

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO No. 40/2015

% 15th May, 2017

**M/S D. PAL & COMPANY ENGINEERS & CONTRACTORS &
GENERAL ORDER SUPPLIERS**

..... Appellant

**Through: Mr. Moni Ginmoy
and Mr. Arvind Kr. Pandey,
Advocates.**

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms. Mansi Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed against the judgment of the court below dated 16.10.2014 whereby the court below has accepted the objections filed by the respondent herein under Section 34 of the Act and has deleted the relief granted by the Award of interest at 15% per annum. The relevant observations which are made by the court below for deleting the grant of interest are contained in paras 7(i) to 7(vii) of the impugned judgment and these paras read as under:-

“7.(**Ground B**) It is stated that the arbitrator has not conducted the arbitration proceedings on the basis of terms and conditions of the agreement between the parties and wrongly awarded the pre-suit, pendente lite and future interest.

- (i) The perusal of the award reveals that Ld. Arbitrator has allowed the claim number 6 of the claimant/respondent, which is reproduced as under:

“In my opinion the contractor is entitled to interest for delayed payment on the amount of this bill as paid i.e Rs.3,66,935/- from 01.01.2003 to 03.11.2004 at the rate of 15% p.a. The amount of interest comes to Rs.1,01,635/- and is awarded accordingly.”

- (ii) On the issue of grant of pre-suit interest, I have relied upon one judgment of the Hon’ble Punjab and Haryana High Court reported as “**AIR 2005 PH 140, (2004) 138 PLR 813, titled as, Balwant Kaur v/s Life Insurance Corporation of India.**” In this judgment is held that:

“It is well settled that the interest may be awarded for the period prior to the date of institution of the suit, if there is any agreement for payment of interest at fixed rate or if interest is payable by the usage of trade having the force of law, or under the provisions of any substantive law.

It is further held that:

“It can be safely concluded that in terms of express prohibition of payment of interest in terms of the policy, the plaintiff is not entitled to interest from the date of death of the policy holder till institution of the suit, as pre-suit interest is a matter of substantive law. In substantive law, the plaintiff is not entitled to interest in terms of the provisions of interest act.”

- (iii) In view of the settled principle of law and the judgment (supra), it is clear that a person is not entitled for ‘pre-suit interest’ as a matter of right. The payment of pre-suit interest is dependent upon the existence of agreement between the parties. In the present case, it is admitted fact that contract executed between the parties contains the terms for ‘prohibition of the payment of interest on delayed payment’. It is clear that there is an express prohibition of the payment of pre-suit interest between the parties.
- (iv) In view of the above discussion, I am of the considered opinion that grant of ‘pre-suit’ interest to the claimant by the Sole Arbitrator is against the policy and substantive law and the award passed by sole arbitrator on this particular issue is liable to be set aside.
- (v) The petitioner has also challenged the payment of pendente lite and future interest and also the rate of interest above the prevailing bank rate. A person deprived of the use of money to which he is legitimately entitled as a right to be compensated for the deprivation in the nature of interest. The payment of interest is a valid consideration for the period, for which the dispute is pending before any forum. The payment of pendente lite and future interest is governed by Section 34 of the CPC. The perusal of the Section 34 of the CPC reveals that in the absence of any agreement for interest

between the parties, only the statutory interest in terms of the Section 34 CPC can be granted.

- (vi) The claimant has failed to prove any agreement regarding rate of interest or any agreement between the parties regarding payment of pendentelite and future interest. In the absence of any agreement between the parties, the matter is governed by Section 34 of the CPC. I am in agreement with the Id. Counsel for the petitioner that the grant of interest at the rate of 15% per annum on the decretal amount is against the principles of law.
- (vii) In the absence of any agreement between the parties or proof of the fact of any other prevalent rate of interest, the Id. Arbitrator could not travel beyond the scope and ambit of Section 34 of CPC. Therefore, the award of Id. Arbitrator for grant of interest at the rate of 15% p.a as pendentelite and future interest is against the provisions of law and the award of the Id. Arbitrator on this issue is liable to be set aside.”

2. The subject contract was a contract granted to the appellant for construction of drain vide the work order of the respondent dated 20.3.2002. In this contract there is no clause barring the payment of interest. An arbitrator is duly empowered to grant interest in view of the Constitution Bench judgment of the Supreme Court in the case of *Secretary, Irrigation Department, Government of Orissa and Others Vs. G.C.Roy AIR 1992 SC 732*.

3. In the present case the court below has committed a complete illegality in holding that the contract in question contains a clause of prohibition of payment of interest on delayed payment inasmuch as there is no such clause in the contract order of the year 2002 which is pointed out to this Court. In any case, assuming that there is a clause for denial of interest, I have held in the case of *Union of India Vs. M/s N.K.Garg & Co. (2015) 224 DLT 668* that any clause

by which a person is denied interest on amount due, then such a clause will be illegal and hit by the provision of Section 23 of the Indian Contract Act, 1872. Detailed reasons have been given by this Court in the judgment in the case of *N.K.Garg (supra)* and are adopted by this Court and it is held that the arbitrator is not barred from awarding interest even if there is a clause in the contract that interest cannot be awarded.

4. In view of the above discussion, this appeal is allowed. The Award of the arbitrator is restored with respect to awarding of interest to the appellant. It is however agreed by counsel for the appellant that the rate of interest granted by the Award at 15% per annum can be read as interest at 9% per annum simple. Ordered accordingly.

5. The appeal is accordingly allowed and disposed of in the aforesaid terms, subject to variation of reducing of the rate of interest from 15% per annum to 9% per annum simple.

MAY 15, 2017/ib

VALMIKI J. MEHTA, J