101

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.3697 of 2016
Date of Decision: February 14, 2019

M/s Shastri Construction Co.

..... Petitioner

Versus

Union of India

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Manohar Lall, Advocate with
Mr. Rajesh Chaudhary, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondent.

SUDIP AHLUWALIA J. (ORAL)

1. This revision is directed against the impugned order dated 25.02.2016 passed by the Ld. Civil Judge (Junior Division), Chandigarh.

2. Background of the matter is that an award in favour of the petitioner-Company dated 19.06.1987 (Annexure P-2) was passed by the Ld. Arbitrator, which was subsequently made a Rule of the Court vide the Decree dated 02.12.1988 (Annexure P-3). The disputed observation in the said order was in relation to issue No.3 i.e. The relief to which the claimant/petitioner was entitled, and the observations of the Ld. Trial Court in this regard were "*In view of my findings on the above stated issues, I do not find any reason to interfere in the award given by Arbitrator Sh. A. K. Mullick except to set aside the award allowing*

pendente lite interest. The petitioner will be liable to pay the interest @12% per annum in case the objector-petitioner failed to make the payment of the awarded amount within a period of one month".

3. In this manner, the final decree in the form of 'Rule of the Court' was pronounced, which was challenged in appeal by both the parties, which were both dismissed. Thereafter, the revisions preferred by both the parties were in turn also dismissed.

4. The petitioner/claimant thereafter filed execution for enforcement of the decree, but the execution petition was initially dismissed in view of the objections filed by the respondent. The revisional application thereafter preferred on behalf of the petitioner (CR No.1522 of 2010) was disposed off by this Court with the following observations:-

> *"Before this Court, the only contention raised by the learned counsel for the petitioner was that as per award of the Arbitrator dated 29.6.1987, the petitioner was entitled to interest at the rate of 12% per annum upto the date of payment or Court's decree, if the awarded amount was not paid within 60 days from the date of pronouncement/publication of the award.*
>
> *Learned counsel appearing on behalf of the respondent very fairly could not dispute the fact that vide award dated 29.6.1987, the payment of net amount of award was to be made within 60 days from the date of publication of the award and in case of default, simple interest on the net awarded amount at the rate of 12% per annum was to be paid by the respondent to the claimants upto the date of payment or the Court's decree whichever was earlier. Thus, there is no dispute that the Arbitrator awarded the interest at the rate of 12% per annum on the awarded amount to the petitioner-Company in case the awarded amount was not paid within the stipulated period of 60 days. Admittedly, the net awarded amount was not paid within 60 days as stipulated aforesaid.*

*It may be relevant to mention at this stage that the Hon'ble Supreme Court of India in the case of **Secretary to Government of Orissa & others v. Rathunath Mahapatra**, JT 1991 (6) SC 349 has held that in every case where the arbitration agreement does not exclude the jurisdiction of the Arbitrator to award interest pendente lite, such powers must be inferred and the award as such is to be maintained. It is not the case of the parties that in this case, the arbitration agreement has excluded the jurisdiction of the Arbitrator to award interest pendente lite.*

In this view of the matter, no fault can be found with the interest awarded by the Arbitrator as stipulated vide award dated 29.6.1987. Moreover, while making the award as the rule of the Court, the Civil Court has not excluded the aforesaid period w.e.f. 29.6.1987 upto 2.12.1988 and what has been set aside is the part of the award of the Arbitrator allowing pendente lite interest for the period it remained pending before the Arbitrator on the claims made under item No.39 under the head "pendente lite interest".

Learned counsel for the respondent was unable to point out any other interpretation of decree dated 2.12.1988 before this Court.

In view of the aforesaid, this revision petition is accepted. The impugned order is set aside and matter is remitted back and the Executing Court is directed to determine the balance amount payable to the petitioner as per the decree dated 2.12.1988.

Let the parties through their counsel be present before the Executing Court on 15.9.2010."

