

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.2654 of 2018
(Through Hybrid mode)

M/s. Samantray Construction (P) Ltd. ***Petitioner***

Mr. Ramakanta Mohanty, Senior Advocate
Ms. Sumitra Mohanty, Advocate

-versus-

State of Odisha ***Opposite Party***

Mr. Tarun Patnaik, Advocate
(Addl. Standing Counsel)

CORAM: JUSTICE ARINDAM SINHA

ORDER
25.07.2022

Order No.

- 06.
1. Mr. Mohanty, learned senior advocate appears on behalf of petitioner and submits, judicial review is necessary over order dated 18th January, 2018 made by the executing Court inasmuch as, on failure of State to return the machinery, the Court held his client is not entitled to cost thereof, as not directed in the award.
 2. Mr. Patnaik, learned advocate, Additional Standing Counsel appears on behalf of State and submits, his client seeks leave to file an additional affidavit.
 3. Court has been able to ascertain that the award was challenged upto the Supreme Court. In impugned order there

is extract of interference by the Supreme Court and its extent. The Supreme Court by order dated 11th September, 2015 said as follows.

“Taking an overall view including the interest component upto the date of award (as the interest has been awarded only from the date of award) claim of the Contractor could be assessed at Rs.1 crore 25 lakhs. We are conscious that we are not to substitute our opinion for that of the Arbitrator but since this part of the Award is outrightly perverse and not based on application of minds, we modify the award in respect of Item No.18 to Rs.1 crore 25 lakhs as on the date of the award instead of Rs.3 crores. Subject to this modification, the award is upheld in all other respects. Final calculation and adjustment may be made accordingly before the executing Court.”

In this context relevant part of the award is also reproduced below.

“I have already indicated that I would not been inclined to award any amount towards interest on the sum of Rs.3 crores awarded by me as hire charges up to the date of the award. I direct the opposite parties to release the machineries within 30 days from the date of the award. The claimant would be entitled to 18% per annum towards interest on the hire charges awarded by me from the date of the award till the date of payment. As regards the other amounts awarded by me in favour of the claimants, the claimants would be entitled to the payment of interest @ 12% per annum from the date on which cause of action arose, i.e. from 21st April, 1988 to the date of the award and from the date of the award till the date of payment, interest shall be paid @ 18% per annum.”

4. Impugned order says also, inter alia, petitioner has already received Rs.6,48,04,107/- in excess of entitlement. So, on one hand petitioner was entitled to return of machineries within 30 days of the award and on the other, it has received in excess, aforesaid sum. While it is true there is no direction in the award for cost of machinery to be paid to petitioner but the direction for return of machinery remains. That has not been complied with and is required to be enforced in execution for discharge and satisfaction of the award.

5. In the circumstances aforesaid parties are directed to go back to the executing Court, to work out this aspect of execution, on return of machineries. Parties and the executing Court may explore ascertaining value of the machinery as on the last date of hire, to be paid for by the hire charges at Rs.1.25 crores, as directed by the Supreme Court, for adjustment against the excess received by petitioner. Any other mode of execution, discharge and satisfaction, regarding the machineries, may also be achieved by the parties through the Court.

6. With above directions and observations the writ petition is disposed of. Interim order passed earlier stands vacated.

(Arindam Sinha)
Judge

RKS