Eastern Coalfields Ltd and Anr. Vs. Somal Pipes Pvt Ltd

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Court : Kolkata

Decided On : Jan-21-2016

Judge : Soumitra Pal

Appellant : Eastern Coalfields Ltd and Anr.

Respondent : Somal Pipes Pvt Ltd

Judgement :

IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE GA No.16 of 2016 APOT No.1 of 2016 GA No.2093 of 2008 GA No.3815 of 2015 WP No.2068 of 2005 EASTERN COALFIELDS LTD & ANR.

Versus SOMAL PIPES PVT LTD BEFORE: The Hon'ble JUSTICE SOUMITRA PAL The Hon'ble JUSTICE MIR DARA SHEKO Date : 21st January, 2016.

Mr.Aloke Banerjee, Adv.Mr.Aniruddha Mitra, Adv.Mr.S.M.

Odaidullah, Adv.Partho Basu,Advocate Mr.Nikhil Roy, Adv.Appellant.

Mr.Siddhartha Mitra, Sr.Adv.Mr.M.Hossain,Advocate Mr.Swaraj Shaw,Advocate Ms.Titash Mukherjee,Advocate Ms.Suruchi Khenteta,Advocate Respondent.

Soumitra Pal, J:- This appeal has been preferred by Eastern Coalfields LTD.and its General Manager (S&M).the appellant nos.1 and 2, respectively, against the order dated 22nd December, 2015 passed in G.A.No.3815 of 2015 with

W.P.No.2068 of 2005 (Somal Pipes Pvt.Ltd.v.Coal India LTD.& Ors.) principally on the ground that since the writ petition was finally disposed of by order dated 1st October, 2015, (for short the earlier order) the learned Single Judge erred in passing the order dated 22nd December, 2015 granting interest on the modification application modifying the earlier order.

Since the learned Single Judge had finally disposed of the writ petition, the application being G.A3815of 2015 (the said application for short).filed in connection thereof, was not maintainable.

Mr.Aloke Banerjee, learned advocate for the Eastern Coalfields LTD.(for short ECL) relying on the grounds of appeal has submitted that the said application filed was neither an application for clarification nor an application for review of the earlier order.

Rather the said application sought for modification of the earlier order with a prayer for direction upon the ECL to pay interest at the rate of 12% on the principal amount of Rs.10,27,721.49/-.

Since neither in the writ petition filed in the year 2005 nor in the subsequent application, being GA2093of 2008, prayer was made for grant of interest, the learned Single Judge erred in modifying the earlier order by directing payment of interest.

As the chart prepared by the ECL furnished before the learned Single Judge contained mistakes, as evident from the order dated 18th June, 2015, it cannot be the basis to grant interest to the respondent - writ petitioner.

Since the writ petition was finally disposed of on 1st October, 2015 and, thereafter, the learned advocate on record for the respondent/writ petitioner had issued a letter dated 13th October, 2015 to ECL with a request to hold a meeting for re-verification of accounts as directed by the learned Single Judge and thereafter letter was issued by ECL on 30th October, 2015 fixing a date for hearing on 5th November, 2015 and order was passed on 17th November, 2015 by the authorities, the learned Single Judge erred in modifying the earlier order.

According to him, the letter dated 2nd December, 2015 issued by the learned advocate on record for the writ petitioner praying for interest @ 12 per cent is a fresh cause of action as there was no such prayer in the writ petition or in the application being G.A.2093 of 2008.

Submission is that the interim order contained in paragraph 8 of the order dated 12 December, 2005 issued in Ashoka Smokeless Coal Industries PVT.Ltd v.

Union of India passed by the Supreme Court cannot be the basis for grant of interest at the rate of 12%, since the Supreme Court while finally disposing of the matter - Ashoka Smokeless Coal Industries (P) Ltd.v.Union of India: (2007) 2 SCC640 did not grant interest.

Moreover, as in Eastern Coalfields Ltd.v.Tetulia Coke Plant (P) Ltd.: (2011) 14 SCC624 the Supreme Court had directed that in the event of failure to pay the amount by the authorities, the amount would carry interest at the @9% per annum, the respondent is not entitled to interest.

As Explanation V of Section 11 of the Code of Civil Procedure 1908 stipulates that any relief claimed in the plaint, which is not expressly granted by the decree, shall be deemed to have been refused and as section 152 of the Code permits Court to correct clerical or arithmetical mistakes in decrees or orders arising therein and as principles of the Code are applicable to writ proceedings, the learned Single Judge erred in passing the order dated 22nd December, 2015.

