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A.No.4184 of 2013
in
E.P.No.4913 of 2010

C.V.KARTHIKEYAN,J.

The petitioner in O.P.No.867 of 2006, which was a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 is the applicant herein. The said O.P.No.867 of 2006, was a fall out of a dispute relating to a contract for the works of, (1)“*Sleeper Renewal 8.469 Km downline including recouplement of ballast and (2) proposed deep screening and making up of deficiency of ballast*” under Agreement No.J 606 dated 08.12.2000 for a total value of Rs.132 lakhs having a validity of seven months for completion of the works.

2.The applicant was the contractor. There were disputes. The matter was referred to arbitration. There were nine claims raised by the petitioner before the Arbitral Tribunal. Claim Nos.5 and 6 now require further adjudication. The said claim Nos. 5 and 6 were as follows:



No.	Description of claim	Amount (Rupees)
5	<i>Damages for the illegal reduced-operation by more than 30.50% of the original agreement value in the works covered under item No.1 in schedule-A, Annexure-II of the Agreement@20% of the permitted reduced value [30.50% - 25%] i.e., 5.5% or Rs.1,06,920/-</i>	<i>Rs.21,384/-</i>
6	<i>Damages for the illegal reduced-operation by more than 53.50% of the original agreement value in the words covered under item No.8 in schedule-A, Annexure-II of the agreement@20% of the permitted reduced value [53.50% - 25%] i.e., 28.50% or Rs.21,434/-.</i>	<i>Rs.4,286/-</i>

3.The tribunal by an award dated 05.02.2006, had allowed claim Nos.1 and 2 and rejected claim Nos.3 and 4 and by divergent opinion but on majority opinion rejected claim Nos.5 to 9.

4.Aggrieved by the said award, the petitioner had filed O.P.No.867 of 2006 taking advantage of Section 34 of the Arbitration and Conciliation Act, 1996. The said Original Petition came up for consideration before a learned Single Judge of this Court and by an order dated 17.04.2008, the learned Single Judge had thought it would be in the interest of both parties that interference is made with respect to the divergent opinion expressed with



respect to the claim Nos.5 to 9 and therefore, set aside that particular portion of the award and remitted the matter back to the Arbitral Tribunal for fresh consideration of claim Nos.5 to 9.

5. From the records it appears that OSA No.614 of 2010 had been filed questioning that particular order of the learned Single Judge. But the OSA suffered an order of dismissal.

6.The matter went back to the Arbitral Tribunal and they were cast with the responsibility to adjudicate claim Nos.5 to 9.

7.This Court is now interested only in the award passed thereafter with respect to the claim Nos.5 and 6. An award was passed on 19.09.2008 allowing the claim with respect to claim Nos.5 and 6 and also granting 18% interest per annum from the date of the award. The date of such award was 19.09.2008. It must be mentioned that the date of the 1st award was 05.02.2006 and while allowing some of the claims on the earlier occasion as stated in the earlier portion of the order, the Arbitral Tribunal had granted 6% interest per annum, if the award is satisfied within a particular period.



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8.The petitioner had then filed E.P.No.4913 of 2010 before this Court.

The matter came up for consideration before the learned Master. The contention of the petitioner is that for the interregnum between the two awards namely, between 05.02.2006 and 19.09.2008 with respect to the claim Nos.5 and 6, the petitioner should be granted the advantage of interest also at 18% per annum. This contention was tested by the learned Master who passed an order on 01.02.2013. The order passed by the learned Master is under appeal before this Court.

9.The learned Master in the course of his order had occasion to examine the earlier order of the learned Single Judge in O.P.No.867 of 2006 and found that the Arbitral Tribunal was cast with the responsibility to re-adjudicate and apply the mind afresh only with respect to the claim Nos.5 to 9.

10.The issue is whether the second award passed on such reconsideration as directed by this Court would be a merger of the earlier arbitration award or would supersede that particular award.



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11. The Court under Section 34(4) of the Arbitration and Conciliation Act, has the power, in some circumstances to remit the matter back to the Arbitral Tribunal to decide once again the claims of the parties therein. As a matter of fact, if the Court had proceeded under Section 34(4) of the Arbitration and Conciliation Act, the proper procedure would be to retain the Original Petition on the file of the Court and remit the matter or the issues which are to be re-considered by the Tribunal. If that course had been adopted then it could be said that the second award is a merger of the first award. The Court still continues to hold on to its right to examine the award passed.

12. The learned Single Judge in the order dated 17.04.2008 in O.P.No.867 of 2006, had concluded as follows:

“With the above directions, the prayer of the petitioner is allowed only to the extent of directing the Tribunal to consider claim Nos.5 to 9 and pass an award as stated above. The matter shall stand posted for further hearing after the receipt of the award from the Arbitral tribunal and on the application made by either of the parties.”



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13.The procedure adopted was in consonance with the provision under Section 34(4) of the Arbitration and Conciliation Act. The learned Judge had not either allowed the Original Petition or dismissed the Original Petition, but had retained the Original Petition on the file of this Court and had stated that the matter shall stand posted after receipt of the award from the Arbitral Tribunal.

14.Thereafter, O.P.No.867 of 2006 was again listed before this court on 04.01.2010. On that date, the learned Single Judge had the benefit of the second award dated 19.09.2008. On considering the award dated 19.09.2008, the learned Single Judge had observed as follows:

*“6.The Tribunal granted 18% interest per annum on the award amount if the payment was not made within 45 days from the date of the award. Hence going by the said decision, I have no hesitation in confirming the award. As already pointed out, the claim of the petitioner in this petition as regards pendente lite award, however, stands rejected, following the decision of this Court, which had, in turn, followed the decision of the Apex Court in **Sayeed Ahmed & Co. Vs. State of U.P. and others reported in***



(2009) 6 MLJ 85.”

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In the result, this O.P. Stands dismissed.”

15. Even before the learned Single Judge, a request was made by the petitioner herein that interest should be granted pendente lite award, but that request was dismissed by placing reliance on the judgment of the Hon'ble Supreme Court in ***Sayeed Ahmed & Co. Vs. State of U.P. and others reported in (2009) 6 MLJ 85.***

16. This is the governing order under which the Execution Petition be examined.

17. The learned Master had held that the interest can be granted only from 19.09.2008. The issue whether interest can be granted for the period between 05.02.2006 and 19.09.2008 had actually been considered by the learned Single Judge before whom a request was placed to grant pendente lite award interest. It was specifically, rejected. Once the learned Single Judge had rejected grant of such interest, I hold it would not be appropriate for the learned Master to re-examine that particular order of the learned Single Judge and proceed to grant interest. The learned Master had also given his own



reasonings and had stated that the second award supersedes the earlier award and therefore stated that the claimant would be entitled for interest with respect to claim Nos.5 and 6 at 18% per annum from 19.09.2008.

18.I am informed that the respondents had also satisfied the award by directly paying the amount of Rs.28,10,081/-. There is no dispute by the learned counsel for the petitioner on this ground. There is no denial of non-receipt of the said amount also.

19.In view of the same, I hold it would not be appropriate to re-agitate the entire issue once again, particularly, because there has been a final decision rendered on the pendente lite interest by the learned Single Judge. It would also be imprudent on the part of this Court to examine the pendente lite interest once again when such request had been rejected in the Original Petition itself. For the reasons stated and also acknowledging the reasons stated by the learned Master, I hold the application does not stand scrutiny.

20.This Application stands dismissed. No costs.

20.09.2022



C.V.KARTHIKEYAN,J.

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