

(1998) 1 ALD 441 : (1998) 1 ALT 218

Andhra Pradesh High Court

Case No: C.R.P. No"s. 4113 and 4219 of 1997

State of Andhra
Pradesh and Another

APPELLANT

Vs

Tippireddy
Channareddy and
Others

RESPONDENT

Date of Decision: Nov. 19, 1997

Acts Referred:

Arbitration Act, 1940 " Section 13, 14(2), 15, 17, 29#Civil Procedure Code, 1908 (CPC) " Order 41 Rule 23, Order 41 Rule 5, 9#Contract Act, 1872 " Section 23#Limitation Act, 1963 " Article 113, 119, 137, 14(2)

Citation: (1998) 1 ALD 441 : (1998) 1 ALT 218

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Advocate: Government Pleader, for Arbitration, for the Appellant; Mr. Singam Venkata Subba Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. These two petitions are between the same parties, namely, petitioners are the State of Andhra Pradesh represented by the Executive Engineer,

N.S. Canals, Kurhichedu, Prakasham district and the superintending Engineer, N.S. Canals, Peollore Colony, Ongole and the respondent No. 1 is

the contractor in relation to two contract works executed by him for the petitioners. These revisions are directed against the decree of the learned

Subordinate Judge, Markapur in O.S.No.5 of 1993 and O.S.No.83 of 1992 dated 30-1-1997 respectively. Although the subject-matter of the

two petitions involve two different claims, since common questions of law and facts emanate from them, both the learned advocates have agreed

that the petitions to be heard together and disposed of by means of this common judgment. Reference to parties shall be as per the status they

occupied in the Court below.

2. Two works were entrusted to the petitioner by virtue of two contract works, namely, (1) construction of U.T. at M/10 + 240 of Darsi Branch

Canal of N. S. Canals and (2) earth work and excavation of Darsi Branch Canal from M 12/7 + 351 to M 13/3 + 351 under Agreement No.58

Se/1977-78 and No.10 SE/1976-77 respectively. Disputes arose between the parties in regard to these contracts. As per the clause in the

agreement for arbitration, the disputes were referred to the panel of arbitrators consisting of (1) Chief Engineer (Projects), Srisailem Project, (2)

Dy. Secretary to Government, Finance and Planning, (Fin.Wing) Dept. and (3) Director of Accounts, Sriramsagar Project. In regard to the first

work, Respondent No.1 raised several claims. The panel of arbitrators, however, allowed claims 1,2,4,6 and 7 and rejected the claims 3 and 5. As

regards the second work, the contractor -Respondent No. 1 raised six claims, out of which, claims 2,4 and 6(a) were allowed by the panel and

the claims 1, 3 and 5 were rejected. In regard to both the contracts, the Respondent No. 1 received the communication of the award on 31-10-

1985 (communicated by registered post). The Respondent No. 1 filed O.P.Nos.79 and 80 of 1985 on the file of the Subordinate Judge,

Markapur to set aside the respective awards in regard to the items of claims rejected by the panel of arbitrators. Both the O.Ps were allowed by

the learned Subordinate Judge, Markapur and appointed one Sri A.P. Ranganadha Swamy, Retired Chief Engineer as sole arbitrator to decide the

claims. The petitioners took the matter in appeal to this Court in C.M.A.Nos.565 of 1990 and 563 of 1990 respectively. This Court allowed both

the appeals by orders dated 15-10-1990. Thereafter, Respondent No. 1 filed C.D.Nos.458 of 1991 and 455 of 1991 respectively on 15-4-1991

before the Consumers Forum, Ongole which were returned for presentation to proper Court on 30-6-1991. The Respondent No.1 then filed

O.S.No.5 of 1993 and O.S.No.83 of 1992 respectively on 11-12-1992 under Sections 14(2) and 17 of the Arbitration Act. Both the suits were

decreed by the learned Subordinate Judge, Markapur on 30-1-1997 which led to the filing of the present revision petitions.

