

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No. 1407 of 2013 of (O&M)
Date of decision: 28.3.2019

M/s Dharam Pal Maddar

...Appellant

Versus

Union of India and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Dheeraj Mahajan, Advocate,
for the appellant.

Mr. Nitin Kumar Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This first appeal has been filed against the judgment dated 4.12.2012 passed by the Additional District Judge, Amritsar, whereby the objection filed by the appellants herein under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth called '**the Act**' for short) has been dismissed.

2. In brief, few facts need to be noted for proper appreciation of the case. It is averred that in response to the tender floated for carrying out some petty works of ordinary repair and maintenance as well as new work, additions and alterations on existing structure and emergent works in Zone No. 5/AEN/T/FZR etc., the appellants submitted tender rates and being

found to be lowest one, the said work was allotted to the appellants and a regular contract agreement No. 89/ASR dated 13.3.1991 was executed between the appellants and the respondent—Department. However, on account of a dispute and differences that arose between the parties, the matter was referred to an Arbitrator, who passed the award on 26.12.2005 and directed refund of the amount of ₹94,140/- that had been retained by the respondents from the bills raised. That award was challenged by the appellants, particularly regarding claim No. 2, 3 and 4, by filing objection petition under Section 34 of the Act. The District Judge, vide his order dated 22.4.2008 partly allowed the objections, by setting aside the award on the point of non-grant of interest on ₹94,140/- and directed the Arbitrator to give a fresh decision on the point of interest on the amount of ₹94,140/-. The said order attained finality as no further appeal was filed. It was alleged that the Arbitrator instead of entering upon the reference and giving opportunity to the appellants, with malafide intention straight away passed a fresh award with respect to claim No.4, vide his order dated 9.5.2008, which is re-produced as under:-

“Award of interest was not the term of reference of the undersigned when undersigned was appointed as sole arbitrator in the above subject arbitration case. As such this item was not considered during arbitration.

However, as desired by the Court, the issue has been examined. Undersigned is of the view that in view of the GCC Clause 16 (3) claimant is not entitled to any interest on awarded amount till the date of award. However, in the above award, it has been clearly been mentioned that the award amount is not paid

within period of 90 days from the date of publication of the award, interest @ 18% p.a. shall be payable by the respondent”

The aforesaid order was challenged by way of filing objections and, as already noticed, the same was dismissed, giving rise to the instant appeal.

3. Mr. Dheeraj Mahajan, learned counsel for the appellants, submits that the Additional District Judge wrongly affirmed the finding of the Arbitrator that under Clause 16 (3) of the General Condition of Contract Act that the appellant is not entitled to any interest on the awarded amount. It is further submitted that the Arbitrator has the power to award interest at all the three stages, namely pre-reference period, pendente lite and post award period, provided there is no provision to the contrary in arbitration agreement and the rate of interest is not unreasonable. It is further submitted that the interest pendente lite is not awarded as compensation for any damage done but for being ***deprived*** of money due to the claimant. In support of his arguments, he relies upon the judgment rendered in **M/s Manalal Prabhudayal Versus Oriental Insurance Co. Ltd. 2006 (4) R.C.R. (Civil) 234** and **M/s Raveechee and Co. Versus Union of India 2018 (3) R.C.R. (Civil) 465**.

4. Per contra, Mr Nitin Kumar, learned counsel appearing on behalf of the respondents, submits that the Arbitrator has rightly held that the appellants are not entitled to any interest on the amount claimed, which finding was affirmed by the Additional District Judge. Reliance is also placed upon clause 64.5 which specifies *where the arbitrial award is for the*

payment of money, no interest shall be payable on whole or any part for of the money for any period till the date the on which the award is made. He places reliance upon judgments rendered in **Sree Kamichi Amman Construction Vs. Divisional Railways Manager(Works) Palghat 2010 (8) SCC 767** to contend that interest cannot be awarded as there is no such clause in the agreement entered into between the parties and the Arbitrator being a creature of the agreement cannot go beyond the terms and conditions. Therefore, no interference is called for by this Court in the instant appeal.

5. I heard learned counsel for the parties and perused the case file as well as the law referred to.

6. The short question that arises for consideration in this appeal is, whether the appellant is entitled to interest on the amount of ₹94,140/-, awarded by the Arbitrator?

7. Learned counsel appearing on behalf of the appellant contends that it is well settled that the Arbitrator can award interest and that the prohibition clause in any arbitration agreement would not hamper the power of the Arbitrator to do so. It is argued that the Arbitrator has the power to award interest at all the three stages, namely pre-reference period, pendente lite and post award period, provided the rate of interest is not unreasonable. He places replies on the judgments rendered in **M/s Raveechee and Co. (supra)**, wherein a similar clause i.e. Clause 16 (3) of the General Condition of Contract Act came for determination. The argument of the counsel for the

Union of India was noticed, wherein an argument had been raised by reason

of Clause 16 (3) the Arbitrator could not have awarded the interest pendente lite. The contention was held to be incorrect. It was held that Clause 16 (3) of the General Condition of Contract Act does not bar the Arbitrator from awarding interest. Similarly, counsel also places reliance upon the judgments rendered in **M/s Manalal Prabhudayal (supra)** and **RSA No. 3194 of 2017 titled Punjab State and others Versus M/s Brightway Contractor and Developers decided on 17.4.2018** in support of his arguments.

