



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPEAL NO. 1 OF 2012

**KOPARGAON MUNICIPAL COUNCIL, KOPARGAON
THROUGH IT'S CHIEF OFFICER
VERSUS
M/S R. L. BHUTADA**

Mr. M. M. Patil (Beedkar), Advocate for the appellant
Mr. S. S. Chapalgaonkar, Advocate for the respondents

CORAM : R. M. JOSHI, J.

DATE : 4th JULY, 2024

PER COURT :-

1. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short the 'Act') challenging judgment dated 01/08/2011 passed in Arbitration Application No. 16/2010.

2. The facts which lead to the filing of the Arbitration Appeal can be narrated in brief as under:

(i) Appellant, Municipal Council, Koperagaon took decision to construct a commercial complex on CTS Nos. 1229 and 1243 at Bangdi Chawl, Kopargaon, Dist. Ahmednagar. Accordingly, tenders were invited for construction of the said complex. Respondent's tender came to be accepted and work order was issued on 01/07/2005. An agreement was also executed between the parties. It is claimed by the Municipal Council

that the site of construction was handed over to the respondent on 15/09/2005 and work was to be completed within 12 months from the said date. As per the terms of the agreement the earnest money deposit and security deposit were to be withheld till completion of the work and no interest was due and payable on the said amount. It was also a term of the agreement that the Municipal Council would not be responsible for any rise or fall in the prices and on that ground escalation of the cost shall not be permitted. Similarly, provision of liquidated damages of Rs.7000/- per week was made in case of any delay in completion of the work. According to the Municipal Council the work was not completed within time but the Municipal Council paid Rs.1,00,37,793/- to respondent. Respondent invoked arbitration clause in the agreement and made reference to the arbitration raising claim of Rs.60,11,303/-. Municipal Council appeared before the Arbitral Tribunal and filed written statement and also raised counter claim for Rs.20,97,933/-. It is alleged by the Municipal Council that the Arbitral Tribunal without proper appreciation of the record as well as the provisions of law had passed award on 03/05/2010 whereby Municipal Council was directed to pay Rs.25,90,144/- along with interest at rate of 18% per annum to the respondent. The counter claim of the Municipal Council was also rejected.

(ii) Being aggrieved by the said award an application came to be filed

under Section 34 of the Act before District Court, Ahmednagar. Learned Principal District Judge dismissed the application by passing impugned order dated 01/08/2011. Hence, this Arbitration Appeal.

3. Learned counsel for the appellant submits that the learned Arbitrator has committed error in allowing the claim of the respondent, ignorance of the evidence on record and the District Court has committed error in deciding the said application without even framing necessary points for determination. It is also claimed that the Arbitration Tribunal as well as District Judge has taken into consideration the claim of the respondent which are beyond the terms of the contract. He further submits that error is committed by the Tribunal in awarding interest at the rate of 18% per annum when there is specific agreement between the parties for such interest to be limited to 9% per annum. On these amongst other submission, learned counsel for the appellant has sought intervention in the impugned orders.

4. Learned counsel for the respondent supported the orders on the ground that Arbitral Tribunal has rightly taken into consideration the evidence on record and more particularly the fact that the site was not handed over to the respondent and hence, the delay caused in completion of the project is not attributable to the respondent. It is also

claimed that respondent has extended the period of work and hence on that count also there is no justification to oppose the claim of the respondent. However, as far as the interest is concerned, there is no dispute made by him about the fact that the agreed interest between the parties is 9% per annum.

5. Arbitral Tribunal after claim being raised before it, has considered the pleadings of the parties and evidence placed before it and partly allowed claim of the respondent with interest at the rate of 18% per annum and rejected counter claim of the Municipal Council. Against the said order, application came to be filed under Section 34 of the Act. While exercising the jurisdiction under the said provision it was not permissible for the District Court to re-appreciate the evidence and record any findings afresh or contrary to the findings recorded by the Tribunal. It is only in case where the award is contrary to the provisions of law or against the public policy, such interference is permitted.

6. In the light of above position of law, if the order impugned is considered then the same indicates that there was a term in the agreement for period of completion of the work to be 12 months but the same was from the date of delivery of the site to the respondent. From the correspondence placed on record more particularly letter dated

25/08/2005 and 28/04/2006 issued by the respondent to the Municipal Council, it can be seen that the possession of the site was handed over to the respondent on 15/09/2005. It can further be seen that there was dispute with regard to the removal of electric poll which was causing obstruction to the work. The said poll was not removed up to 14/12/2015. It is therefore held by the Arbitrator that the Municipal Council had failed to hand over unobstructed possession to the respondent.

7. It is further observed that there was delay in finalization of designs and drawing which has resulted in delay in completion of the project. The learned District Judge has also taken into consideration the fact that the Municipal Council has *suo moto* extended the period of completion of work by six months. By taking into consideration material evidence on record it is held that the Municipal Council was responsible for the delay and not respondent. Considering material evidence before the learned Tribunal, the findings recorded by the Tribunal cannot be called as perverse much less contrary to the public policy and against the provisions of law. The learned District Court has also exercised its jurisdiction within the limited scope of Section 34 of the Act and as such question of causing interference therein while exercising the jurisdiction under Section 37 of the Act does not arise. This Court, therefore, finds

no reason or justification to cause interference in the impugned order to the extent of grant of compensation to the respondent and refusal of counter claim.

8. As far as the interest granted on the amount of compensation is concerned, the learned counsel for both sides concur to the factual position that as per the agreement between the parties the amount of interest would be 9% on delayed payment. In view of Section 16 of the Act, Arbitral Tribunal is not permitted to grant interest more than agreed between the parties. Hence, a joint request is made for modification of the award to the extent of grant of interest at the rate of 9% per annum instead of 18% as directed by the Arbitral Tribunal.

9. By consent of both sides, the interest payable to the respondent on the amount directed to be paid by the Arbitral Tribunal is restricted to 9% per annum.

10. Appeal stands disposed of in above terms.

(R. M. JOSHI, J.)

ssp