

(2005) 11 AP CK 0021

Andhra Pradesh High Court

Case No: C.R.P. No. 55 of 2004

The Government of Andhra
Pradesh and Others

APPELLANT

Vs

Y. Radha Krishna Murthy and
Another

RESPONDENT

Date of Decision: Nov. 3, 2005

Acts Referred:

- Arbitration Act, 1940 - Section 17, 30, 8
- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2006) 1 ALT 189 : (2005) 3 APLJ 442 : (2006) 2 ARBLR 477

Hon'ble Judges: N.V. Ramana, J

Bench: Single Bench

Advocate: GP for Arbitration, for the Appellant; N. Subba Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.V. Ramana, J.

Aggrieved by the order-award dated 14.07.2003 passed by the Principal Senior Civil Judge, Guntur in Arbitration O.P. No. 147 of 1989, the Government of Andhra Pradesh, represented by its Secretary, R & B Department, and two others, filed this Civil Revision Petition. The facts of the case, in brief are - an agreement bearing No. 51/80-81 was entered into by the petitioners with the respondent on 10.03.1981, whereunder the respondent was required to widen the carriage way from K.Ms. 403.00 to K.Ms. 403.875 in Guntur Municipal limits. The work was required to be completed by the respondent within a period of twelve months from the date of agreement.

2. During the course of execution of the work, disputes arose between the parties. The respondent requested the petitioners to refer the matter to the panel of

Arbitrators as envisaged in the Agreement. As the petitioners failed to refer the matter to the Arbitrator as per the terms of the agreement, the respondent filed O.P. No. 46/1983 on the file of the Principal Senior Civil Judge, Guntur, u/s 8 of the Arbitration Act, 1940 praying appointment of Arbitrator. The said O.P., by order dated 20.04.1988 was allowed appointing one Sri K. Venkataswamy, retired Superintending Engineer, as Arbitrator. The Arbitrator commenced the arbitration proceedings, and both the parties participated in the arbitration proceedings, and ultimately, the Arbitrator passed an award on 18.12.1988 allowing the claim put forth by the respondent in part by awarding Rs. 2,58,023/-.

3. Pursuant thereto, on the file of the Principal Senior Civil Judge, Guntur, the respondent filed O.P. No. 147/1989 u/s 17 of the Arbitration Act, 1940 praying to make the award passed by the Arbitrator as rule of the court, while the Government filed O.P. No. 50/1993 praying to set aside the Award passed by the Arbitrator. Initially both the O.P.s., were dismissed, by the Court below vide its order dated 21.01.2002. Aggrieved thereby, on the file of this Court, the respondent filed revision in C.R.P. No. 2264 of 2002 against the order in O.P. No. 147 of 1989, while the Government filed appeal in C.M.A. No. 1524 of 2002 against the order in O.P. No. 50 of 1993. A Division Bench of this Court, by common judgment dated 03.02.2003, allowed the C.R.P., and while setting aside the order impugned therein, remanded the O.P. No. 147 of 1989 to the Principal Senior Civil Judge, Guntur, for disposal of the matter in accordance with law. However, the C.M.A. filed by the Government against the order in O.P. No. 50 of 1993 was dismissed. No appeal having been preferred by the Government against the dismissal of the appeal in C.M.A., the order in O.P. No. 50 of 1993, dated 21.01.2002, passed by the Principal Senior Civil Judge, Guntur, has become final. Pursuant to the order of remand passed by this Court in C.R.P. No. 2264 of 2002, the Principal Senior Civil Judge, Guntur, re-opened O.P. No. 147 of 1989, and after hearing both the sides, by his judgment and decree dated 14.07.2003 allowed the O.P. with costs, and made the award dated 18.12.1988 passed by the Arbitrator, rule of the Court, and held that the respondent is entitled to the amount awarded by the Arbitrator together with interest at the rate of 18% per annum from 01.04.1984 till the date of realization.

4. The learned Government Pleader for Arbitration appearing on behalf of the petitioners mainly contended that the order passed by the Court below, making the award passed by the Arbitrator as rule of Court, and holding that the respondent is entitled to interest at the rate of 18% per annum from 01.04.1984 till the date of realization, is incorrect, and prayed that the same be set aside. On the other hand, the learned Counsel for the respondent submitted that the interest awarded by the Arbitrator is part and parcel of the award, and the Court cannot interfere and modify the same. He contended that in the absence of any clause in the contract prohibiting payment of interest to the contractor for the belated payment, the Arbitrator is entitled to award interest. He further submitted that O.P. No. 50 of 1993, filed by the Government to set aside the award passed by the Arbitrator, was

dismissed by the Principal Senior Civil Judge, Guntur, vide his orders dated 21.01.2002, and the appeal preferred thereagainst in C.M.A. No. 1524 of 2002, was also dismissed, and no further appeal having been preferred by the Government against the said order, the award passed by the Arbitrator has become final, and as such, the only course available to the Civil Court in the O.P. filed u/s 17 of the Arbitration Act, 1940 is to pass a decree in terms of the award passed by the Arbitrator, unless in exercise of its discretionary power, it *prima facie* comes to the conclusion that the Award passed by the Arbitrator is patently illegal or beyond the scope of the reference made to the Arbitrator.

