

State of Orissa Vs. Builders Union Engineers and Contractors

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SooperKanoon Citation : sooperkanoon.com/524634

Court : Orissa

Decided On : Jul-19-1978

Reported in : AIR1979Ori34; 46(1978)CLT204

Judge : R.N. Misra, J.

Acts : [Arbitration Act, 1940](#) - Sections 29

Appeal No. : Civil Revn. Nos. 219 to 223 of 1978

Appellant : State of Orissa

Respondent : Builders Union Engineers and Contractors

Advocate for Def. : G. Rath and ;R.K. Rath, Advs.

Advocate for Pet/Ap. : Addl. Govt. Adv.

Disposition : Revisions dismissed

Judgement :

ORDER

R.N. Misra, J.

1. These applications by the State of Orissa are directed against the orders of the Subordinate Judge, Bhubaneswar in several execution cases.

2. The decree-holder-opposite party, 4 firm of contractors, had undertaken the construction of certain portions of the Buria Medical College Hospital under F-2 contracts and disputes having arisen between the State and the contractor, the same had been referred to arbitration under the arbitration clause in the contracts. There were five deposes in all and five awards were passed for different amounts of claim. The awards were almost in similar terms and, inter alia, stipulated:--

'..... I hereby direct the opposite party-defendant do pay the same amount of to the claimant-plaintiff within a period of thirty days (30 days) from today and in case the opposite party-defendant fails to pay the said amount to the claimant-plaintiff within the aforesaid date, the opposite party-defendant will pay interest at the rate of nine per cent per annum on the said amount of Award from the date of expiry of the said period of one month (thirty days).'

Steps were taken to make the several awards rule of the Court and accordingly five different cases were registered. No objection was filed on behalf of the State and in fact, the Government Pleader at Bhubaneswar conceded that decrees may follow. Accordingly, the learned Subordinate Judge gave the following direction:--

'..... it is ordered and decreed that the award submitted by the arbitrator is made rule of the court.'

On 6-4-1977, the State of Orissa made certain deposits and maintained that the decrees were satisfied. Plaintiff-decree-holder, however, did not accept the position and levied execution of the several decrees. Five execution cases were accordingly registered. Therein, the State of Orissa as judgment-debtor reiterated its stand of satisfaction of the decrees by payment and the decree-holder disputed the position. After hearing parties, the learned Subordinate Judge came to hold:--

'..... The award directed payment of money within a stipulated period and failing to carry interest at the rate of 9 per cent till the date of payment. The J. Dr. who is also common in all these cases did not make payment within the time specified in the award. He, however, paid the specific amount mentioned in the award through court on 10-4-77, but did not pay the interest due by them. The decree-holder acknowledged receipt of the amount so paid. But he now contends that out of the

money received by him he has first appropriated such amount as was due to him towards interest and the balance towards the principal amount mentioned in the award and for that he is still entitled to get the amount claimed in the execution cases. On behalf of the judgment-debtor it is contended that since the decree-holder was paid the amount awarded under the decree nothing more remains to be paid.

It is well settled that when certain amount is due towards the principal and interest and the debtor while making payment does not signify his intention as to whether the amount paid by him is towards the principal or the interest, the option is left to the creditor to appropriate the amount either towards the principal or interest as he may think proper. In the present case undisputedly by the time of payment some amount was due towards interest on the principal amount specified in the award. The judgment-debtor did not specifically state while making payment that the said payment was towards the principal amount specified in the award. So the appropriation of the amount towards the interest due and balance towards part satisfaction of the principal amount cannot be said to be illegal. In this view of the matter the claim, in all cases is maintainable.....'

Petitioner has carried these revisions challenging the aforesaid order.

3. Learned Additional Government Advocate relying on the provisions of Section 29 of the Arbitration Act contends that the decree of the court having not granted any interest on the award from the date of the decree, the decree-holder is not entitled to any future interest. Counsel for the decree-holder on the other hand contends that in the award, interest was directed to run after thirty days from the date it was made and no upper limit had been fixed. When that award was adopted by the court without indicating any variation in regard to payment of interest, it must follow that the court intended to continue the direction of the arbitrator in the matter of payment of interest and, therefore, had not made any alteration.

4. Section 29 of the Arbitration Act provides:--

'Where and in so far as an award is for the 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.'

