
(2014) 09 AHC CK 0176

Allahabad High Court

Case No: C.M.W.P. No. 23384 of 2001

United Trade Agency Contractor

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision: Sept. 26, 2014

Acts Referred:

- Arbitration Act, 1940 - Section 15, 15(b), 15(c), 16, 17
- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 4(2)

Citation: (2014) 11 ADJ 524 : (2015) 2 ALJ 184 : (2014) 107 ALR 643

Hon'ble Judges: Rajan Roy, J

Bench: Single Bench

Advocate: V.K. Singh, G.K. Singh, G.K. Srivastava and Sanjiv Kumar, Advocate for the Appellant; A.K. Mehrotra and Ranjeet Saxena, Advocate for the Respondent

Judgement

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Rajan Roy, J.

Heard Sri Sanjiv Kumar and Sri Girish Kumar Srivastava, learned Counsel for the petitioner and Sri A.K. Mehrotra appearing for the respondent Nos. 3 to 5. By means of this writ petition, the petitioner has challenged the order dated 24.3.2001 passed by the Appellate Court, whereby the order of the Court below dated 16.8.1996 modifying the arbitrator's award dated 5.8.1991, so far as it related to the date from which the interest of 18% was awarded, is concerned.

2. The contract was entered into between the petitioner and respondent Nos. 3 to 5 in the year 1985 for laying down a pipe-line. The petitioner-contractor raised a claim of Rs. 2,25,624/-, which was not accepted by the respondents. Consequently, on 1.2.1986, an application was submitted before the Civil Judge (S.D.) under section 20 of Arbitration Act, 1940, whereon, the Court concerned referred the matter for

arbitration on 28.9.1980. On 14.2.1990, the U.P. State Electricity Board appointed an arbitrator.

3. After conducting the proceedings of arbitration about the alleged claim of the petitioner-contractor the arbitrator awarded an amount of Rs. 96,649.49 plus 18 % interest on the principal sum awarded, however, he did not specify date from which the aforesaid interest was to be calculated.

4. It is said that the arbitrator died after submitting the award before the U.P. State Electricity Board, therefore, the Board submitted the award before the Court concerned under the Act, 1940. Thereupon the Court concerned while making the award the rule of the Court vide order dated 6.8.1996, modified the award by providing that 18% interest awarded was to be paid w.e.f. 1.2.1986 to 5.8.1999, whereas for the subsequent period i.e., w.e.f. 6.8.1991 till the date of actual payment, interest @ 6% was ordered to be paid.

5. Being aggrieved, the State Electricity Board filed two appeals under section 39 of the Act, 1940 before the District Judge. The said appeal was decided by means of the impugned order dated 24.3.2001.

6. In appeal, the Appellate Court modified the order dated 6.8.1996 to the extent that the 18% interest, as awarded by the arbitrator, was directed to be paid w.e.f. 18.9.1989 to 5.8.1999 instead of 1.2.1986 to 5.8.1991 i.e., the interest awarded by the order dated 16.8.1996 for the pre-reference period was denied.

7. The respondent-Electricity Board did not challenge the appellate order dated 24.3.2001 and therefore, it has accepted the same.

8. The petitioner has filed this writ petition challenging the appellate order dated 24.3.2001.

9. The contention of the learned Counsel for the petitioner is that the application under section 20 having been made on 1.2.1986, the Court below rightly awarded interest w.e.f. the said date, and the Appellate Court erred in modifying the order dated 16.8.1996 in awarding the said interest w.e.f. 18.9.1980. In support of his contention, the learned Counsel for the petitioner relied upon the judgments in [Sudhir Brothers Vs. Delhi Development Authority and Another, Executive Engineer \(Irrigation\), Balimela and Others Vs. Abhaduta Jena and Others, State of Orissa Vs. B.N. Agarwala,](#).

