IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2229 of 2019
and
C.M.P.No.14442 of 2019

M/s.Maxwell Industries Lt.,
Now Known as M/s. VIP Clothing Ltd.,
Gobichettipalayam, Kolappalur – 638 456
Erode District, Represented by its Manager ... Petitioner

vs

1.M/s.The Cotton Corporation of India Ltd.,
1057 Trichy Road, Ramanathapuram,
Coimbatore 641045
Represented by its General Manager.

2.M/s. Tradewell,
Door No.5-87-34/7, Laxmipuram Main Road,
Gunter – 522 007
Rep. by its sole proprietor – P.Krishnakumar ... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the order of attachment dated 03.06.2019 passed in E.P.No.14 of 2011 in A.P.No.25 of 2002 on the file of Principal District Judge, Erode.

For Petitioner : Mr.Kadhirvelu V.

For R1 : Mr.Anuraaq Rajagopalan
for M/s.Anirudh Krishnan

For R2 : Not Ready in Notice

ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court to attach the property of the petitioner and 2nd respondent herein to satisfy the award passed against them in A.P.No.25 of 2002 by the Arbitral Tribunal.

2. The 1st respondent herein filed a claim petition against the petitioner and 2nd respondent herein seeking an award for a sum of Rs.33,82,963.49/- towards sale of cotton bales to the petitioner. The dispute between the parties was referred to the decision of Sole Arbitrator and he passed an award against the petitioner and 2nd respondent on 05.10.2022 directing the respondents therein to pay a sum of Rs.33,82,963.49/-.

3. As the petitioner and 2nd respondent failed to satisfy the Arbitral Tribunal award, the 1st respondent herein filed execution petition in E.P.No.14 of 2011 on the file of the Principal District Judge, Erode. In the execution petition, apart from the amount awarded by the Arbitrator, the 1st respondent also claimed post award interest at the rate of 18% per annum from the date of award to the date of realisation. The petitioner herein filed a counter affidavit and opposed the claim made by the 1st respondent for post award interest.

4. The Executing Court passed an order for attachment of petition mentioned properties and aggrieved by the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner submitted that award put into execution was silent about the post award interest and in such circumstances, the 1st respondent is not entitled to claim post award interest at the rate of 18% per annum.

6. The learned counsel appearing for the 1st respondent by drawing the attention of this Court to Section 31 Sub-Section (7) (a) and (b) of the Arbitration and Conciliation Act, 1996, submitted that if the award is silent about post award interest, the claimant is entitled to 18% interest from the date of award to the date of realisation as per the statutory mandate under the said section. In support of his contention, the learned counsel also relied on the following judgements:-

(i) ***Madhu Mehra vs. Pritpal Singh*** reported in ***2010 SCC Online (Del) 2174***.

(ii) ***Hyder Consulting (UK) Ltd., vs. State of Orissa*** reported in ***(2015) 2 SCC 189***.

7. In ***Madhu Mehra*** case law cited supra, while considering the statutory mandate under Section 31 Sub Section (7)(b) of the Arbitration and Conciliation Act, 1996 the Delhi High Court observed as follows:-

"7. It is clear from clause (b) of Section 31(7) of the Act that a sum directed to be paid by an arbitral tribunal shall carry interest @ 18% per annum from the date of the award to the

date of payment, unless the award otherwise directs. In other words, it means that if the arbitral tribunal awards no interest from the date of the award till the date of the payment, the mandate of clause (b) shall take effect and the award in that event will carry interest @ 18% per annum from the date of the award till realization. However, if in a given case, the arbitral tribunal does award interest from the date of the award till payment but not @ 18% per annum but at a different rate, then what is awarded by the arbitrator shall hold good, unless the same is modified by the Court on objections filed to the award by either of the parties.

8. Apart from what has been held above, the issue is covered by a judgment of the Apex Court in the case of State of Haryana v. S.L.Arora and Company , 2010 (2) SCALE 541. The relevant part of the judgment which is binding on this Court runs as under:-

"xxxxxx

18.6) Clause (b) of Section 31(7) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the "sum directed to be paid by an arbitral award" shall carry interest at the rate of 18% per annum from the date of award to the date of payment if the award does not provide otherwise in regard to the interest from *the date of the award. This makes it clear that if the award grants interest at a specified rate up to the date of payment, or specifies the rate of interest payable from the date of award till date of payment, or if the award specifically refused interest, Clause (b) of Section 31 will not come into play. 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. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest, the claimant will be entitled to post-award interest at the higher rate of 18% per annum. The higher rate of interest is provided in Clause (b) with the deliberate intent of discouraging award-debtors from adopting dilatory tactics and to persuade them to comply with the award."*

8. In ***Hyder Consulting (UK) Ltd.,*** case law cited supra, the Hon'ble Apex Court while considering the application filed under Section 31 (7)(a) of the Arbitration and Conciliation Act, observed as follows:-

"29. There may arise a situation where, the Arbitral

Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum award and the interest component in it.

30. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

31. 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).*

32. 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."

9. In the light of the above mentioned case laws, it is made clear that if the award is silent about the post award interest, as per the statutory mandate under Section 31 (7)(b) of the Arbitration and Conciliation Act, 1996, the claimant is entitled to interest at the rate of 18% per annum from the date of award to the date of realisation. On the other hand, if the award specifies post award interest at any particular date, the rate of interest mentioned in the award will prevail over the statutory interest. In the case on hand, the award does not speak about the post award interest. The sum payable under Section 31(7)(a) of the said Act has been quantified as Rs.33,82,963.49/-. Therefore, the 1st respondent/claimant is entitled to take advantage of the statutory mandate under Section 31 (7) (b) of the Arbitration and Conciliation Act,

1996 and claim post award interest. Therefore, the submission made by the learned counsel for the petitioner as if, the execution petition filed by the 1st respondent goes beyond the scope of award is not acceptable to this Court.

10. Accordingly, I do not find any error in the impugned order and as a consequence, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

11.03.2024

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

To

The Principal District Judge,
Erode.

S.SOUNTHAR, J.

dm

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