

(2010) 10 BOM CK 0114

Bombay High Court

Case No: Chamber Summons No. 553 of 2010 in Arbitration Petition No. 499 of 2003

The Maharashtra Small
Scale Industries
Development
Corporation Limited

APPELLANT

Vs

Snehadeep Structures
Pvt. Ltd.

RESPONDENT

Date of Decision: Oct. 22, 2010

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 34
- Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 - Section 7

Citation: (2011) 1 ALLMR 309 : (2010) 5 BomCR 371 : (2011) 1 MhLj 397

Hon'ble Judges: S.J. Vazifdar, J

Bench: Single Bench

Advocate: M.P. Rao, instructed by A.C. Mahimkar, for the Appellant; Virendra Tulzapurkar, instructed by Chandana Salgaoncar Radia, for the Respondent

Judgement

S.J. Vazifdar, J.

This is the respondent's Chamber Summons for a dismissal of the above petition u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "1996 Act").

2. The petition is to set aside an award dated 30.6.2003. The above petition was filed on 29.9.2003. It was dismissed on 23.8.2005 on the ground that the petitioner had failed to comply with the provisions of Section 7 of The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as the "1993 Act").

The petitioner's appeal being Appeal No. 855 of 2005 against the order and judgment dated 23.8.2005 was disposed of by an order of the Division Bench dated 17.11.2005.

The Division Bench set aside the order and judgment dated 23.8.2005 and restored the arbitration petition to file for fresh consideration by the learned single Judge.

The learned Judge by an order dated 25.1.2006, dismissed the petition again on the ground that Section 7 of 1993 Act had not been complied with. The learned Judge held that a petition u/s 34 of the 1996 Act falls within the ambit of the expression "appeal" in Section 7 of 1993 Act.

The petitioner's appeal being Appeal No. 485 of 2005 was allowed by an order and judgment of the Division Bench dated 5.2.2008. The order and judgment dated 25.1.2006 was set aside and the petition was ordered to be disposed of by the appropriate bench.

3. The respondents filed a petition for special leave to appeal in the Supreme Court being SLP (C) No. 7076 of 2008. The Supreme Court allowed the respondents' appeal. The judgment is reported in [Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited](#), . Paragraph 65 thereof reads as under:

65. Keeping in mind the language of Section 7, object of the legislation and the contextual meaning of the term appeal, we are, therefore, of the view that the term "appeal" appearing in Section 7 of the Interest Act should include an application u/s 34 as well. The judgment and order of the High Court shall, therefore, stand set aside and the appeal is allowed to the extent indicated above. The respondent Corporation shall make a deposit of 75% of the amount awarded by the learned arbitrator by his award dated 30.6.2003 in court where the application for setting aside the award is now pending decision. Such deposit shall be made within three months from this date. In the event, such deposit is made the court shall decide the application for setting aside the award filed u/s 34 of the Arbitration Act as expeditiously as possible preferably within six months from the date of deposit by the Corporation.

4. The judgment of the Supreme Court is dated 25.1.2010. The three months period therefore expired on 25.4.2010. Before the expiry of this period, the petitioner deposited only a sum of Rs. 58,64,656/- i.e. seventy five per cent of the principal sum awarded.

5. The operative part of the award reads as under:

(1) The Respondent shall pay to the Claimant a sum of Rs. 78,19,540.73 (Rupees seventy-eight lacs nineteen thousand five hundred forty and paise seventy three only) as per the claim in Annexure "L" to the Statement of Claim.

(2) The Respondent shall pay to the Claimant simple interest on the said amount at the rate of 10% per annum from the date of the Statement of Claim till the date of Award and future interest at the same rate from the date of the Award till payment and/or realisation.

(3) In case the Respondent fails to pay the amount awarded within three months from today, the Respondent would be liable to pay to the Claimant compounded interest with monthly rests at 1 1/2 times of Prime Lending Rate charged by the State Bank of India from the date of the claim until payment and/or realisation.

(4) Parties to bear their own costs.

6. The petitioner deposited the said amount on the basis that only the principal amount awarded can be taken into consideration while computing the amount to be deposited u/s 7 of 1993 Act.

7. The submission is not well founded. Section 7 of 1993 Act reads as under:

7. Appeal. - No appeal against any decree, award or other order shall be entertained by any Court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such Court or, as the case may be, such authority.

There is nothing in Section 7 of 1993 Act which limits the computation of the amount to be deposited only on the principal sum awarded. The words "amount in terms of the decree, award or, as the case may be, other order" are wider. They include all the amounts that are awarded. The deposit of seventy-five per cent must be computed on the basis of all the amounts awarded under an award. In the present case this would include the amounts under Clauses (1), (2) and (3) of the operative part of the award.

8. The petitioner admittedly has not deposited the amount as per the award read with Section 7 of 1993 Act.

9. It is not possible for me to consider the application for extension of time to deposit the balance amount in view of the fact that the time was granted by the Supreme Court. This Court cannot extend the time granted by the Supreme Court.

10. In the circumstances, the chamber summons is made absolute in terms of prayer (a). There shall be no order as to costs.