

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 3348 of 2021

Date of decision: 30th May, 2023

M/s Rajinder Kumar Contractor through its Managing Director

Petitioner

v.

Punjabi University, Patiala

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Dr. Naresh Kaushik, Advocate for the petitioner.
Mr. P. S. Hundal, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed for setting aside orders dated 23.9.2010, 20.12.2017 and 19.10.2021 disposing of the execution petition holding that the execution is satisfied, dismissing the application for recalling the order and dismissing the review, respectively.
2. The brief facts are that the parties entered into a contract for construction of a building in Punjabi University, Patiala. The work was completed on 8.12.1995. The arbitration initiated at the instance of the petitioner culminated in award dated 19.2.2008. The petitioner was held entitled to recovery of Rs.6,29,007/- along with interest @ 15% from 23.10.1996 till the passing of the award. Further, interest @ 12% was granted from the date of award till the actual payment. The execution petition filed by the petitioner was disposed of on 20.12.2017. The executing court held that amount of Rs.23,54,056/- was paid to decree

holder and his claim stood satisfied. The application filed for re-calling of the order was dismissed on 5.1.2019. Aggrieved of the order, the petitioner approached this court and Civil Revision No. 1836 of 2019 was disposed of on 18.3.2019 granting liberty to the petitioner to file a review petition. On dismissal of review petition on 19.10.2021, the present petition is filed.

3. The grievance raised is that the respondent had calculated interest @ 12% on the principal amount of Rs.6,29,007/- and not on the interest awarded under Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'). The contention is that the order disposing of the execution petition was against the law laid down by the Supreme Court in *M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, 2015(2) SCC 189*. Reliance is also placed on the decision of the Supreme Court in *UHL Power Company Ltd. v. State of Himachal Pradesh, 2022(1) R.C.R (Civil) 677*.

4. Learned counsel for the respondent fairly submits that the respondent is ready to pay interest as per decision in *M/s Hyder Consulting (UK) Ltd.'s case (supra)*.

5. The pin pointed issue involved in the present petition is as to whether interest awarded under Section 31(7)(a) of the Act is to be included while calculating interest under Section 31(7)(b) of the Act.

6. The issue is no longer *res integra*. The Supreme Court in *M/s Hyder Consulting (UK) Ltd.'s case (supra)* held that the word 'sum' used in Section 31(7)(a) of the Act does not restrict it to the principal amount. Rather the interest awarded under Section 31(7)(a) of the Act will take the colour of 'sum' and there shall be no distinction between the principal

amount and the interest awarded under Section 31(7)(a) of the Act for the purpose of calculating interest under Section 31(7)(b) of the Act. The relevant paragraphs are reproduced below:

“In the result, I am of the view that S.L. Arora’s case is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the Award on the substantive claim does not refer to interest pendente lite awarded on the “sum directed to be paid upon Award” and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the Award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language.

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Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an "interest" and takes the colour of "sum" for which the award is made.

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Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the

interest. It is, therefore, obvious that what carries under Section 31(7) (b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a).

Therefore, in my view, the expression "grant of interest on interest" while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest."

7. The legal position emerges that the interest awarded till the passing of the award partakes character of principal amount, in other words the 'sum'. It would be apposite to mention here that it was not a case of compounding of interest. The issue needs to be analysed from different angle i.e. whether the interest granted under Section 31(7)(a) of the Act is to be considered to calculate interest under Section 31(7)(b) of the Act.

8. There cannot be a quarrel on the proposition that an order passed ignoring the binding precedent of the Supreme Court suffers from an error apparent on record. The executing court erred in not entertaining the review petition.

9. In view of the above, the impugned orders are set aside. The matter is remitted back to the executing court to decide the execution petition afresh in accordance with law.

10. The revision petition is allowed.

[AVNEESH JHINGAN]
JUDGE

30th May, 2023
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1. Whether speaking/ reasoned

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Yes / No
2. Whether reportable

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Yes / No