

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.03 Of 2009
(Through hybrid mode)**

Union of India and others ***Appellants***

Mr. D.R. Bhokta, Advocate

-versus-

Prahallad Moharana ***Respondent***

Mr. J.K. Mohapatra, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

08.09.2022

I.A. nos. 37, 38 and 39 of 2021

Order No.

09.

1. Mr. Bhokta, learned advocate appears on behalf of appellants (Union of India). He submits, after filing of the appeal respondent died on 15th April, 2017. Intimation of death was received by his client on 12th July, 2019. There was delay in taking out substitution application, filed on 22nd December, 2021. He submits, the delay be condoned, abatement set aside and substitution made of the widow and two sons.

2. Mr. Mohapatra, learned advocate appears on behalf of the legal heirs of respondent. He submit, there is no explanation for delay of more than two years in making the substitution application, after intimation of death was given. However, in fairness, he leaves it to Court.

3. On query from Court Mr. Bhokta submits, he is ready to argue the appeal. In interest of justice, Court is inclined to and condones the delay, sets aside abatement and allows the substitution.

4. I.A. nos. 37 to 39 of 2021 are allowed. Appellant will file consolidated cause title in course of the day. The appeal is taken up for hearing.

5. Mr. Bhokta submits, the Court below erroneously refused to adjudicate on purported reason that questions of fact cannot be gone into in a challenge to the award under section 34 of Arbitration and Conciliation Act, 1996. Furthermore, respondent had urged work done under 95 work orders. He had issued to him only 79 work orders, out of which only 48 work orders were actually executed. The Court below erred in not appreciating the contractor had obtained payment on final bill without protest but thereafter raised frivolous claim, which were mostly awarded. The Court below also erred in holding that the penalty was without authority. On sums, which could not have been awarded, there was further allowed interest. He submits, the award, therefore, has patent illegality on face of it and impugned order as well as the award be set aside in appeal.

6. Mr. Mohapatra submits, the award is well reasoned. At instance of appellant the Court below scrutinized each of the awards made in

his client's favour. Award for Rs.27,558/- was set aside by the Court below. There was no interference with the rest. He submits, there be no interference in appeal.

7. Perused impugned order. The Court below has recited facts of the case to be, inter alia, total value of work was Rs.15,93,960/-. It was for execution of new works, addition and alteration to existing structure, ordinary repair, maintenance and miscellaneous works. On several claims made, the arbitrator passed award in respect of claim nos.1, 4, 6 and 8 only.

8. The Court below found on claim no.1, there was no explanation for short payment of Rs.8,857/-. Claim no.4 stood awarded and the Court below found concurrently that penalty was imposed illegally. No notice of imposition of penalty was given. It was also found that time for completion of the work was extended by the employer without penalty.

9. Claim no.6 awarded was for compensation and claim no.8 for refund of security deposit. It appears the Court below found compensation was granted by way of escalation on, as aforesaid, the employer having extended time for execution of the work from 30th June, 1993 to 25th November, 1993. The amount of escalation was worked out by applying Hudson formula as well as narration given by

G.D. Gajaria on Building Contracts. The Court below declined to be drawn into adjudication on facts as, according to it, the forum doing so was in the reference and there did not appear any patent illegality in the manner the evidence was analyzed by the arbitrator.

10. Under section 31(7)(a) the Arbitrator has power to grant interest. 10% interest was awarded amount was granted. Since there is no mention that it was compound interest, it is to be simple interest per annum.

11. In view of aforesaid, there is no reason to interfere with impugned order, it is confirmed.

12. The appeal is dismissed.

(Arindam Sinha)
Judge

Sks