5. The Executing Court thereafter passed the impugned order in compliance of the aforesaid directions of this Court in which it has been observed *inter alia-*

"*In this case, it is admitted by the learned counsel for the decree holder and JD that full and final payment made to the contractor on 28.04.1992 was made to the tune of*

Rs.11,19,693/-. Vide order dated 26.08.2010, Hon'ble High Court has pleased to held that decree holder is entitled to receive interest according to the award from the date of award i.e. 29.06.1987 to date of decree i.e. 02.12.1988 @ 12% per annum. Accordingly, decretal amount of interest for the said period comes out to Rs.1,36,443.82 paise. This amount of interest is not disputed by both the parties. However, the decree holder is claiming interest over the interest, which was neither granted to him by the order of Hon'ble High Court nor by the Arbitrator. Hence, in compliance of order passed by Hon'ble High Court, the decree holder is entitled only for the interest from the date of publication of award to the date of decree i.e. for the period of 29.06.1987 to 02.12.1988. Accordingly, decree holder is not entitled for any interest beyond the date of decree over the interest due towards the JD. Accordingly, decree holder is entitled to further amount of Rs.1,36,443.82 be payable to him by the JD. Hence, in compliance of order dated 26.08.2010 passed by Hon'ble High Court, said amount of Rs.1,36,443.82 is determined, as the balance amount payable to the decree holder by the JD in compliance of decree dated 02.12.1988. Accordingly, application is decided. Papers of the application be placed upon the main file and be consigned to record room by Shri Manjit Singh, Civil Ahlmad. Applicant is directed to execute said order through court in case JD has failed to make the said payment to the decree holder within two months from the date of order".

6. The petitioner is aggrieved that interest over the amount of Rs.1,36,443.82 which was the accrued interest @ 12% p.a. on the awarded amount from the date of passing the award till the date it was decreed is being denied vide the impugned order, even though this amount ought to have been treated as part of the finally assessed compensation, and was

not to be regarded as extraneous interest in terms of the observations of the Ld. Arbitrator.

7. This contention is, however, resisted on behalf of the respo\- Judgment Debtor whose Ld. Counsel has submitted that "*no interest can be awarded over interest, which in other words amounts to granting of compound interest for the disputed period on the aforesaid assessed interest amount*".

8. To summarize, contention of Ld. Counsel for the respondent is that "the awarded amount is the amount contained in the award", and that the unquantified accruing interest thereupon cannot be included to inflate the awarded amount for the purpose of further calculation of interest.

9. In support of their respective contentions, both the sides have placed certain citations before this Court. The first reliance from the side of the petitioner is on the decision of the Hon'ble Supreme Court in "***Union of India vs. Bungo Steel Furniture Private Ltd.***, ***AIR 1967 SC 1032*** in which a decision of the Calcutta High Court was upheld by the Ld. Apex Court with the observation that "*We are accordingly of the opinion that the arbitrator had authority to grant interest from the date of the award to the date of the decree of Mallick, J. and Mr. Bindra is unable to make good his argument on this aspect of the case*".

10. Thereafter, the petitioner's side has relied upon a decision of the Hon'ble Supreme Court in "***McDermott International Inc. vs. Burn Standard Co. Ltd. and others***", ***(2006) 11 SCC 181***, wherein it was observed-

> "*The ground has been taken only in the supplementary affidavit filed on behalf of BSCL on 21-9-2004 beyond a period of three months as specified in Section 34 of the Act. The Arbitrator has awarded the principal amount and interest thereon up to the date of award and future interest thereupon which do not amount to award of interest on interest as interest awarded on the principal amount up to the date of award became the principal amount which is permissible in law".* *(Emphasis added)*

11. Furthermore, the petitioner side has relied upon a decision of this Court in "***Haryana Tourism Corporation Ltd. and another vs. Bodh Raj Gupta and another***", ***2001 (1) RCR (Civil) 402***, in which a Single Judge had only partly allowed the revision filed against the contractor-respondent and observed *inter alia* "*Resultantly, this revision is partly allowed by rejecting the objection of jurisdiction and it is hereby declared that the contractor-respondent shall get the amount awarded by the arbitrator along with interest at the rate of 15% from the date of the award up to the date when it became rule of the Court and he will further get interest at the rate of 9% from the date of the decree up to the date of the payment. There shall be no order as to costs*".

