IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7869 of 2010
Date of decision:13.09.2018

M/s Kuljit Singh and Co. ... Petitioner

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.K.Garg, Advocate for
Mr. P.S.Rana, Advocate, for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 19.07.2010 passed by the Civil Judge (Junior Division), Chandigarh.

The petitioner-contractor and respondent no.2 -Executive Engineer Patiala-Ki-Rao Construction Division SYL Canal Project entered into a contract agreement no.26 dated 2.1.1987 for construction of Super Passage of 75.005 km of Satluj Yamuna Link Canal Project, Punjab. Certain disputes and differences arose between the parties and since the contract agreement contained arbitration clause, vide letter dated 18.6.1991, Chief Engineer, SYL was appointed the sole arbitrator. The arbitrator rendered the award dated 23.5.1995 (Annexure P-1) while accepting certain claims and rejecting the counter claim. The objections under Sections 30 and 33 of erstwhile Arbitration Act, 1940 were submitted by the respondents. The same were dismissed, vide judgment and decree dated 12.05.1998. Award dated 23.05.1995 was made rule of Court and it was held that petitioner was entitled to recover the interest @ 12% per annum.

Vide Annexure P-2, an application for execution of the decree, passed by the Executing Court, was submitted. Respondents, vide Annexure P-3 filed a reply stating therein that a sum of ₹70,88,002/- after deductions to the tune of ₹15,68,469/- which were on account of income tax and sales tax was deposited. Vide application dated 10.06.2000 (Annexure P-4), petitioner protested against the recovery of sales tax etc. The trial Court, vide order dated 05.03.2001 held that as per the terms and conditions of the contract agreement, sales tax was not recoverable from the decree holder.

The aforementioned order was assailed in this Court, vide CR No.2681 of 2001. This Court disposed of the revision petition on 14.09.2001 (Annexure P-6) by holding that recovery of sales tax was not justified which was being claimed @ 2% by the judgment debtor. The review application seeking modification of the order, vide order dated 29.10.2002 was also dismissed,. It is in these circumstances, executing court proceeded ahead for determination of the outstanding amount to the petitioner and impugned order dated 19.07.2010 has been passed which according to the petitioner was not as per the calculations submitted by it but the calculations submitted by the respondents was accepted.

Mr. K.K.Garg, Advocate for Mr. P.S.Rana, learned counsel representing the petitioner submitted that the impugned order is not sustainable in the eyes of law as the finding of the trial Court holding that decree holder had made calculations on higher side by adding interest on interest was not permissible. The interest calculation made by JD after 23.05.1995 (i.e., the date of award) was wrong as per the provisions of Arbitration Clause 63. JD was liable to pay an amount of ₹58,53,936/- i.e. the balance amount due as on 11.02.2010 plus the element of interest awarded by the Arbitrator, the interest as per the award and the interest on the entire amount totalling to ₹11,88,832/-, much less, the escalation as per award under claim no.27. The trial Court erroneously held that escalation amount payable to the petitioner was only ₹85,916/- as calculated by the respondent and not ₹1,81,553/- which was in consonance with Claim no.27 of the award and the calculations submitted by the petitioner have not been taken in correct perspective, whereas, the respondent intentionally gave the wrong calculations. If at all, there was some confusion, the matter could have been referred to any Chartered Accountant or Audit Controller, Punjab, and thus, prayed for setting aside the impugned order.

Ms. Anu Pal, learned Deputy Advocate General, Punjab appearing on behalf of the respondents supported the impugned order by raising the following pleas:-

The impugned order is in accordance with the terms and conditions of the award which contained the element of interest. The amount already deposited was only outstanding towards the petitioner. The petitioner has unnecessarily charged the interest on interest which is not permissible in law. The interest has been calculated @ 13% on the awarded amount from 1.8.1990 (date of reference) till 23.05.1995, (date of decree). JD has also calculated the interest @12% from the date of decree as ordered in the decree on the amount of ₹39,10,314/- and the total amount came to be ₹86,71,898/- as on 27.01.2000. The paid amount was duly deducted from the due amount and the calculation submitted by the decree holder is on the higher side and urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Garg. It would be necessary to extract Arbitration Clause 63 which reads as under:-

> *“The award of the Arbitrator shall be final and binding on both the parties.”*

Both the sides were at dispute with regard to calculations submitted on their behalf. In such situation, the trial Court should not have weighed the calculations by putting on scale instead relegated the parties either to the Audit Controller, Punjab or Chartered Accountant who could have undertaken the exercise of ascertaining the actual amount due as per the calculations submitted, *ibid.* The Courts are not expert in the calculations, therefore, should not accept the calculations submitted by one of the parties as intricacy of calculations and applicability of the prevailing law is the yardstick particularly when the execution application had been filed seeking implementation of the award having trapping of decree already made rule of Court, as per the judgment and decree dated 23.05.1995, but not in the manner and mode as noticed above.

No reasoning has been assigned as to how and in what manner the calculations submitted by the petitioner-decree holder was on the higher side. One of the reasons for rejecting the calculations of the petitioner was that petitioner had calculated interest on interest. In my view, the trial Court remained oblivious of the latest law wherein the charging of interest on interest as per the terms and conditions of the award is permissible. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **M/s Hyder Consulting (UK) Ltd. vs. Governor State of Urissa through Chief Engineer 2016(6) SCC 362.**

As an upshot of my findings, the impugned order is set aside and the trial Court is directed to decide the calculations submitted by the parties by referring the matter to the Chartered Accountant or to the office of Audit Controller, Punjab or his prerogative.

Let the aforementioned exercise be undertaken within a period of 10 months from the date of receipt of certified copy of this order. The parties are directed to appear before the trial Court on 15.10.2018.

The revision petition stands disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

September 13, 2018
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No