Reliance has been placed on two Calcutta cases being *Union of India v. Bunge Steel Furniture (Pvt.) Ltd.*, AIR1953 Cal 70 and *Lal Chand Roy v. Nerode Kanta Goswamy*, AIR 1966 Cal 478. The first case was an appeal under Section 39 of the Act, where the court had refused to set aside an award which contained a direction to the following effect (at pp. 73, 74): --

'..... I award and direct the Union of India to pay the said amount to the claimant with simple interest at 5% per annum from this date till payment or realisation.'

Examining the question of payment of interest, the Court held:--

'The next question is whether Section 29 of the Indian Arbitration Act has affected this power and if so, to what extent. Section 29 provides that where and so far as an award is for the 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. Having regard to this section the umpire cannot fetter the discretion of the Court with regard to the interest from the date of the decree. The award in the instant case, in so far as it gave interest from the date of the decree to be passed by the Court is in contravention of Section 29 and as such is beyond the powers of the umpire. But the award in the instant case may well be read as an award of interest on the principal sum adjudged at 5 per cent per annum from the date of the award up to the date of the decree and from the date of the decree till payment or realisation. The award as to interest so read consists of two parts and the second part is clearly severable from the first part. The second part of the award is excessive and bad and as such may be struck out and the first part of the award may be maintained.....'

The second case also arose out of an appeal under Section 39 challenging the refusal to set aside an award. The award contained the following term (at p. 478):--

'I further award and direct that the said owelty money will carry interest at 6% per annum from the date when the separate possession of 2A, Colonel Biswas Road is delivered to Sri Lal Chand Roy as aforesaid till the date of payment.'

Sinha, J., as the learned Judge then was, spoke for the Division Bench thus (at p. 479):--

'..... Various authorities were cited before the learned Judges, but Bachawat, J., having considered all the authorities came to the conclusion that the position in law before the introduction of Section 29 in the [Arbitration Act, 1940](#) was that where the arbitration clause was wide enough for the arbitrator to adjust all equities between the parties, there was no impediment in his granting interest on any amount awarded, and that this power did not flow from Section 34 of the Code of Civil Procedure but from the submission of the parties to arbitration in terms which were wide enough for the arbitrator to adjust all equities between the parties, including the payment of interest on any sum awarded. There certainly was a conflict of decisions but the learned Judge pointed out that the consensus of opinion upheld the position stated above. The learned Judge, however, pointed out that the position was altered when Section 29 was introduced into the [Arbitration Act, 1940](#). Section 29 provides that where, and in so far as an award is for the payment of money, the Court may, while passing a 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. The learned Judge rightly came to the opinion that an arbitrator, by making such an order for the payment of interest, could not fetter the discretion of the Court, from the date of the decree. He was finally of the opinion that if the arbitrator awarded interest, it would only be valid up to the date of the decree but granting interest after the date of the decree was beyond the powers of the arbitrator. The award was however set aside not on this point but on another point. Incidentally, the learned Judge made an observation that, if a judgment on award was made, it might be construed that the interest up to the decree was awarded by the arbitrator and thereafter by the Court. With respect, I am unable to appreciate this observation. This was, however, only mentioned casually and forms no part of the decision. As I have stated above, the application was really decided on another

point altogether. I respectfully agree with the proposition that where the submission is in a sufficiently wide form and the arbitrator has been given the power to adjudicate on all disputes between the parties and to adjust all the equities, he can make an order as to interest, not as a result of Section 34 of the Code of Civil Procedure but by virtue of the submission. This power, however, comes to an end upon the passing of the decree. The arbitrator has no power to make an award granting interest after the decree. If he exercised any such power, it would be in violation of the jurisdiction conferred upon the Court by Section 29 of the [Arbitration Act, 1940](#) and as such, void.....'

5. The award in the instant case does not suffer from the defect pointed out in the two Calcutta decisions. The relevant portion of the present award has already been extracted and its terms were such that they did not affect Section 29 of the Arbitration Act in any manner. The arbitrator only indicated that after lapse of thirty days from the date of the award, interest became payable. There was no reference to the date of payment or realisation. Realisation obviously postulates recovery through court by execution. Since in the award there was nothing which could impinge upon court's power under Section 29 of the, Act and there having been no objection to the award when the court made it, a rule, there can be absolutely no difficulty in construing that the court wanted the term of interest contained in the award to be continued as its own. Legal position is well settled that the executing court has power to interpret a decree and where the same court which granted the decree is the executing court and it construes its decree by saying that unpliedly it meant that the provision of interest in the award shall be continued in the decree of the court, it cannot be contended that future interest is not payable. I do not think, there is justification to interfere with the impugned order.

Accordingly, each of the revision applications is dismissed. There would, however, be no order for costs.