

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.Nos.119 and 303 of 2018

M/s.SAVIO Industrial and Structural
Corporation,
96/5, K.N.Colony Post,
Salem Cuddalore Main Road,
Salem - 636 014.

.. Appellant in

O.S.A.No.119 of 2018/Petitioner in OP

M/s.SAVIO Industrial and Structural
Corporation rep. by its
Proprietor VX Dominic Savio,
96/5, K.N.Colony Post,
Salem Athur Main Road,
Salem - 636 014.

.. Appellant in

O.S.A.No.303 of 2018/Respondents in OP

Vs

- 1.Southern Railway rep. by
General Manager,
Egmore, Chennai - 8.
- 2.The Chief Engineer,
Gauge Conversion,
Southern Railway, Egmore,
Office of the Chief Administrative
Officer, Chennai - 8.
- 3.The Deputy Chief Engineer -
Constructions,
South Western Railway,
No.18, Millers Road,
Bangalore - 560 046.

4.M.K.Kabir,
Arbitral Tribunal,
80, Law Chamber,
Chennai - 104.

.. Respondent in

O.S.A.No.119 of 2018/Respondent in OP

1.The General Manager,
Southern Railway,
Park Town, Chennai - 8.

2.The Chief Engineer,
Office of the Chief Administrative
Officer/CN/MAS,
Gauge Conversion,
Southern Railway, Egmore, Chennai.

3.The Deputy Chief Engineer/
Construction,
South Western Railway,
No.18, Millers Road,
Bangalore - 560 046.

.. Respondent in

O.S.A.No.303 of 2018/Petitioners in OP

Appeals preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order and decretal
order dated 19.10.2016 made in O.P.Nos.143 and 525 of 2016.

Prayer in O.P.Nos.143 and 525 of 2016.

Petition filed under Section 34 of the Article of
Constitution Act 1996 Praying to allow the Petition by granting
the Claim of refund as Security Deposit amount of Rs.3,05,044/-
with due interest as per Interest act 1993 from 1st January 1997,
and the costs as prayed fro, setting aside the arbitral award
dated:30/12/2015.

Petition filed under Section 34 of the Articles of
Constitution Act,1996 praying to SET ASIDE the award of Learned
Arbitrator dated:30/12/2015 made in relation to disputes arising
out of Agreement Nos.46/CN//96, 47/CN/96 and 50/CN/96 in so far
as the grant of pendente-lite interest is concerned.

For Appellant .. Mr.AR.L.Sundaresan,
Sr. Counsel
for Ms.AL.Ganthimathi
in both the appeals

For Respondents .. Mr.P.T.Ram Kumar
for R1 to R3
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Since both the parties being the same and the same order is challenged in both the appeals, these appeals are taken up together and disposed of by way of a common order.

2.The only issue that arises for consideration in these appeals is with respect to the entitlement of the appellant for payment of interest on the security deposit.

3.This is the second round of litigation. On the earlier round of litigation, the matter was proceeded under the Micro Small and Medium Enterprises Development Act, 2006 ('MSMED Act' for brevity). As the Arbitrator did not pass the award with respect to interest on the security deposit and pursuant to the order passed by this Court exercising the power under Section 11 (6) of the Arbitration and Conciliation Act, 1996, the learned Arbitrator has awarded interest.

4.Though it was contended by the appellant that the security deposit was used for the purpose of recovering the arrears, factual finding otherwise was given by the Arbitrator while holding that MSMED Act will not have an application and therefore, what is applicable is the Arbitration and Conciliation Act, 1996 alone and hence we are not concerned with the applicability of Section 31(7) of the Arbitration and Conciliation Act, 1996, which clearly mandates that payment of interest is subject to the agreement entered into inter se parties.

5.The learned single Judge placed substantial reliance upon Clause 16(2) of General Conditions of Contract (for short 'GCC'), which reads as follows:

No interest will be payable upon the earnest money or the security deposit or amount payable to the contractor under the contract, but Government Securities deposited in terms of Sub-Clause (1) of this clause will be repayable with interest accrued thereon.