3. Mr. Rayudu, the learned Government Pleader for Arbitration in addition to the grounds raised in the petition has raised two specific contentions,

namely, that the suits were barred by limitation and secondly the interest awarded by the learned Subordinate Judge is beyond the period

prescribed u/s 29 of the Arbitration Act. According to him, both the suits should have been dismissed as barred by limitation and even assuming

that they were to be decreed, the interest could not have been awarded from a date prior to the date of the decree.

4. In spite of both the sides raising several contentions, they have settled down to two questions viz., (i) whether the suits of the respondent were

barred by limitation; and (ii) whether the learned Subordinate Judge was right in awarding interest prior to the date of the decree in spite of Section

29 of the Arbitration Act providing interest to be awarded from the date of the decree.

5. Mr. Rayudu, the learned Government Pleader, has contended that the period of limitation in these cases for making the awards the rule of the

Court was governed by Article 119 of the Limitation Act and when no application was filed by the respondent within 30 days from the date of

service of notice of making the award or of the date of service of the award, no further proceedings could have been filed to make it the rule of the

Court as it was barred by limitation.

6. Mr. Suhba Rao, the learned advocate for the respondent, has contended that having regard to the admitted events whereby the award was

challenged in several proceedings before the Court till the suit was filed and when the respondent had no obligation to file the award into Court, it is

the residuary Article 137 or Article 113 prescribing 3 years" period of limitation which operates in the area. It is also his contention that having due

regard to the respondent prosecuting the litigation before the Court bona fide till the High Court decided the matter finally, both by the Doctrine of

Merger and also in view of Section 14(2) of the Limitation Act by excluding such period, the suits are very much within the period of limitation.

Mr. Rayudu, the learned Government pleader, has contended that when the respondent did not choose to challenge the entire award and confined

his challenge to the disallowed claims of certain items, the exclusion of period of limitation u/s 14(2) of the Limitation Act does not come to his

rescue to compute the period of limitation of 3 years as a whole.

7. In the nature of the contentions and in view of certain precedents depended upon by both the sides, a necessity has arisen to deal with the

matter in detail as to the question of limitation. Chapter II of the Arbitration Act, 1940 (for short "the Act") deals with arbitration without the

intervention of the Court, which can be popularly called as inter vivos lis. In view of the provisions u/s 3(2) and 13 of the Chapter under the Act, it

commences from the appointment of an arbitrator till the award is passed by the sole arbitrator or team of arbitrators. Section 14(1) of the Act

obliges the arbitrators or the umpire who have made the award to sign it and give notice in writing to the parties of the making and signing thereon

and of the amounts and fees payable in respect of the arbitration and award. As per clause (2) of the provision, if any of the party to the arbitration

agreement or any person claiming under such party requests or if so directed by the Court and upon payment of the charges etc., the arbitrators or

the umpire as the case may be are obliged to cause the award or a signed copy of the award together with the depositions and documents to be

supplied to the parties. The arbitrators or the umpire shall also state the special case under sub-clause (b) of Section 13 and also pronounce its

opinion which shall be added to and form part of the award when so rendered under the provision. u/s 15 of the Act, the Court has got power to

modify; u/s 167 of the Act. In none of these provisions, there is any obligation or requirement of the party to file the award into the Court to make

it a rule of the Court as has been normally understood. That is why, if an arbitrator has failed to file the award into the Court, a party to the

arbitration agreement has a right to approach the Court to compel the arbitrators to file the award into the Court to make it a rule of the Court by

passing a judgment u/s 17 of the Act. Decidedly, no period of limitation runs against such parties to the arbitration agreement to file the award into

the Court to attract Article 119 of the Limitation Act. Further more, sub-clause (a) of Article 119 of the Limitation Act prescribing 30 days as

limitation for filing in Court an award from the date of service of notice of the making of the award means that it must be filed by the arbitrator u/s

14 of the Act within such a period of limitation and by the party under sub-clause (b) to set aside an award or getting an award remitted for

reconsideration within 30 days from the date of service of notice of the filing of the award. Therefore, sub-clause (b) is dependent upon sub-clause

(a). If the arbitrator files the award into the Court and serves a notice of filing of the award and making of the award, sub-clause (b) of Article 119

of the Limitation Act is not at all attracted, or otherwise, it becomes redundant. There may be many instances where arbitrators for some reason or

the other may not file the award into the Court or may not serve the notice of the award on the parties or may not serve the notice of filing of the

award into the Court on the parties and, therefore, the operation of Article 119 of the Limitation Act with its sub-clauses (a) and (b) is dependent

upon the conduct of the arbitrators in accordance with Section 14 of the Act. Therefore, if a party seeks relief in regard to an award passed an

arbitrator, it is either Article 113, residuary one, or Article 137 of the Limitation Act prescribing three years period which operates in the area and

not Article 119.

