IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

388

CWP-17795-1999
Date of decision: 21.10.2022

THE JIND DURGA COOP. LABOUR & CONSTRUCTION SOCIETY LTD.

.......Petitioner

VERSUS

STATE OF HARYANA AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present:- None for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana.

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VINOD S. BHARDWAJ, J. (Oral)

The present petition had been filed for seeking issuance of directions to the respondents in the nature of writ of Mandamus directing the respondents to pay interest @ 18% per annum on delayed payments and/or to any other suitable writ, order or direction as may be deemed appropriate by this Court.

2. Briefly summarized, the facts of the instant case are that the petitioner is registered Society and is an approved contractor with the respondent-Department. It was allotted a number of works during the period of 1995-1996 and subsequently as well. The petitioner however did not receive the payments in time despite satisfactory completion of the work as per the time schedule set by the Department. Resultantly, the petitioner sent a demand notice on the respondent-department through its counsel on 28.09.1998. A total of the 33 works had been executed by the petitioner to that period when the said notice Annexure P-2 was sent.

3. A response to the aforesaid legal notice was sent by the respondent No.4 wherein the payment due to the petitioner-Society was not disputed, however, in reference to the plea of non-payment in time, it was stated that necessary payment shall be released on receipt of letter of credit. It is further averred in the writ petition that the LOC was also received by the respondents vide letter No. 2395 dated 21.10.1998. The plea for grant of interest on delayed payment was however turned down on the ground that there is no provision for interest under the Rules. Reply of the respondent-Deparment dated 19.11.1998 to the legal notice had also been attached as Annexure P-3.

4. It is averred that there was no fault on behalf of the petitioner and that the payment in question had been delayed solely on account of the acts that are attributable to the respondents alone for which the petitioner cannot be denied the interest on the ground that no such stipulation was contained in the contract. The claim arose not in relation to the contract but on account of the unjust retention of the money which was undisputedly due to be disbursed to the petitioner upon successful execution of the works allotted to him.

5. Reliance was also placed on a Division Bench Judgment of this Court in CWP No. 2953 of 1998 titled as "The Jind Urban Estate Cooperative Labour and Construction Society Ltd. versus State of Haryana and Others" decided on 26.05.1998 (Annexure P-4).

6. Written statement on behalf of the respondent-Department had been filed wherein they had taken a plea that the writ petition would not be maintainable as the petitioner has an efficacious remedy in the form of either approaching the Civil Court and/or to invoke the arbitration proceedings as per Annexure R-1.

7. The factual aspects noticed above are however not disputed. It is averred that in case the petitioner had any objection regarding the delayed payment, he should have invoked arbitration regarding the said witness instead of approaching this Court as clause 25 (A) of the agreement duly provided for this.

8. I have gone through the pleadings and have also heard learned State Counsel on the issues involved. Even though the dispute would ordinarily have been relegated enabling the parties to take recourse to the alternative remedy available to him in accordance with law, however, the dispute in question has remained pending before this Court since 1999 and already a period of nearly 23 years has elapsed. It would be a travesty of justice, at this juncture to direct the petitioner to now take recourse to the alternative remedy for the said relief.

9. The facts of the present case have remained undisputed insofar as the its relates to the execution of works and the delayed payment. The plea taken by the respondents that an alternative remedy of going in for an arbitration available to the petitioner is not tenable on the merits since the factual aspect is not in dispute. The respondent-Department itself being the generator of the dispute cannot be allowed to take benefit of the said wrong and to add to the agony of the petitioner who had successfully executed the works and compound the hurdles in his quest for justice. It is also not in dispute that under similar circumstances a Division Bench of this Court has passed an order in CWP-2593 of 1998 on 26.05.1998 (Annexure P-4). There does not seem to be any valid justification as to why relief in terms of the aforesaid judgment should not be extended to the petitioner in the

present factual aspect of the present case. The relevant and operative part of the said order passed by a Division Bench of this Court is reproduced hereinafter below:

> *"Mr. Raj Kumar, Learned Counsel for the petitioner contends and we think rightly, the respondents having arbitrarily delayed the payment of the amount due to the petitioner, should be held liable for compensating the petitioner by way of interest. On behalf of the respondents, Mr. Bishnoi has stated that the state was unable to make the payment on account of paucity of funds.*
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> *We find no justification on the part of the respondents for not making the payment within reasonable time after the completion of work. Consequently, we direct that the petitioner shall be paid interest in respect of each of the works from a date on which three months expire from the date of completion of work. To illustrate the first work as mentioned in Annexure R-1 was completed on Jan 15, 1996. The amount due to the petitioner has been made in May, 1998. The interest shall be paid w.e.f. April 15, 1996. Similar would be the position in respect of other bills. The interest shall be paid @12 P.A. The needful shall be done within three months from today. In case the respondents fail to make the payment within the aforesaid period, the rate of interest shall be 18% per annum. In case the petitioner has any dispute with regard to the amount actually paid, it shall be entitled to seek its remedy in accordance with law.*"

10. Payment of interest in a given case may be regulated either by the term of a contract or by the statute. Absence of a provision for payment of interest in a contract can not be equated to a prohibition in the contract against payment of interest. Where the agreement contemplates time bound scheduled and approved payments, absence

of a clause dealing with compensatory interest is merely in conformity with the essence of contract stipulating timely payments. A prohibition on payment of interest would on the other hand acknowledge the occurrence of such an exigency and stipulate an express prohibition.

11. The payment of interest in such circumstances would be governed by the provision of the Interest Act. It would thus be essential to examine the provisions of the Interest Act, 1978. Section 3 of the Interest Act, 1978 reads thus:

> ***"Section 3. Power of court to allow interest.—***
>
> *(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—*
>
> *(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;*
>
> *(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings: Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.*
>
> *(2) Where, in any such proceedings as are mentioned in subsection (1),—*

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section,—

(a) shall apply in relation to—

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect—

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest."

12. 'Debt' has been defined under Section 2(c) of the Interest Act, 1978 to mean any liability for an ascertained sum of money, excluding a judgment debt. Sub-Section 3 of Section 3 exempts the provision of the Section where the agreement contemplates interest as a matter of right or where interest is debarred by virtue of an express

agreement. In other cases, the interest is payable.

13. The statutory provision empowers award of interest as a restitution measure once a Court comes to a conclusion that an ascertained debt has been wrongly retained by the debtor. Court of law has to balance the equity and needs to suitably indemnify the victim. It would be necessary to refer to some precedents.

14. The Hon'ble Supreme Court in the matter of ***Thazhathe Purayil Sarabi and others Vs. Union of India and another*** reported as **(2009) 7 SCC 372** has held as under:

> *"Interest is basically a compensation payable on account of denial of the right to utilize the money due, during the period in which the same could have been made available to the claimant and which has been, in fact, utilized by person withholding the same."*

15. The Hon'ble Supreme Court in the matter of ***Union of India Vs. Tata Chemicals Ltd.*** reported as ***(2014) 6 SCC 335*** has further observed as under:

> *"Interest is a kind of compensation for use and retention of money curtailed or retained without right."*

16. The Hon'ble Supreme Court in the matter of ***Manalal Prabhudayal Vs. Oriental Insurance Company Ltd.*** reported as ***(2009) 17 SCC 296*** has also held as under:

> *"Grant of interest and rate of interest is not to be ordinarily interfered with unless exercise of discretion is ex-facie bad in law."*

17. The Hon'ble Supreme Court thus has held about accrual of right in favour of the deprived and it is not just a concession. The debtor having retained the amount and drawn benefit thereof, he ought

not to capitalize on his wrongful acts. It further holds that grant of interest should not be ordinarily interfered with unless such discretion is bad in law.

18. Taking into consideration, the statutory provision, the totality of the circumstances noticed above, and also the precedent judgments passed including by this Court in CWP No.2953 of 1998 (supra), the present petition is disposed of with a direction that the petitioner shall be entitled to interest for undue retention of money payable to the petitioner @ 9 % per annum from the date when the payment fell due till its actual disbursement. The needful shall be done within a period of 03 months from the date of submission of claim alongwith certified copy of this order. In case the respondent-Department fails to make the payment within the period as stipulated above, the rate of interest payable shall be @ 12 % per annum. In the event, the petitioner has any dispute with respect to the amount actually paid, he shall however be at liberty to take recourse to avail his remedies in accordance with law.

The present petition is disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 21, 2022
Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No