6. Accordingly, it was held that in view of the above, the appellant is not entitled for interest. Secondly, the award passed by the learned Arbitrator was set aside and hence these appeals are before us. It is to be noted that as against the award passed, both parties filed applications invoking Section 34 of the Arbitration and Conciliation Act, 1996.

7. Learned senior counsel appearing for the appellant would submit that Clause 16(2) of GCC will have to be made applicable to a case where a contract has been performed. Once the contract is performed, then there is no necessity for paying any interest on the security deposit. Therefore, the said clause cannot be made applicable to a case where the amount has been withheld wrongly and thereafter paid. On the applicability of Clause 52 (A) of GCC, it is submitted that the same is applicable to other contracts alone when it comes to non-payment of interest. It is further submitted that even before the learned single Judge, learned counsel for respondents 1 to 3 did not raise the aforesaid contention. In support of his submission, learned senior counsel has made reliance upon the judgment of the Apex Court in Union Bank of India Vs. Ambica Construction ((2016) 6 SCC 36).

8. Learned counsel appearing for respondents 1 to 3 by placing reliance upon the decisions in (1) Union of India Vs. Bright Power Projects (India) Private Limited ((2015) 9 SCC 695), (2) Sri Chittaranjan Maity Vs. Union of India ((2017) 9 SCC 611) and (3) Reliance Cellulose Products Limited and Another Vs. Oil and Natural Gas Corporation Limited and Another ((2018) 7 MLJ 332(SC)) submitted that the aforesaid judgment has to be seen in the context of the earlier enactment wherein there is no pari materia provision like Section 31(7) of the new Act. Even Clause 16(2) of GCC has been rightly interpreted to deny the entitlement for payment of interest for pre-arbitration period and as well as pendente lite. Therefore, it is submitted that the appeals will have to be dismissed.

9. Before going into the respective contentions, we would like to extract Clause 52 A of GCC, which reads as under:

"52-A. Any sum of money due and payable to the Contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Railway against any claim of this or any other Railway or any other Department of the Central Government in respect of payment of a sum of money arising out of or under any other contract made by the contractor with this or any other Railway or any other Department of the Central Government.

It is an agreed term of the contract that the sum

of money so withheld of or retained under this clause by the Railway will be kept withheld or retained as such by the Railway till the claim arising out of or under any other contract is either mutually settled or determined by the arbitrator, if the other contract is governed by arbitration clause or by the competent court as the case maybe, and that the contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this clause and duly notified as to the contractor."

10.As rightly submitted by the learned counsel for respondents 1 to 3, Clause 16(2) of GCC has already been considered by the Apex Court on more than one occasion. While doing so, it has been held categorically that the aforesaid clause prohibits payment of interest. If that position is taken into consideration, in the light of Section 31(7) of the new Act, then, we do not find any error in the order passed by the learned single Judge.

11.Even on the interpretation of Clause 52 A of GCC, we do not find any merit. Respondents 1 to 3 have made reliance upon Clause 52 A of GCC. Though the learned single Judge did not go into the applicability of the aforesaid clause, we have permitted the counsel to argue at length on this aspect as well. Clause 52 A of GCC will have to be read as a whole. This clause speaks about withholding of security deposit followed by dis-entitlement of payment of interest. Therefore, withholding and retaining will have to be read along with the issue governing interest. That would be the proper interpretation of Clause 52 A of GCC. By doing so, we have no hesitation in holding that even under Clause 52 A of GCC, the appellant has not made out a case.

12.Thus, looking from any perspective, we do not find any merit in these appeals. Accordingly, these original side appeals stand dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Southern Railway,
Egmore, Chennai - 8.

2.The Chief Engineer,
Gauge Conversion,
Southern Railway, Egmore,
Office of the Chief Administrative
Officer, Chennai - 8.

3.The Deputy Chief Engineer -
Constructions,
South Western Railway,
No.18, Millers Road,
Bangalore - 560 046.

4.The Sub Assistant Registrar,
Original Side, High Court, Madras.

+2cc to Mr.AL.Ganthimathi, Advocate, S.R.No.275 &276

+1cc to Mr.P.T.Ram Kumar, Advocate, S.R.No.616

O.S.A.Nos.119 and 303 of 2018

AK(CO)
GSP(12/02/2019)