

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

CR-3086-2018 (O&M)

Date of Decision:- 12.10.2023

M/s H.S.Tuli & Sons Builders (P) Ltd.

...Petitioner

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Petitioner – H.S. Tuli in person.

Mr. Arun Gosain, Senior counsel assisted by
Ms. Swati Arora, Advocate for the respondent – UOI.

GURVINDER SINGH GILL, J.

1. The petitioner herein assails order dated 28.11.2017 (Annexure P-2) passed by the Civil Judge (Junior Division) Chandigarh vide which an execution application filed by the petitioner has been dismissed. The petitioner also assails order dated 19.1.2018 (Annexure P-3) passed by the Civil Judge (Junior Division) Chandigarh, dismissing an application for review of the aforesaid order dated 28.11.2017 (Annexure P-2).
2. It is the case of the petitioner that he had entered into two contracts with the respondent – Union of India i.e. Contract No. 25 and Contract No. 69 in the year 1963-64 pertaining to construction of technical buildings and domestic accomodation at Air-Field, Chandigarh. A dispute having arisen pertaining to non-payment of the work executed by the petitioner, separate awards dated 14.12.1977 with respect of Contract No. 25 and award dated

18.11.1977 pertaining to Contract No. 69 were passed in favour of the petitioner by the Arbitrator. The matter in hand arises out of Contract No.

25. Although, objections were filed by respondent – Union of India but the same were dismissed and award was made Rule of the Court on 31.10.1979.

3. Thereafter, Union of India preferred appeal in this Court i.e. FAO No. 77 of 1980 (arising out of Contract No. 25) wherein the execution of the award in question was stayed. Upon a prayer made by respondent - Union of India before this Court during the pendency of the aforesaid FAO for staying execution of the decretal amount, the respondent – Union of India was directed to deposit the decretal amount in the Court while further allowing the petitioner to withdraw half of the amount without furnishing any security and the remaining half upon furnishing of security to the satisfaction of the Executing Court, vide order dated 19.2.1980.
4. Pursuant to the aforesaid order dated 19.2.1980, the decretal amount of Rs.1,58,280.36/- was deposited before the Executing Court by respondent – Union of India and accordingly the Decree Holder furnished surety bond to the tune of Rs. 80,000/- and the entire deposited amount of Rs.1,58,280.36/- was released to the petitioner and upon a statement made by the petitioner/Decree Holder, the execution was consigned to record room, as fully satisfied on 19.3.1980.
5. Subsequently, the FAO No. 77 of 1980 was dismissed by this Court on 19.7.1980. The respondent – Union of India filed SLP in the Hon'ble Supreme Court in the year 1980 which was later registered as Civil Appeal No. 8206 of 1983 and notice of motion of the appeal arising out of the SLP in question was issued in the year 1983. Hon'ble Supreme Court passed an

order on 19.9.1983 staying the execution of the award in question but it needs to be noticed that as a matter of fact, the decretal amount had already been released to the petitioner way back on 19.3.1980. The said Civil Appeal No. 8206 of 1983 was ultimately dismissed by Hon'ble Supreme Court on 21.3.1996. It was, thereafter, that the petitioner filed another execution application claiming an amount of Rs. 3,22,510/- towards interest which has been dismissed by the Executing Court vide its order dated 28.11.2017. Thereafter, the Executing Court also dismissed the review application against the said order of dismissal.

6. The petitioner, who is appearing in person, submits that apart from the fact that the petitioner is entitled to interest @ 18% on the delayed payment of amount of Rs. 1,58,280.36/-, which was paid in the year 1979, though the award had been passed in the year 1977, he also remained constrained with regard to use of the money as well as the property which had been furnished as security at the time of furnishing of bank guarantee when the amount of Rs.1,58,280.36/- was released to him by the Executing Court on 19.3.1980. The petitioner also places reliance upon (1992) 1 SCC 508 – Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy.
7. The petitioner places reliance upon judgment dated 17.12.2013 (Annexure P-1) passed by this Court in CR-2237-2010 titled as Union of India versus Harbans Singh Tuli & Sons which arose from the second contract amongst the parties i.e. Contract No. 69 leading to filing of FAO No. 155 of 1980. It has been submitted that the entire dispute arises out of two identical contracts executed during the year 1963-64 leading to passing of two separate awards by the Arbitrator, as there were two separate contracts and thereafter leading to filing of two separate FAOs in this Court i.e. FAO No.

77 of 1980 in the instant case and FAO No. 155 of 1980 in the other case arising out of Contract No. 69 and thereafter leading to two separate SLPs in the Hon'ble Supreme Court and since in the identical matter arising out of the other contract, the identical relief prayed for has already been granted to the petitioner vide cited judgment dated 17.12.2013 (Annexure P-1) passed by this Court, the petitioner is entitled to the same relief in present case on account of similarity of cases and on account of the said precedent.

