IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1195 OF 2016

Jorini Hospitality Pvt.Ltd. …Petitioner
vs
New India Assurance Co.Ltd. ...Respondent

Mr.A.M. Vernekar with Suraj S. Ghogare I/b. Narichania & Narichania for Petitioner.
Ms.Ruchika Dave I/b. Asim S. Vidyarthi for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 23 JANUARY 2019

P.C. :

This petition challenges a part of an impugned award. The Petitioner herein was the claimant before the arbitral forum. It's claim arose out of a fire insurance policy issued by the Respondent herein in its favour. The Petitioner's claim on account of the principal amount claimed as due and payable by Respondent No.1 was accepted by the learned arbitrator and an appropriate award was passed thereon. The learned arbitrator ordered interest at the rate of 8% per annum on the awarded amount. This was *pendente lite* interest. The learned arbitrator also awarded costs of arbitration in a sum of Rs.3 lakhs. These two, namely, the award of interest and arbitration costs, are the only matters, which are the subject matter of challenge in the present petition.

2 After the matter is heard at some length, learned Counsel for the Petitioner submits that there are no reasons for the particular award of interest or costs. Learned Counsel submits that the goods insured under the

policy were hypothecated to a bank and for this hypothecation, the Petitioner was paying interest at the rate of 16.5% per annum and this fact was known to the Respondent. Learned Counsel submits that on this basis, the Petitioner had prayed for *pendente lite* interest of 18% on the awarded principal amount. Learned Counsel submits that without discussing any reasons, the learned arbitrator has reduced the rate of interest to 8%. Learned Counsel submits that there is absolutely no discussion on the propriety of the rate of interest. As regards the costs awarded by the learned arbitrator, it is submitted that the Petitioner had submitted schedule of actual costs in the sum of Rs.14,96,500/-. Learned Counsel submits that though the learned arbitrator has referred to the bill of costs submitted by the Petitioner, without any discussion whatsoever the amount of costs has been reduced to Rs.3 lakhs.

3 Learned Counsel for the Respondent opposes the petition. Learned Counsel submits that both interest and costs were in the discretion of the arbitrator and were rightly awarded by the learned arbitrator. It is obvious that giving of reasons is a fundamental requirement of the arbitration law in India, as contained in Sub-section (3) of Section 31 of the Arbitration and Conciliation Act, 1996 ('Act'). It is mandatory for the arbitral tribunal to state its reasons upon which it is based, unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under Section 30. It is not the Respondent's case that no reasons are to be given or that the award is on agreed terms under Section 30 of the Act. It is, therefore, obvious that the arbitral award had to state reasons for each of the claims awarded by it. Insofar as interest is concerned, particularly having regard to the fact that it was an express

case of the Petitioner insured that the contract was subject to a bank clause, which *inter alia* showed that the insured goods were hypothecated to the bank and interest was being paid on such hypothecation, it was imperative for the arbitrator to have considered reasons for awarding interest. Learned Counsel submits that considering the principle of Section 73 of the Contract Act, the damage by way of interest at the rate of 18% claimed by the insured in the present case, by reason of breach of contract of insurance, was within the knowledge of the parties when they made the contract as loss or damage likely to result from breach of it. There is no doubt that the fact of hypothecation was reflected in the insurance contract and can very well be said to be within the knowledge of the insurer. It is, however, equally true that the insurance contract does not reflect any particular rate of interest which the insured was liable to pay on hypothecation finance. Since, at any rate, this interest was to be awarded by a reasoned award and that, since, these reasons are singularly lacking in the present award, the award has to be set aside. Learned Counsel for the parties, however, leave it to the court to fix the rate of interest that should appropriately be ordered on the principal amount awarded by the learned arbitrator.

4 As regards the costs ordered by the arbitrator, the matter was certainly within the discretion of the arbitrator, though even for this award, the arbitrator had to give some modicum of reasons. Even here, though the award shows complete want of reasons, and, therefore, may well be interfered with by this court in its jurisdiction under Section 34, the actual quantum of costs has been left by the parties to this court to decide.

5 Accordingly, the arbitration petition is disposed of by awarding interest on the principal amount awarded by the learned arbitrator at the rate of 11% per annum, which is in keeping with the bank rate referred to in Sub-section (7) of Section 31.

6 Considering the fact that it is not in dispute that the bill of costs submitted by the Petitioner to the learned arbitrator for the award of costs includes fees paid to the arbitrator in the sum of Rs.3,80,000/- and considering the fact that the Petitioner has wholly succeeded in the present arbitration reference, there is no reason why at least this much cost should not be awarded against the Respondent. Accordingly, the costs of arbitration awarded by the learned arbitrator are altered to Rs.3,80,000/-.

7 The award is accordingly read down and sustained. The arbitration petition is disposed of accordingly.

(S.C. GUPTE, J.)