10. The learned Counsel also contended that the petitioner had in fact filed objection under section 15 of the Act of 1940 for modification of the award, therefore, the Court concerned did not commit any error in passing the order dated 16.8.1996 and modifying the award as referred above while making it the rule of the Court. The power under section 15 could also be exercised while making the award the rule of the Court under section 17. He placed reliance upon the pronouncement reported in [Naraindas Lilaram Adnani Vs. Narsingdas Naraindas Adnani and others,](#)

11. On the other hand, Sri A.K. Mehrotra, learned Counsel for respondent Nos. 2 to 5 submitted that all the judgments cited on behalf of the petitioner relate to cases where the arbitrator had awarded interest with effect from a specific date. The dispute in those cases was whether the arbitrator was right in awarding the interest for the pre-reference period or he should have awarded the same only for the post-reference period, but so far as the case at hand is concerned, in this case, the arbitrator did not specify any date from which the interest was to be paid, therefore, it was not open for the Court concerned to modify the award while making it the rule of the Court under section 17 of the Act, 1940. He referred to section 15 which relates to the power of the Court to modify the award.

12. The contention of the learned Counsel was that the Court concerned could have modified the award subject to the limitation contained in the aforesaid provision. He contended that none of the eventualities mentioned in section 15 existed in this case and the modification, which was ultimately done, was not permissible within the scope of section 15. In this regard, he relied upon a decision of the Delhi High Court in Appeal No. 2019 A of 1985 and connected matters, Anantraj Agencies v. Delhi, decided on 3.8.1989. He also relied on a decision of the Supreme Court in the case of Hindustan Vidyut Products Ltd. v. State of Rajasthan, dated 24th March, 1999.

13. Learned Counsel submitted that the Court concerned could have remitted the award to the Arbitrator for reconsideration, on such terms as it thinks fit, subject to existence of the conditions mentioned in section 16 of the Act, but this was not done. He submitted that by no stretch of imagination could the award be modified by the Court under section 17 of the Act, 1940, while making it the rule of the Court and this according to him is evident from the language used in the said provision. In this regard, the learned Counsel for the petitioner also invited the attention of the Court to the State amendment by which section 7A has been inserted in the Act, 1940. He referred to the use of the word "may", therein, as also the words "from the date of commencement of arbitration". His submission was firstly that the quantum of interest was at the discretion of the arbitrator and secondly in spite of section 7A, the arbitrator in this case did not specify any date from which the interest was to be paid. Therefore, it was not open to the Court concerned to modify the award under section 17.

14. The learned Counsel for the respondent also invited the attention of the Court to the provisions of section 29 relating to interest on award, in support of his contention that the Court while passing the decree could have ordered interest from the date of decree at such rate as Court deems fit but it did not have the power to order interest from any prior date. Sri Mehrotra also relied upon the pronouncements of the Supreme Court reported in AIR 1991 SC 1747.

15. In rejoinder, learned Counsel for the petitioner submitted that section 7A was not an impediment in the matter. He relied upon the judgment of this Court in

16. The following questions arise for consideration in this writ petition:

"(i) Whether, modification of the award in question by specifying the date from which the interest awarded was payable, is permissible in exercise of powers under section 15 of the Arbitration Act, 1940?

(ii) Whether the petitioner is entitled to interest awarded 18% w.e.f. 1.2.1986 or w.e.f. 18.9.1989."

17. Before proceeding to decide the issue involved, it is necessary to refer to relevant provisions i.e., sections 15, 16 and 17 of the Arbitration Act, 1940. They read as under:

"15. Power of Court to modify award.--The Court may by order modify or correct an award--

(a) where it appears that a part of, the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

16. Power to remit award.--(1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit--

"(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.,

(2) Where an award is remitted under Sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court:

(3) An award remitted under Sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

17. Judgment in terms of award.--Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."

18. Section 15 refers to the power of the Court to modify the award. Three eventualities have been mentioned. One of the eventualities as referred in section 15(b) is, if the award is imperfect in form or contains "any obvious error", the same can be amended without affecting the decision of the Arbitrator.

19. The fact that objection/Application was filed by petitioner under section 15 for modification/correction of the award is not in dispute and it has been specifically mentioned in the order of the Appellate Court. The Court concerned before pronouncing judgment on the award under section 17 of the Act, 1940 is required to apply its mind to arrive at the conclusion whether there is any cause to modify or remit the award.