5. In the light of the arguments advanced, the only question that arises for consideration in this C.R.P. is whether there is any ground raised, as enumerated u/s 30 of the Arbitration Act, 1940, to set aside the award passed by the Arbitrator. On bare reading of the order passed by the Court below, it appears that the Arbitrator has not mis-conducted himself while conducting the proceedings. Unless at least one or other conditions contained u/s 30 of the Arbitration Act, 1940 is satisfied, normally the award cannot be set aside. Though the Court is precluded from re-appraising the evidence, unless the petitioners bring to notice of the Court that the Arbitrator mis-conducted himself or wrongly rendered the Award, this Court cannot interfere. It is not the case of the petitioners that the Arbitrator misconstrued the facts or Award passed by the Arbitrator or judgment rendered by the trial court is not based on propositions of law. That not being the case of the petitioners, I am of the considered view that unless there is an error apparent on the face of the record, on scrutiny of merits of the documents and material on record, this Court cannot interfere with the award passed by the Arbitrator.

6. In the case on hand, the award passed by the Arbitrator was assailed by the Government in O.P. No. 50 of 1993 on the file Principal Senior Civil Judge, Guntur, but the same by order dated 21.01.2002, was dismissed. The appeal preferred against the said order in C.M.A. No. 1524 of 2002, was also dismissed by a Division Bench of this Court vide its Order 03.02.2003. No further appeal was having been preferred by the Government against the dismissal of the C.M.A., the award passed by the Arbitrator has become final. Hence, the only course available to the Civil Court is to pass judgment in terms of the award as per Section 17 of the Arbitration Act, 1940. To understand the provisions of Section 17 of the Arbitration Act, 1940, it is appropriate to extract the said provision, which reads:

Judgment in terms of Award Where the Court sees no cause to remit the award or any of the matter 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, on 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.

7. A bare reading of the provisions of the above section, it would become clear that in the absence of pendency of application filed by the Government to set aside the Award, unless the Court sees some reasonable cause to remit the Award for reconsideration or set aside the Award, the Court shall proceed to pronounce the Judgment according to the Award. In the case on hand, the facts, as stated in the preceding paragraphs, clearly go to show that the award passed by the Arbitrator, which was made the rule of the Court, attained finality in view of the dismissal of O.P. as well as the appeal, filed by the Government. Since no further appeal was taken by the Government against the order in the appeal, patently petitioners have accepted the findings given by the Civil Court while dismissing the O.P., and the said findings having attained finality, the only course available to the Civil Court is to pass the Judgment in terms of the Award.

8. The phrase "Pronounce Judgment" in Section 17 of the Arbitration Act, 1940 itself indicates that judicial determination by passing a reasoned order is required before reaching the conclusion that the decree in terms of the award ought to be passed after the Court satisfies for itself that the award is in accordance with law. In the instant case, the petitioners failed to satisfy the Court that there are sufficient reasons to set aside the award. In view of the dismissal of O.P. and the appeal, filed by the Government, it can safely be concluded that the trial Court as well as the appellate Court, were not inclined to set aside the award passed by the Arbitrator, which was made the rule of the Court. Inasmuch as the Court refused to interfere and set aside the award, as the petitioners failed to show sufficient reasons to set aside the same, having regard to the provisions of Section 30 of the Arbitration Act, 1940 the only course available to the Court is to pass a decree u/s 17 of the Arbitration Act, 1940.

So far as the contention of the petitioners that the interest awarded by the Arbitrator is excessive is concerned, once the interest awarded by the Arbitrator formed part and parcel of the Award, this Court cannot modify the same by revising the rate of interest. Similar question arose for consideration in *V.C. Brahmana v. State of Andhra Pradesh* 1997 (2) ALD 252 and this Court having considered the same, and following the earlier Division Bench Judgment, in para 13 held "where interest has been awarded as part of the Award, it is not available to be changed or modified by the Court".

In similar circumstances, a Division Bench of this Court in *K. Venkateswara Rao Vs. T. Seshachalapathi and Others*, following the judgment of the Supreme Court in *State of Orissa Vs. B.N. Agarwalla, etc.*, and the judgment of the Division Bench of this Court in *V.C. Brahmana v. State of Andhra Pradesh*, held:

... the Division Bench of this Court in *V.C. Brahmana V. State of A.P.* rep. by the Superintending Engineer (R & B), Visakhapatnam 1996 (5) ALT 951 wherein it has been held that where the interest has been awarded as part of the award, it is not available to be changed or modified by the Court. The Division Bench has further

held that in view of the law laid down by the Supreme Court and High Court, it is not permissible to the Civil Judge to reduce the interest awarded by the Arbitrators. We are in entire agreement with the decision of the Division Bench of this Court V.C. Brahmanna's case on this aspect.

9. Since, in the instant case also, the interest awarded by the Arbitrator formed part and parcel of the award, following the principles and the ratio laid down by the Supreme Court and by the Division Benches of this Court in judgments referred to above, and having regard to the fact that in the instant case, the O.P. and the appeal filed by the Government assailing the award, was dismissed, and no further appeal having been preferred, and no grounds, as envisaged u/s 30 of the Arbitration Act, 1940 having been pointed out by the petitioners, I am of the considered opinion that no interference is called for with the order passed by the Court below in exercise of its revisionary jurisdiction u/s 115 of the Code of Civil Procedure, 1908. In the result, the C.R.P. is devoid of merit, and the same is accordingly dismissed. No costs.