Mr.Sidhartha Mitra, learned senior advocate referring to the writ petition and to the said application for modification of the earlier order has submitted that as grant of interest was always a part of the claim and not a new cause of action and as ECL had furnished a chart recognising the claim of 12% interest of the respondent /writ petitioner and as the Division Bench in its order had accepted such claim and as it was held by the Supreme Court in Ashoka Smokeless (Supra) that the writ petitioner was not an e-auction bidder rather a linked consumer, the learned single Judge was justified in modifying the earlier order.

Moreover, the respondent is also entitled to an excess amount of Rs.10,20,721.49 deposited as evident from the chart submitted by ECL after re-verification.

It is submitted that the judgement of the Supreme Court in State of Uttar Pradesh, v.

Shri Brahm Datt Sharma: AIR1987 Supreme Court 943 relied before the learned Single Judge, on behalf of the appellant is not applicable to the facts of the case as the relief granted is not a new cause of action.

Reliance has been placed on the judgments in Delhi Administration v.

Gurdip Singh Uban: (2000).SCC296 in Ram Chandra Singh v.

Savitri Devi: (2004)12 SCC713and in K.A.Ansari v.

Indian Airlines Limited: (2009).SCC164in support of his submission.

In order to appreciate the issue, it is necessary, to set out the relevant prayers in the writ petition, being, WP no.2068 of 2005 which are as under : a) A declaratory order, if necessary directing the writ petitioner unit be permitted to lift coal as per entitlement by furnishing Indemnity Bond and other undertakings as per solemn orders of Honble Supreme Court dated 19.10.05 and extensions thereof.

b) A writ in the nature of Mandamus do issue directing the respondents to supply coal as per entitlement by furnishing Indemnity Bond and other undertakings as per solemn orders of Honble Supreme Court dated 19.10.05 and extensions thereof. After hearing the parties, the said writ petition and the connected applications were disposed of finally by order dated 1st October, 2015, the relevant portion of which is as under: The petitioners will approach the General Manager, Sales and Marketing of both the coal companies for expeditious reverification of their claims of not being participants as bidders/purchasers in the since set aside e-auction scheme as well as their claims for refund in the period aforesaid.

This process being one of reverification is to be made as expeditiously as possible and positively within a period of four weeks from the date of communication of a copy of this order along with material to substantiate their claims on account of refund, to be made by the petitioners upon the said authorities.

It is made clear the coal companies have to demonstrate that the petitioners had participated in the e-auction as bidders in this period, if they did, to seek to disentitle them from the refund on the objection on law recorded above, not adjudicated upon in view of the concession made on the distinguishing fact of the petitioners not having been biddeRs.Once the claims are settled on or before the time indicated above, the settled amounts will be forthwith payable to the petitioners by the said two coal companies.

So far as the payment of the claims of the petitioners out of the monies deposited by Eastern Coalfields is concerned, they will apply for leave to withdraw the same deposited with the Registrar for payment of their settled claims on refund.

The writ petitions are disposed of.

All connected applications are also disposed of. As noted, the learned advocate on record for the respondent/writ petitioner, by letter dated 13th October, 2015 intimated the order dated 1st October, 2015 and requested for re-verification of accounts.

Thereafter, hearing was held on 5th November, 2015 in which the respondent / writ petitioner appeared.

On 17th November, 2015 the ECL had passed an order after re-verification.

Subsequently, the learned advocate on record for the respondent/ writ petitioner issued the letter dated 2nd December, 2015 requesting, inter alia, for payment of interest @ 12% on the amount in question.

The issue is whether the learned Single Judge was justified in passing the order dated 22nd December, 2015 by making a modification of the earlier order on the said application when the writ petition and the connected application had been finally disposed of.