20. In this context, it is relevant to refer to paragraph 12 of the pronouncement of the Supreme Court in the case of [Union of India and Others Vs. Manager, M/s. Jain and Associates](#), which reads as under:

"12. The result is - before pronouncing judgment, the Court has to apply its mind to arrive at the conclusion whether there is any cause to modify or remit the award. Further the phrase "pronounce judgment" would itself indicate judicial determination by reasoned order for arriving at the conclusion that decree in terms of award be passed. One of the meanings given to the word "judgment" in Webster's Comprehensive Dictionary [International Den., Vol. I (1984) reads thus : "the result of judging; the decision or conclusion reached, as after consideration or deliberation". Further, Order XX, Rule 4(2), C.P.C. in terms provides that "judgment" shall contain a concise statement of case, the points for determination, the decision thereon, and the reasons for such decision. This is antithesis to pronouncement of non-speaking order."

21. Another judgment of the Supreme Court which requires reference in this context is the one rendered in the case of [Naraindas Lilaram Adnani Vs. Narsingdas Naraindas Adnani and others](#), of which is being quoted herein-below:

"9. Under section 15(b) of the Arbitration Act, 1940, the Court may, by order, modify or correct an Award inter alia where the Award is imperfect in form, or contains any obvious error which can be amended without affecting such decision. Obviously the Court cannot substitute its own order for the Award of the Arbitrator. But any obvious error in the Award can be corrected by the Court provided it does not affect the decision given by the Arbitrator. In the present case the decision of the

arbitrator is clear, namely, that the Narain Niwas property is exclusively the personal property of the appellant Naraindas. It is also clear that respondents 1 and 2 cannot claim any part of "" by virtue of their being partners in the firm of Lilaram Kewalram (India). The only reason why the arbitrator has not granted any consequential relief seems to be his impression that the possession of respondents 1 and 2 was governed by the provisions of the Bombay Rent Act. This being clearly a mistake, it is possible to correct the same without affecting the decision of the Arbitrator. After all, the Award must be couched in a form which would lead to finality. It should not be in a form which compels the parties to embark upon further litigation. If the mistake of the Arbitrator is allowed to stand as it is, it would clearly lead to further litigation between the parties although their rights, inter se, are clearly decided by the Arbitrator. The mistake, therefore, can be corrected under section 15(b) of the Arbitration Act 1940."

22. Section 7-A of the Arbitration Act, 1940 reads as under:

"7-A. Where and insofar as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the Arbitrators or Umpire may deem reasonable to be paid on the principal sum awarded, from the date of commencement of arbitration as defined in sub-section (3) of section 37 to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at the rate not exceeding 6 per cent per annum as the arbitrators or umpire, may deem reasonable on such principal sum from the date of award to the date of payment or to such earlier date as the Arbitrators or the umpire may think fit, but in no case beyond the date of decree to be passed on award."

23. The Arbitrator is empowered under section 7-A (as applicable in the State of U.P.) and also as per the dicta of the Supreme Court relied upon by the petitioner, to award interest for the pre-reference period, the post-reference or pendente lite arbitration proceedings as also post-award period till the date of actual payment or to such earlier date as arbitrator may think fit, but, in no case beyond the date of decree to be passed on the award.

24. In view of the above, while awarding 18% interest on the principal amount, the arbitrator should have mentioned the specific date from which said interest was payable and in not doing so, he committed an "obvious error" in the award, in terms of section 15(b) of the Act of 1940.

25. Section 15(c) refers to clerical mistake or error arising from an accidental slip or omission, which is obviously different from the "obvious error" referred in section 15(b). The latter provision has a wider meaning and does not relate to mere clerical errors.

26. The next question is, as to whether, the specification of the date from which or the period for which the 18% interest awarded by the arbitrator on the principal

amount is payable, affects the decision of the arbitrator on the matter referred or not. I am of the view that the arbitrator having accepted the claim of the petitioner and determined the principal amount payable in respect of the matter referred to him and awarded 18% thereon, this decision, remains unaffected by the specification of the date from which or the period for which the said interest is payable, therefore, it was permissible in exercise of powers under section 15(b) of the Act, 1940. In view of the pronouncements already referred above, it was the duty of the Court to apply its mind as to whether the award required modification or there is a need to remit the award, before pronouncing its judgment under section 17 of the Act, 1940.

