Rajiv Chugh

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

13. CR No.4253 of 2015 (O&M)

Hema

... Petitioner

Vs.

Municipal Council, Thanesar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate
for the petitioner (in CR-6765-2015).

Mr. Vikas Bahl, Sr. Advocate with
Mr. Nitish Garg, Advocate
for the petitioner (in CR-4253-2015).

Mr. Akshay Bhan, Sr. Advocate with
Mr. Nimanyu Gautam, Advocate
for the petitioner (in CR Nos.5198 to 5205 of 2015).

Mr. Karan Singla, Advocate
for the petitioner (in CR-5510-2015).

Mr. Manu Loona, Advocate
for the petitioner (in CR-5511-2015)

Mr. Puneet K. Bansal, Advocate
for the petitioner (in CR-5512-2015).

Mr. Bikram Chaudhary, Advocate
for the respondent.

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RAMESHWAR SINGH MALIK, J. (ORAL)

These 13 identical civil revision petitions filed by the decree-holders under Article 227 of the Constitution of India, are directed against the similar orders passed by the learned executing Court, disposing of the execution applications as fully satisfied, are being decided together, vide this common order, with the consent of learned counsel for the parties, as all these revision petitions arise out of similar set of facts. However, for the facility of reference, facts are being culled out from CR No.6765 of 2015 (Virender Kumar Vs. Municipal Council, Thanesar).

Notice of motion was issued.

Facts are hardly in dispute. It is a matter of record that this Court vide order dated 14.07.2010 (Annexure P-2), while disposing of as many as 09 identical writ petitions, including CWP No.13548 of 2008 (Virender Kumar Vs. State of Haryana and others) referred the matter to an agreed sole arbitrator to resolve the dispute between the parties. Consequently, there was an arbitration award dated 14.10.2010 (Annexure P-3).

Relevant operative part of the arbitral award, contained in paras 20 and 21 thereof, which deserve to be noticed here, reads as under: -

"Therefore, in view of the above discussion, it is held that the petitioners had not willfully and intentionally come forward to execute the agreements, but they did not execute the agreements as possession has not been delivered to them. The Municipal Council could not deliver possession as the shops were not ready for

possession, and the execution of the agreement was dependent upon the delivery of the possession. There is no evidence in the file that the relevant time when the allotment letter was issued and offer was made that an agreement be executed, the shops were built up to the extent that possession could be offered to them. In fact, in the letters which were addressed to the petitioners for execution of the agreement, there is no mention about the delivery of the possession. Thus, all the issues are decided in favour of the petitioners and against the respondents.

In view of the above findings, award is passed in favour of the petitioners against the respondents with costs of Rs.10,000/- (Rupees Ten Thousand only) and Municipal Council, Thanesar, is directed to complete the work in all the respects of the Shopping Complex, situated in Kacha Gher, Thanesar, within one month; if already completed, a notice be issued to the petitioners to take possession of the respective shops and also to execute the agreement within a week. Municipal Council is further directed to give interest on the advance rent as well as non-refundable security, at the rate of interest offered by Nationalized Bank, i.e. 7% per annum, till physical/possession is handed over to the petitioners/allottees. Petitioners are further awarded damages by way of 12% interest on non-refundable security till delivery of possession as they have suffered mentally as well as loss of business due to delay in completion of work of the shops and handing over their possession. Requisite stamp papers be filed within week."

Objections under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act' for short), to the abovesaid arbitral award dated 14.10.2010 filed by the respondent-Municipal Council, came to be dismissed by the learned Additional District Judge, Kurukshetra vide judgment dated 15.09.2012 (Annexure P-4). Petitioner/decree-holder filed his execution application dated 08.10.2012 (Annexure P-5). The abovesaid judgment dated 15.09.2012 (Annexure P-4) was challenged by the respondent-Municipal Council before this Court, by filing nine identical appeals, including FAO No.291 of 2013. These appeals were dismissed by this Court vide common order dated 17.01.2014 (Annexure P-7). Respondent-Municipal Council approached the Hon'ble Supreme Court and the SLPs were dismissed by the Hon'ble Supreme Court vide its order dated 04.08.2014 (Annexure P-8), thus, arbitral award dated 14.10.2010 (Annexure P-3), attained finality between the parties.

Thereafter, respondent-Municipal Council filed its objections to the execution application. Decree-holders filed their reply to the objections vide Annexure P-10. The learned executing Court vide its impugned order dated 23.03.2015 (Annexure P-12) disposed of the execution petition as fully satisfied, while placing reliance on a judgment of the Hon'ble Supreme Court in **State of Haryana and others Vs. M/s S.L. Arora & Company, 2010 AIR (SC) 1511,** which had, as a matter of fact, been already overruled by the Larger Bench of the Hon'ble Supreme Court in **M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa Through Chief Engineer, 2015 (2) SCC 189.** Hence, these revision petitions at the hands of decree-holders.