8. Mr. Rayudu, the learned Government Pleader, has tried to make a distinction between a petition and a suit for the purpose of pressing the

request into service with regard to limitation for a petition and a suit in a different context spelt out in Article 119 and Articles 113 and 137 of the

Limitation Act as, according to him, although a petition filed by a party to make the award a rule of the Court is called a suit, it is still an O.P., to be

brought within Article 119 of the Limitation Act. This Court is not in a position to appreciate such a contention in the legal meaning which can be

attached to the nomenclature of proceedings before the Court. A cause or a proceeding before the Court can be called by any name but the

purpose is more important. Whether it is called an O.P., or an application or a suit is a rule of procedure which determines its form and not the

content. The content is to make an award the rule of the Court and the question is whether who should file such an award into the Court to make it

the rule of the Court. As already pointed out above, when there is no obligation for a party to file the award into the Court to make it the rule of

the Court, for the reasons stated above there cannot be an obligation by such a person to be operated by Article 119 of the Limitation Act A suit

may be filed for any relief u/s 9 of the CPC notwithstanding the parameters of the provisions of the Arbitration Act, as a Civil Court has got

jurisdiction to try all proceedings of civil nature. Undoubtedly, an arbitration proceeding is a matter of civil nature. Unless prescribed or transcribed

by a particular nomenclature taking out from the character of a suit, it will be a civil proceedings, which can be called as a suit within the meaning of

Section 9 of the CPC regarding which there cannot be any counter or adversary thinking presented by any learned expressions in precedents or

otherwise. It also appears to the mind of this Court that in such a situation Article 119 of the Limitation Act is not at all attracted and it has been

settled by our own High Court in Ram Prasad Construction Co. Vs. State of A.P., and the Supreme Court in Patel Motibhai Naranbhai and

another Vs. Dinubhai Motibhai Patel and others, . In Ram Prasad Construction Co., (supra), the Division Bench declared in unmistakable terms

that Article 119 is not at all applicable and it is the residuary Article 113 or Article 137 of the Limitation Act which is attracted as no period of

limitation is prescribed in the Limitation Act in such cases and, therefore, the period of limitation is three years. (Conversely not 30 days as

indicated in Article 119 of the Limitation Act). In *Patel Motibhai Naranbhai (supra)*, while dealing with the application of Section 14(2) of the

Arbitration Act, the Supreme Court held that when a party files an application for making the award a rule of the Court, Article 119 of the

Limitation Act does not apply and it is Article 137 which applies. However, an alternative expression was made in Paragraph 9 of the precedent as

follows:

Under Sub-section (2) of Section 14, a duty is cast upon the arbitrator to file the award or cause the award to be filed in the Court at the request

of the party to the arbitration agreement or if so directed by the Court. There is no provision which requires the arbitrator to apply to the Court for

filing of the award and pass a decree in terms of the award. An application for filing the award in Court has to be made within thirty days from the

date of service of the notice of making of the award under Article 119 of the Limitation Act. Even if it is held that Article 119 will apply only to an

application made by a party and not by the arbitrator. Article 137 will come in the way of the arbitrator's making any application beyond the

period of three years from the date of making of the award.'''

This view totally supports the interpretation of Article 119 of the Limitation Act as above by this Court in the context stated above to mean that the

Hon''ble Supreme Court was dealing with the operation of the Article for filing the award by the arbitrator within the period of 30 days and not by

the party. Therefore, notwithstanding the fact that the respondent received the notice of passing of the award, the period of limitation did not being

and end within 30 days immediately thereafter and, therefore, the suits which were filed beyond the period of thirty days cannot be said to be

barred by limitation.