8. This Court has considered the aforesaid submissions addressed before this Court and is unable to accept the same for the following reasons :-

- (i) that the first execution petition filed by the petitioner before the Executing Court had been duly consigned to record room on 19.3.1980, as fully satisfied, upon release of an amount of Rs.1,52,280.36/-. It was for the petitioner to have expressed categorically therein at that stage, in case he had any reservation or any objection but no such statement was made. Rather, the statement made was expressing categoric satisfaction as regards execution of decree.
- (ii) that even if the contention of the petitioner based on judgment of Hon'ble Supreme Court in G.C.Roy's case (supra) to the effect that the petitioner is required to be compensated for having been made to furnish security for release of amount, either in the shape of some monetary security or in the shape of some property because such person would have been restrained or restricted in some manner as regards usage of such property during the time such security or undertaking exists, the petitioner, at best, could claim that some restrictions regarding usage of his money or property were there w.e.f. the date

when he furnished such security i.e. 19.3.1980 till the date such security was required to be operative, which could be said to be required to be operative only till the pendency of the FAO which as a matter of fact was dismissed shortly thereafter on 19.7.1980. The interim directions issued by this Court on 19.2.1980 in FAO No. 77 of 1980 binding the petitioner in any manner, the same stood automatically vacated upon dismissal of the said FAO on 19.7.1980. Thereafter, the petitioner was not bound by any order of Court;

(iii) that although the petitioner vehemently argued that he was bound by his undertaking and the surety furnished before the Executing Court right till the date when SLP was dismissed in 1996 as Hon'ble Supreme Court had also ordered for stay of execution of award in question vide its order dated 19.9.1983 but the said contention does not hold any ground inasmuch as the amount of Rs.1,52,280.36/- had already been withdrawn by the petitioner and the execution petition also stood consigned to record room as satisfied on 19.3.1980. The order of Hon'ble Supreme Court dated 19.9.1983 is reproduced herein-under:-

“ The execution of the Judgment and decree dated the 31st October, 1979 of the Sub-Judge, 1st Class, Chandigarh making the award of the Arbitrator dated the 14th December, 1977 given by Shri Y.L. Subramanyam, Superintending Engineer a rule of Court, be and is hereby stayed.”

There was no such specific direction by the Hon'ble Supreme Court that the claimant, in any case, was required to furnish any security;

(iv) that during the course of arguments, the petitioner has pressed into a judgment of Hon'ble Supreme Court rendered in 2010 (2) SCR 297 – State of Haryana and others v. S.L. Arora & Company and has drawn

the attention of this Court to the following extract from para 18.6, which is reproduced herein-under :-

“But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post award interest in the award.....”

The petitioner, however, cannot draw any benefit from the aforesaid judgment inasmuch as the petitioner was held entitled to interest @ 6% per annum from the date of decree till payment and the same was actually paid to the petitioner by the Executing Court and it was pursuant to the said payment of the entire amount that the petitioner had made a statement of the execution, being satisfied. The petitioner, as a matter of fact is actually claiming interest on the amount of interest whereas in S.L.Arora's case (supra) itself, the matter has been clarified in the concluding part of paragraph 21, while distinguishing the earlier judgment in Uttar Pradesh Cooperative Federation Limited vs. Three Circles – (2009) 10 SCC 374. It has been held as under :-

“.....Therefore, the observation in *Three Circles* that *Mcdermott* held that interest awarded on the principal amount upto the date of award becomes the principal amount and therefore award of future interest therein does not amount to award of interest on interest, is *per incuriam* due to an inadvertent erroneous assumption.”

(v) that in any case the aforesaid order passed by Hon'ble Supreme Court, staying proceedings of the execution (although already executed) was passed on 19.9.1983 i.e. after about 3 years of dismissal of FAO by this Court. The petitioner had all the time to get the bank guarantee

cancelled i.e. from the date when FAO was dismissed in the year 1980 but he himself did not choose to do so and as such, at this stage, he cannot turn down and say that he had sustained loss on account of the fact that he maintained the bank guarantee all these years till the dismissal of the SLP;

(vi) that the execution application out of which the instant matter arises was filed in the year 1999 i.e. after more than 12 years of the award in question and even after more than 12 years of the dismissal of the FAOs by this Court and as such, would be barred by limitation, particularly when the first execution application had already been consigned to record room, being satisfied on 19.3.1980.

(vii) that the petitioner cannot draw any advantage from the cited judgment dated 17.12.2013 (Annexure P-1), even though pertaining to an identical contract between the parties since the question raised herein i.e. the issue as to whether the petitioner himself had not taken any step for getting the bank guarantee cancelled between the years 1980 to 1983 even though there was no stay of any kind during the said period was never raised or adjudicated in the said judgment.

- 9. In view of the reasons mentioned above, this Court does not find any infirmity in the impugned orders and the same are hereby affirmed.
- 10. Finding no merit in the revision petition, the same is dismissed.
- 11. All the pending miscellaneous applications also stands disposed off accordingly.

12.10.2023
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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No