Heard learned counsel for the parties.

Twin questions that fall for consideration of this Court are; (i) whether the decree-holders are entitled to the statutory benefits under Section

31 (7) (a) and (b) of the Act; and (ii) whether the decree-holders-petitioners are also entitled to calculate the amount of interest on advance rent and non-refundable security, at the rate of interest offered by nationalized bank, i.e. 7% per annum, with quarterly rests.

So far as the first question is concerned, now the controversy has been set at rest by the Hon'ble Supreme Court in its judgment in **M/s Hyder Consulting (UK) Ltd.**'s case (supra). The observations made by the Hon'ble Supreme Court in paras 65 and 66 of its judgment in **M/s Hyder Consulting (UK) Ltd.**'s case (supra), which can be gainfully followed in the present case, read as under: -

> *"Sub-section (7) of Section 31 of the Act, which deals with the power of the Arbitral Tribunal to award interest, reads as follows:*
>
> > *"Sub-section (7)*
> >
> > *(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*
> >
> > *(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."*
>
> *Clause (a) of sub-section (7) provides that where an Award is made for the payment of money, the Arbitral Tribunal may*

include interest in the sum for which the Award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an Award for payment of money, to include interest in the sum for which the Award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the Award is made. To put it differently, sub-section (7)(a) contemplates that an Award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "sum" awarded may be principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are "the sum for which the award is made." On a plain reading, this expression refers to the total amount or sum for the payment for which the Award is made. Parliament has not added a qualification like "principal" to the word "sum," and therefore, the word "sum" here simply means "a particular amount of money." In Section 31 (7), this particular amount of money may include interest from the date of cause of action to the date of the award."

Finally, the conclusion was drawn by the Hon'ble Supreme Court in para 87 of the judgment and the same reads as under: -

"Coming now to the post-award interest, Section 31 (7) (b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not

> *the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31 (7) (b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31 (7) (b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a).”*

A bare reading of the abovesaid law laid down by the Hon'ble Supreme Court leaves no scope for doubt that the decree-holders in the cases in hand, would be entitled for post-award interest, as contemplated under Section 31 (7) (b) of the Act. When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the respondent-Municipal Council had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the answer to the first question posed hereinabove, is and has to be in favour of the petitioners/decree-holders. Accordingly, the decree-holders are held entitled for the post-award interest as provided under Section 31 (7) (b) of the Act.

Coming to the second question, learned senior counsel for the petitioners have rightly placed reliance on an official communication dated 02.01.2015 (Annexure P-13), at page 97 of the paper book, issued by Sr. Manager of Central Bank of India, Kurukshetra, pointing out the method of calculation of interest. The relevant part of this communication dated 02.01.2015 (Annexure P-13) reads as under:-

"We are enclosing the interest rate chart for domestic term deposits which contains for different time period and for different amount.

We also confirm that the interest on various deposits will be provided on quarterly compounded basis as per the Bank's norms."

Careful reading of the abovesaid official communication would make it crystal clear that the rate of interest offered by nationalized bank, i.e. 7% per annum, is to be calculated on quarterly compounded basis. Learned counsel for the respondent-Municipal Council could not refer to any contrary material in this regard and rightly so, as none would be available. Since the learned executing Court has misdirected itself on both the abovesaid material aspects of the matter, the impugned order cannot be sustained.

The contentions raised by learned counsel for the respondent-Municipal Council that the decree-holders/petitioners should have sought the clarification in the arbitral award dated 14.10.2010 (Annexure P-3), by moving an appropriate application before the Arbitrator, has been duly considered but found wholly misplaced and not worth acceptance. It is so said because there was no ambiguity in the arbitral award. No clarification was required to be sought at the hands of decree-holders. Under these peculiar facts and circumstances of the case, it can be safely concluded that the decree-holders would be entitled to calculate the rate of interest offered by nationalized bank, i.e. 7% per annum, on the basis of quarterly rests. In the given fact situation of the cases in hand, discussed hereinabove, irresistible conclusion is that the answer to second question is also in favour of the decree-holders/petitioners herein. Ordered accordingly.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found patently illegal and running contrary to the law laid down by the Hon'ble Supreme Court in **M/s Hyder Consulting (UK) Ltd.**'s case (supra), the same cannot be sustained. Accordingly, the impugned order is hereby set aside.

The learned executing Court is directed to decide afresh the execution applications of the decree-holders, on merits but at an early date, by passing an appropriate order, however, keeping in view the abovesaid observations made by this Court.

Resultantly, with the observations made hereinabove and directions issued, all these 13 revision petitions stand allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

03.03.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No