8. In the instant case, on account of work that was allotted to the appellant herein a dispute arose between the parties as far back as on 5th March, 1993, when the appellant herein, requested for an Arbitrator to be appointed. It was as late as 24th May, 2005 that the Arbitrator entered into the reference and gave award dated 26th Dec., 2005. The Arbitrator held that it was the respondent herein who failed to issue the work order and cement required for execution of work, which caused delay in execution of the allotted work for which the appellant/claimant was not responsible and ordered refund of the penalty amount that had been retained from the bills submitted. The other claim regarding idling of labour on permanent roll was disallowed. It was held that the security amount of ₹94,140/- was to be released in favour of the appellant, which award was challenged before the Additional District Judge, Amritsar, by way of filing objection under Section 34 of the Act, who remanded the matter back regarding the question of interest. After remand, the Arbitrator by a cryptic order, without hearing

both the parties, came to hold that the claimant is not entitled to any interest on the awarded amount till the date of award, in view of the Clause 16 (3) of the General Condition of Contract Act. However, allowed interest @ 18% per annum to be paid in case the amount is not paid within a period of 90 days from the date of publication of the award.

9. The argument raised by the counsel for the respondent that the judgment **Sree Kamichi Amman Construction Vs. Divisional Railways Manager (Works) Palghat 2010(8) SCC 767** would be applicable in the instant case is without merit. No doubt the Supreme Court has held that *“[Section 37\(1\)](#) of the new Act by using the words "unless otherwise agreed by the parties" categorically clarifies that the arbitrator is bound by the terms of the contract insofar as the award of interest from the date of cause of action to date of award. Therefore where the parties had agreed that no interest shall be payable, arbitral tribunal cannot award interest between the date when the cause of action arose to date of award”* but the said ratio would not be applicable as clause 16 (3) mentions that no interest will be payable upon earnest money and security deposit whereas in the instant case the amount ordered to be refunded is the penalty that was retained from the bills submitted on the ground the contractor had not completed project within time. The delay was attributed to the respondent.

10. In a recent judgment of a Larger Bench in **M/s Ambica Construction vs Union of India AIR 2017 SC 2586** it has been held:

“5. The only contention advanced at the hands of the learned counsel for the appellant, was based on the judgment of this

*Court in **Union of India v. Ambica Construction, (2016) 6 SCC 36**, wherein, having examined the legal position declared by this Court, by a Constitution Bench in **Irrigation Department, State of Orissa v. G.C. Roy, (1992) 1 SCC 508**, it was held as under:*

"34. Thus, our answer to the reference is that if the contract expressly bars the award of interest pendente lite, the same cannot be awarded by the arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendente lite by the Arbitral Tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits."

A perusal of the conclusions drawn by this Court in the above judgment, rendered by a three Judge Division Bench, leaves no room for any doubt, that the bar to award interest on the amounts payable under the contract, would not be sufficient to deny payment of pendente lite interest. In the above view of the matter, we are satisfied, that the clause relied upon by the learned counsel for the Union of India, to substantiate his contention, that pendente lite interest could not be awarded to the appellant, was not a valid consideration, for the proposition being canvassed. We are therefore satisfied, that the arbitrator, while passing his award dated 28.6.1999, was fully justified in granting interest pendente lite to the appellant. Accordingly, while affirming the award passed by the arbitrator on the issue of pendente lite interest, as also, the determination rendered by the learned Single Judge in his order dated 6.9.2001, we set aside the impugned order passed by the Division Bench of the High Court, on 17.06.2005, on the

question of pendente lite interest. The pendente lite interest determined by the arbitrator, shall be paid to the appellant, within two months from today .’’

11. The Arbitrator clearly erred in holding that the award of interest was not the term of reference of the Arbitrator when he was appointed as sole Arbitrator and *“in view of the GCC Clause 16 (3) claimant is not entitled to any interest on awarded amount till the date of award.”* There is no dispute that it is the respondent herein, who was held responsible for the delay in completion of the work, since the cement and other material were not released in time. There is no challenge to the aforesaid finding by the respondents. The claimant/appellant had requested for appointment of an Arbitrator as back as 1993 and despite requests and for reasons best known to the respondents, the arbitrator was not appointed till 24.5.2005. The respondents herein had clearly sat on the matter while enjoying the benefit of the amount lying with them, which was to be refunded. Therefore, in terms of the judgment rendered by the larger Bench in ***M/S Ambica Construction*** (supra) the Arbitrator is competent to look into the issue of delay in the appointment of arbitrator and grant interest pre reference and interest pendent-lite . A litigant should not be made to suffer at the hands of the powerful state who acts whimsically/arbitrarily in not appointing the arbitrator in terms of the agreement.

12. Consequently, the appeal is allowed, the impugned order passed by the Additional District Judge, Amritsar, dismissing the objection petition filed by the appellant is set aside. The appellant shall be entitled to interest

@ 9% on the awarded amount from the date it was claimed in the objection
petition till the date of the award as well the amount of interest post award
as allowed by the arbitrator which decision has attained finality.

28.3.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No