27. So far as the contention of Sri Mehrotra that the Court should have remitted the award back to the Arbitrator, is concerned, the same is not acceptable, as, the Arbitrator had already expired, moreover, the award suffered from an obvious error and was amenable to correction/modification in terms of the provisions contained in section 15 of the Act, 1940. It was not a case where any matter had been left undetermined by the Arbitrator. The Arbitrator had clearly decided the rights of the parties and had accepted the claim of the petitioner as also his right to be paid interest on the principal sum but had committed error in omitting to specify the period for which the interest @ 18% was payable. In this regard reference may be made to the observations of the Supreme Court in Paragraph 10 of the judgment in the case of Naraindas Lilaram Adnani (supra), wherein for the same reasons a similar plea was rejected.

28. In view of the above discussion, the question No. 1 framed as above, is answered in the affirmative.

29. So far as the second question is concerned, a perusal of the order passed by the Court below dated 16.8.1996 makes it amply clear that it has taken into consideration the provisions of section 7A of the Arbitration Act, 1940, as applicable in the State of U.P., and has fixed the period for payment of 18% interest awarded by the arbitrator as 1.2.1986 to 5.8.1991 and for the remaining period i.e., 5.8.1991 till the date of actual payment, it has awarded only 6% annual interest, which is clearly in consonance with section 7A, therefore, does not require any interference.

30. Section 7-A while referring to the date of commencement of arbitration gives the said words" meaning as defined in sub-section of section 37 of the Act, 1940. Sub-section 3 of section 37 reads as under:

"(3) For the purposes of this section and of the Indian Limitation Act, 1908 (9 of 1908), an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated."

31. Undisputedly, the petition for appointment of arbitrator under section 20 of the Act, 1940 was filed on 1.2.1986, therefore, the interest was payable w.e.f. the said date i.e., 1.2.1986. The contention of the respondents that the arbitral proceedings, in fact, commenced on 22.5.1990, therefore, the interest is payable from the said date cannot be accepted. Thus, the Court vide its order dated 16.8.1996 has rightly specified the period for payment of interest @ 18% as awarded by the arbitrator and has also rightly prescribed 6% interest for the post of post-award period i.e., w.e.f. 5.8.1991 till the date of payment.

32. Section 7-A of the Arbitration Act as applicable in the State of U.P., is not an impediment in this case, the scope of the case was considered in the case of [Meerut Development Authority Vs. Surendra Kumar \(Contractor\) and Sri J.R. Jain retired Superintending Engineer Public Works Department, Arbitrator,](#) Even the Supreme Court in the case of Vidyawati Constructions Company, (2009) 17 SCC 403 held that Rule 7-A, as applicable to post-1976 in the State of U.P. only imposes ceiling of 6% on rate of interest for post-award period and not for pre-reference and pendente lite period. The said judgment was followed subsequently in the case of [Channa Bros. and Co. Vs. Union of India \(UOI\),](#)

33. In view of the judgments referred to by the learned Counsel for the petitioner and those referred to hereinabove, the legal position cannot be challenged that the Arbitrator was competent to award interest for the pre-reference, pendente lite arbitration proceedings and from the date of award to the date of payment or such earlier date but before the date of decree. This is also evident from a reading of section 7-A as applicable in the State of U.P. and as discussed in the judgment of this Court in the case of Meerut Development Authority (supra). In the facts of the case, the petitioner was entitled to interest w.e.f. 1.2.1986.

34. In this case, so far as the post award period is concerned, interest @ 6%, has been awarded and the same is not in issue. Thus, the award of 18% interest for the pre-reference period and pendente lite does not suffer from any error.

35. The contention of Sri Mehrotra based on section 29 of the Act, 1940 is also not acceptable for the reason the said provision relates to award of interest by the Court in the decree from the date of the decree and not prior to that. The said provision has no application in this case as there is no dispute relating to the award of interest for the post award period.

36. In view of the above, the question No. 2 is also answered in affirmative.

37. In view of the above discussion, none of the arguments of Sri Mehrotra nor the decisions cited by him help his cause.

38. The Appellate Court committed an apparent error in modifying the order dated 6.8.1996 passed by the Court below on the ground that the eventualities mentioned in section 15 of the Act, 1940, are not attracted and the Court below did not have

any power to modify the order of the arbitrator. The said finding/observation is not sustainable in view of the above discussion. The reference made in this regard to section 29 is also misplaced and misconceived. The finding that the application submitted by the petitioner for modification of award was beyond the scope of section 15 is perverse. Accordingly, the impugned appellate order dated 24.3.2001 is quashed. The order of the Court below dated 6.8.1996 is restored. The writ petition is allowed.