

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.R.P. Nos.577, 992 and 2265 of 2015

COMMON ORDER : *(per Hon'ble Sri Justice Ramesh Ranganathan)*

These three revision petitions are preferred against the order dated 20.6.2014 passed in I.A. No.1356 of 2012 filed in A.O.P. Nos.438, 439 and 450 of 2000 by the Arbitrator (Retired Chief Bridge Engineer, S.E. Railway) seeking directions to the Railways to pay the outstanding arbitration fees along with interest at 18% per annum from the date of the Award i.e., 1.12.2004 towards the fees payable to him, for conducting the proceedings in the aforesaid A.O.Ps. and for an award to be passed.

In the order under revision, the learned Principal District Judge, Nellore held that the petitioner in the I.A. was appointed as an Arbitrator; he had conducted arbitration proceedings; after he had passed an Award, the respondent had filed the aforesaid three A.O.Ps. (A.O.P Nos.438, 439 and 450 of 2000), under Section 34 of the Arbitration and Conciliation Act, to set aside the award; while 50% of the agreed fees had been paid by the 1st respondent in the three A.O.Ps., the Railways had not paid their share of 50% fees; only a part thereof had been paid; and, therefore, the remaining part should be paid with interest at 18% per annum.

The learned Principal District Judge observed that the counsel for the 2nd respondent – Railways had admitted that there was no dispute with regard to the liability of the Railways in payment of the remuneration of the Arbitrator; the only question was with regards payment of interest i.e., whether interest could be granted thereon; several requests were made by the Arbitrator for payment of his balance remuneration; inspite of such requests, the Railways did not choose to pay the same; it was just and reasonable, in the circumstances, to award interest

at the rate claimed by the arbitrator, and, in view of Section 39(4) of the Arbitration and Conciliation Act, 1996, he was entitled for payment of remuneration with interest at 18% per annum from 1.12.2004. The revision petitioner herein was directed to pay the arbitration fees with interest at 18% per annum from 1.12.2004 till the date of actual payment. Aggrieved thereby, the present three revision petitions are filed.

Sri Javed Razack, learned counsel for the petitioner, would submit that any grievance, which the Arbitrator may have regarding non-payment of his fees, could only have been agitated in independent legal proceedings, and not in an application filed by the revision petitioner herein under Section 34 of the Arbitration and Conciliation Act; the mere fact that the petitioner herein had admitted, before the Court below, that they did not dispute the liability to pay fees, did not justify such an order being passed; and, in any event, the Court below had erred in directing payment of interest at 18% per annum.

Section 39 of the Arbitration and Conciliation Act relates to lien on the arbitral award and deposit as to costs. Under Section 39 (1), subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration. Under Section 39(2), if in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that, out of the money so paid into Court, they shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable; and the balance of the money, if any, shall be refunded to the applicant.

Under Section 39(3), an application under sub-section (2) may be made by any party, unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to

appear and be heard on any such application. Under Section 39(4) the Court may make such orders as it thinks fit respecting the costs of the arbitration, where any question arises respecting such costs, and the arbitral award contains no sufficient provision concerning them.

Having admitted before the Court below that there was no dispute regarding payment of the arbitration fees, the revision petitioner cannot now be heard to contend to the contrary, or to claim that the application made by the Arbitrator, in the application filed by the revision petitioner under Section 34 of the Act, could not have been entertained by the Court below. The order under revision does not disclose such a contention having even been taken by the revision petitioner herein before the Court below. The only dispute raised before the Court below was with regards payment of interest; and, as the petitioner in the I.A. (Arbitrator) claimed interest at 18%, the Court below had awarded 18% interest relying on Section 39(4) of the Arbitration and Conciliation Act.

As noted hereinabove, Section 39(4) of the Act merely enables the Court to make such orders as it thinks fit with respect to the costs of the arbitration, where the arbitral award contains no sufficient provision concerning them. While Section 39(4) confers a discretion on the Court to make such orders as it thinks fit with regard to costs, exercise of the power conferred under Section 39(4) can only be for just and valid reasons. The order under revision does not contain any reasons as to why interest at 18% should be directed to be paid on the outstanding arbitration fees.

While Sri Javed Razack, learned counsel for the revision petitioner, submits that interest at 6%, as prescribed in the Civil Procedure Code, should alone have been directed to be paid, Sri P.Venkata Rama Sarma, learned counsel for the respondent, would submit that the interest rate, directed to be paid by the Court below, at 18% per annum is reasonable; and, in any event, the interest rate should be fixed at least at 15% per annum, because of the inordinate

delay, on the part of the revision petitioner, in making payment of the arbitration fees.

As the amounts due towards the fees of the arbitrator, has not been paid from when it was due in the year 2004 till date, and the Respondent-Arbitrator has been denied his legitimate fees for the past 14 years for no fault of his, we consider it reasonable that he be paid simple interest at 12% per annum on the outstanding arbitration fees. The order under revision is set aside; and, instead, the revision petitioner shall pay the arbitration fees, as directed by the Court below, along with simple interest at 12% per annum, to the Respondent-Arbitrator, within three months from the date of receipt of a copy of this order.

All the three Civil Revision Petitions are disposed of accordingly. No order as to costs. Miscellaneous petitions pending, if any, in all the three Civil Revision Petitions shall stand closed.

JUSTICE RAMESH RANGANATHAN

JUSTICE N.BALAYOGI

25th July, 2018

Note : Issue C.C. in one week.

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