9. Mr. Rayudu, the learned Government pleader is no doubt correct in postulating that if three years period of limitation is borrowed from Article

113 or 137 of the Limitation Act and if the suit was filed beyond such a period, it should be barred by limitation. But the distinction is about Article

113 which has got a larger scope for commencement of the period of limitation from the time when the right to sue accrues. Then that becomes a

question of fact or a mixed question of fact and law as to when the right to sue accrued to the respondent in these cases. But by applying Article

113 of the Limitation Act, normally taking that the period of limitation commences from the date of service of the award on 9-11-1985, the suits

filed on 31-12-1992 were really barred by limitation. But Mr. Subba Rao, teamed advocate for the respondent has not left the matter to end there

only. He has relied upon the Doctrine of Merger and also exclusion of the period of limitation when the respondent was pursuing the litigation bona

fide till it was finally disposed of on 15-10-1990 and on the calculation he is within the period of limitation excluding such time. Certain dates which

are already recorded supra will throw clear light on this question. They may be noted in seriatum to speak to the context and consistency.

i. Date of the awards 31-10-1985

ii. Communicated to the respondent 9-11-1985

iii Date of filing of O.P. Nos. 79 and 80 of 1985 10-12-1985

iv. Petitions allowed on 3-3-1990

V. C.M.A Nos. 563 and 565 of 1990 allowed by the High Court on 15-10-1990

vi. Suits O.S. Nos. 83 of 1992 and 5 of 1993 filed on 31-12-1992

There is continuity in the litigation, till it was finally disposed of by the High Court on 15-10-1990. It is calculated that the period covered by such

litigation upto the High Court is 4 years 10 months and 4 days. The period between the communication of the awards from 9-11-1985 till the suits

were filed on 31-12-1992 is calculated to be 7 years 1 month and 22 days. Deducting 4 years 10 months and 4 days out of 7 years 1 month and

22 days, the balance would be 2 years 3 months 22 days. Therefore, excluding the period of limitation as above, the suits are filed within a period

of three years as a whole and that is the correct meaning of computation of period of limitation by exclusion. Mr. Subba Rao or Mr. Rayudu, the

learned advocates who made their best efforts to convince this Court about the starting point of limitation either from the date of communication or

from the date of conclusion of the litigation with three years may not be correct under the circumstances. Furthermore, even construing that Article

113 of the Limitation Act is applicable, the respondent got the right to sue strictly on 15-10-1990 when this Court disposed of the appeals against

the decision of the trial Court and if that is construed as correct, even then the suits will not be barred by limitation as they are within three years.

10. Mr. Rayudu has laboured hard with all his known sincerity and humility that when the respondent did not choose to challenge the entire award

and chose to challenge only the items which were disallowed under the awards, the period of limitation in regard to the admitted items of the award

cannot stop running. It is true that no period of limitation will stop like the flow of a river or the lime, as time is the essence of the period of

limitation. But statutorily, such running of the period of limitation as a whole is sought to be cut short by computation u/s 14(2) of the Limitation

Act. The reason being that it is well known that it is the decision of the highest Court in the hierarchy which becomes executable as it is popularly

stated that all the judgments merge in the decree of the highest Court and, therefore, the period of limitation will not start running when once it is

stalled due to the proceedings whether stayed or not. It is true that mere filing of the appeal will not operate as stay in view of Order 41 Rule 5(5)

of the CPC but in case somebody succeeds in the appellate Court, rights will be restored u/s 114 of the CPC thereby meaning that it is the

Doctrine of Merger which ultimately operates and not the running of the period of limitation. The fact that the respondent did not challenge some

of the items which were allowed which he tried to enforce by filing the suits and failed in regard to the other items which were disallowed upto the

High Court, has no relevance at all because when the matter is before (he appellate Court or the High Court, the opposite party has always the

right to oppose it either by filing cross-appeal, cross-objections or even challenging the finding by invoking Order 41 Rule 23 of the CPC even

without filing a cross-appeal. Therefore, there is no guarantee that the award stops at a particular stage or become final and conclusive. Therefore,

the Doctrine of Merger has a rule of convenience and wisdom in Rule of Law. The operation of the period of limitation is subservient to the

Doctrine of Merger, which is the Rule of Law. It is well known (hat the law of limitation or the rule of estoppel is brought into jurisprudence to

support a diligent person but not a negligent person. At the same time, the rights of diligent persons cannot be taken away except in accordance

with proper interpretation of law. Within this concept, the above inference in law should be justified or otherwise the establishment of a right before

the Court for a Us becomes redundant or even absurd. Therefore, this Court is totally convinced that the suits were not barred by limitation

applying Article 113 or 137 read with Article 14(2) of the Limitation Act.