12. On the other hand, decision of a Co-ordinate Bench of this Court in "***State of Punjab and another vs. S. S. Construction Engineers and Contractors***", ***2010 (43) R.C.R. (Civil) 884,*** was relied upon by the respondent in which the revision filed on behalf of the contractors against whom the award was passed by the Arbitrator was allowed with the following observations:-

> *"Second challenge to the award of interest by the Arbitrator is that future interest from the date of Award till*

> *recovery has been awarded even on the amount of interest accrued for pre-reference period and for reference period, which could not have been allowed. There is considerable force in the argument. The Arbitrator could not have allowed compound interest. It appears that even the trial court has not allowed compound interest because the trial court has held the Contractor entitled to recover the amount mentioned in the Award with interest @ 15% per annum from the date of Award till recovery. However, even if there is confusion regarding interpretation thereof, it has to be made clear that compound interest could not be awarded by the Arbitrator. The Contractor, therefore, would be entitled to future interest only on the principal amount of Award and not on the interest amount, which accrued till the date of Award."*

13. Lastly, the respondent's side has also cited the minority view of a Three Judge Bench decision of the Hon'ble Supreme Court in "***M/s Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa Through Chief Engineer***", ***2015 AIR (SC) 856***, in which H. L. Dattu, C.J. had observed *inter alia "* 30. *Thus, I am of the considered opinion that, since the position on the interpretation of sub-section (7) of Section 31 of the Act, 1996 regarding award of interest upon interest has been correctly decided in the S.L. Arora case (supra), the present reference may not be required. The decision of this Court in the Three Circles case (supra) was rightly held to be passed on inadvertent erroneous assumption, as stated in the S.L. Arora case (supra). <u>The McDermott case (supra) did not deal with the question pertaining to awarding of 'interest on interest' or compound interest</u>. Furthermore, the decision in the ONGC case (supra) pertained to the Act, 1940, and, therefore, in light of the settled principle of law, would not be applicable to cases under the Act, 1996. Lastly, the*

decision in the Central Bank of India case (supra) did not deal with the issue around interpretation of sub-section (7) of Section 31 of the Act, 1996, nor did the principle laid down therein hold contrary to the decision in S.L. Arora case (supra)".

14. This Court has carefully considered the aforesaid decisions relied upon by the parties. It may be mentioned at the outset that the arbitration proceedings in the present case were held under the old Arbitration Act of 1940, and, as already seen in the decision of ***Union of India's case (supra)***, the arbitrator was well within his right to grant interest from the date of his award to the date of the decree finally passed by the Court. Even otherwise as noted in the relevant para No.44 of the decision in ***McDermott International Inc. case (supra)***, the interest awarded upon the principal amount up to the date of award and future interest thereupon do not amount to award of interest interest, as the interest awarded on the principal amount up to the date of award becomes the principal amount which is permissible in law.

15. The decision of this Court in State of Punjab (supra) is distinguishable from the facts of the present case. The above quoted observation was passed in the context of the background that the Ld. Trial Court had itself not allowed compound interest in favour of the concerned contractor, who was held to be entitled to future interest only on the principal amount of award and not on the interest amount which accrued till the date of award, as it is seen on perusal of the facts as narrated in para No.2 of the said decision that:-

> "*Respondent-Contractor executed some work of the petitioners. There was dispute between the parties regarding*

> *payment of work executed by the Contractor. As per arbitration clause in the agreement, Arbitrator was appointed. Arbitrator made Award dated 29.09.1998 (Annexure P-1) awarding Rs.29,38,914/- along with interest thereon @ 15% per annum w.e.f. 02.06.1990 (being the last date of payment made to the contractor) <u>till date of Award and also future interest at the same rate on the awarded amount as well as on the interest amount accrued till the date of Award.</u>"* *(emphasis added)*

As such interest upon the awarded amount at the rate of 15% per annum from the last date of payment <u>till the date of award</u>, and also interest at the same rate on the awarded amount as well as <u>interest accrued again "till the date of award</u>" was directed by the Ld. Arbitrator, which certainly was a double interest for the same period ending on the "date of award".

16. In the present case, however, the interest was directed to be levied at 12% from the date of award till the date of the same becoming 'decree', which was the necessary requirement in the old Act. Suffice it to say, award under the old Act could not become executable from the moments of its pronouncement itself but had to necessarily go through the process involved till it would finally become a 'Court decree' by way of a 'Rule of the Court'. We may examine the situation from a common sense analogy. A loan of Rs.100/- is grated to the defendant for one year at the rate of interest of 10%. He however, defaults in such payment on account of which a suit for recovery of the principal amount along with the interest is filed against him for that period which comes to Rs.100/-+Rs.10/-=Rs.110/-. If the suit is decreed on these facts, this figure of Rs.110/-

actually becomes the 'decretal amount', on which future interest as applicable is liable to be further imposed if the decree is not satisfied forthwith, and the same has to be executed in accordance with law.

18. On the face, therefore, there is no irregularity or impropriety in concluding that the accrued interest for the period between the date of 'pronouncement of award' and the date of 'decree' when it became actually enforceable, would automatically get merged into the awarded amount to be recovered subsequently, and so there can be no fallacy that such inclusion in the awarded amount before the decree amounts to imposing any 'compound interest' on the respondent/Judgment Debtor.

19. Even the minority view in ***H. L. Dattu C.J. in M/s Hyder Consulting (UK) Ltd.'s case (supra)*** was in the context of interpretation of sub-section 7 of Section 31 of the New Arbitration Act of 1996, and was held to not apply to the old Act of 1940. In any event, the majority view in the aforesaid case as summarized by Abhay Manohar Sapre J., even though in the context of interpretation of Section 31(7) of the new Act for deciding a principle which may be applicable to a similar situation if need be, in case of the earlier Act of 1940, has unambiguously gone in favour of the awardee, as can be seen from the following observations of the said Bench:-

> *"79. With great respect, I find myself in complete agreement with the reasoning and the eventual conclusion arrived at by brother Bobde J. Even though, the judgment delivered by brother Bobde J. encapsulates everything of what is required to be said, I, however, looking to the point involved and very ably argued by all learned senior counsel, wish to record my own reasons, in addition to what has already*

been laid down.

80. Reiteration of facts is unnecessary. The only question that arises for determination in the instant lis is, "Whether grant of interest by the Arbitral Tribunal under Section 31(7) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") amounts to granting "interest on interest"?

81. The aforesaid question can be answered by a plain and simple reading of Section 31(7) of the Act which reads as under:

31(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

xxx xxx xxx xxx

84. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then looses its character of an "interest" and takes the colour of "sum" for which the award is made.

85. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the *legislation seeks to make no distinction between the sum award and the interest component in it.*

86. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

87. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a).

88. Therefore, in my view, the expression "grant of interest on interest" while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest."

20. The above position of law, thus, expounded in the majority judgment in M/s Hyder Consulting (UK) Ltd.'s case (supra), even though cited on behalf of the respondent, actually supports the case of the petitioner to the extent that the accrued interest for the period between the date of 'pronouncement of award' and of its becoming a 'decree' actually merges into the amount awarded, and claiming of interest upon said 'decretal amount' subsequently does not amount to charging 'interest on interest'.

21. The impugned order passed by the Executing Court is, therefore, set aside and it is held that the petitioner-Decree Holder is entitled to interest on the amount of Rs.1,36,443.82 which actually is to be considered as having merged with the original amount awarded, as on the date of such award having become a 'decree'.

22. The present petition stands disposed off in the above terms.

(SUDIP AHLUWALIA)
JUDGE

February 14, 2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No