11. Section 29 of the Arbitration Act is emphatic that where the award is for payment of money, the court may in the decree order interest from

the date of the decree at such rate as the Court deems reasonable to be paid on the-principal sum as adjudged by the award and confirmed by the

decree. In the first place, the awarding of interest is discretionary and secondly it cannot go back to the date of the decree. Mr. Rayudu, the

learned Government Pleader is totally right in postulating this. The learned Subordinate Judge is totally wrong in awarding such rate of interest prior

to the date of decree. Mr. Subba Rao, learned Counsel for the respondent, has done his best with all his learning by depending upon certain

precedents that when once interest is awarded in the award by the arbitrator at a particular rate or upto a particular point of time, the Court will do

well in confirming the interest inspite of Section 29 of the Act. On a careful reading of those precedents, this Court is not in a position to draw such

a rule enunciated anywhere. What they contemplate is that when once the rate of interest is awarded in the award, it shall be affirmed till that date

and there is nothing to indicate that inspile of Section 29 of the Act, the interest can be awarded prior to the date of the decree. On the other hand,

the Hon"ble Supreme Court has affirmed such a clear interpretation. In State of Orissa Vs. B.N. Agarwalla, etc., , while dealing with the powers

of the arbitrators to award future interest till the date of the decree or the date of payment whichever is earlier, it is hinted that when the Court does

not modify the award with regard lo the grant of interest from the date of the award upto the date of payment, the effect would be as if the Court

itself has granted interest from the date of the decree till the date of payment as having been awarded u/s 29 of the Act to mean lhat interest cannot

be awarded prior to the date of the decree by the Court. In the latest pronouncement, a Division Bench of our own High Court in The

Superintending Engineer, P.W.D. (R and B) and Another and The State of Andhra Pradesh, R and B Dept. and Others Vs. Patibandla

Radhkrishna Murthy and Others, has also affirmed this view of Section 29 of the Act empowering the Court to award interest from the date of the

decree till the date of payment besides the interest awarded by the arbitrators, which may be sometimes upto a particular limit if it is confirmed. But

the arbitrators cannot control the effect of Section 29 of the Act by providing that interest can be awarded prior to the date of the decree. That will

be beyond the jurisdiction of the arbitrator amounting to misconduct which cannot be supported and also being repugnant to Section 23 of the

Contract Act, it cannot be given effect to. It would be a travesty of the judicial process to think that the arbitrator can abrogate a statute unless it

can be interpreted to mean in a particular manner. This Court is not at all persuaded to accept the contention of the learned advocate for the

respondent that interest can be awarded prior to the date of the decree in spite of Section 29 of the Act.

12. Mr. Subba Rao, learned advocate for the respondent, made an alternative, not a contention, but an appeal that this is a fit case to award

interest by way of damages or some compensation for withholding the amount of the respondent by the petitioner. Such a concept is no longer in

existence. Neither the Interest Act nor unjust enrichment would operate in the field of statutory obligation prescribing or restricting the right of the

parties, which the Court is bound to enforce.

13. In the result, the petitions are allowed partly. The decrees of the learned Subordinate Judge in both the suits are confirmed except to the extent

of the right of the respondent-plaintiff to recover the interest on the amount decreed only from the date of the decree and not prior to that. The

decrees shall be modified only to this extent. Sri Rayudu, the learned Government Pleader, contends that the learned Subordinate Judge was

wrong in imposing costs on the petitioner although the delay in the litigation was caused due to the respondent. In the opinion of this Court, it is no

delay. Such a delay was statutorily permitted to enforce the right by filing petitions and appeals etc. In the peculiar circumstances of the case, there

shall be no order as to costs in these petitions.