In order to answer this issue it is appropriate to set out the prayer in the said application being GA No.3815 of 2015 which are as under: a) The order dated 1st October, 2015 as passed in WP No.2068 of 2005 (Somal Pipes PVT.LTD.versus Coal India Limited & Ors.) be modified to the extent that the Respondent no.6 &7 be directed to pay 12% interest calculated till date along with the principal amount of Rs.10,20,721.49 from the date of payment by the Petitioner; b) To allow the Petitioner to withdraw the principal excess amount paid to the Respondent No.6 & 7 by the Petitioner amounting to Rs.10,20,721.49 which was deposited by the Respondent no.6 & 7 before the Registrar High Court, Calcutta in pursuance of the order dated 18th June, 2015 passed by the Honble Division Bench of the Honble High Court at Calcutta. We find the learned Single Judge while disposing of the writ petition and its connected application on 1st October, 2015 had directed that once claims are settled, the settled amount would be forthwith payable by the two coal companies to the respondent / writ petitioner.

The earlier order did not direct for payment of interest.

The question is whether the amount to be paid, in terms of the settled amounts, contained interest.

The respondent/writ petitioner had relied on a chart, earlier furnished by the ECL, to claim interest.

On behalf of the ECL it was submitted that there were mistakes in the chart.

In this regard the Division Bench by order dated 18th June, 2015, passed in APO No.1820 of 2015, held that : .

an admission is not conclusive and can be explained away.

Admission can also be withdrawn in an appropriate case.

Therefore, just because an admission is made which, it is alleged, was based on mistake, that cannot create any right.

We are not accepting the fact that this was based upon a mistake.

That question may be gone into by the learned Trial Court.

Therefore, the direction for payment is substituted by directing the payment to pay the like sum to the Registrar, O.S.He shall keep the money invested in a short term fixed deposit and shall go on renewing the same and hold the money subject to further orders of this Court.

The claims and contentions of the parties shall naturally be decided by the learned Trial Court in accordance with law. Therefore, it is evident from the order dated 18th June, 2015 that the claim of the writ petitioner was wide open.

In this regard, it is to be noted that Mr.Mitra, has relied on the interim order dated 12th December, 2005, passed in Ashoka Smokeless (supra) which, inter alia, is as under : To protect the interest of the petitioners and to ensure that no permanent harm is caused to them we also think it proper to record the undertaking given on behalf of the Coal India LTD.and its subsidiaries that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to the petitioners within 6 weeks of the judgment of this Court with interest thereon at 12% per annum from the date of payment till the date of return to the concerned petitioner. However while finally disposing of Ashoka Smokeless (supra) by judgment dated 1st December, 2006 the Supreme Court did not issue direction to grant interest.

The judgment in Eastern Coalfields LTD.v.Tetulia Coke Plant (supra) relied on by the respondent/writ petitioner also does not support the claim for interest as in paragraph 14 thereof the Supreme Court had directed that the amount in terms of the settled accounts shall be paid by the appellant in accordance with law within a period of two weeks, failing which the amount will carry an interest at the rate of 9% (nine per cent) per annum.

Thus, we find the amount did not and cannot include interest.

Before proceeding further be it noted that in Eastern Coalfields Limited v.

Tetulia Coke Plant (supra) the Supreme Court, while rejecting the contention of the learned Additional Solicitor General, had held as under: 11.

We are unable to accept the contention of the learned Additional Solicitor General that whatever is challenged in the present petition is only an interim order.

It is not so because the respondents herein also challenged the legality of the e-auction scheme in the writ petition.

The High Court has not disposed of only an interim prayer but has disposed of the entire writ petition by its judgment and order dated 25.03.2010.

Consequently, it must also be held that when the entire scheme is set at naught by this Court, whatever action has been taken following the said eauction by the Coal Company has also been declared to be illegal and, therefore, the Coal Company has become liable to refund the entire money which was collected in excess of the notified price.

That is the consequence of quashing of the scheme and the same came to be reiterated by this Court while contempt petitions were field and were disposed of.

Therefore, it cannot be said that the effect of the decision of Ashoke Smokeless Coal India (P) LTD.would be restricted only to those cases which were before this Court and not for all cases which were pending in different High Courts at that stage, at least to the issues which are common in nature (Emphasis supplied) In this regard case, it is appropriate to refer to the prayers made in the application, being GA No.2093 of 2008, in connection with W.P.No.2068 of 2005, which are as under : a) Respondents be directed to refund amounts along with interest i.e., Rs.1,99,35,631/- (Rupees one crore ninety nine lakh thirty five thousand six hundred thirty one) from NEC and Rs.11,70,430/- (Rupees eleven lakhs seventy thousand four hundred thirty) from ECL.

b) Respondents be restrained from charging 120% of notified price which was notified by the respondent CIL on 16th June, 2004 for coal being supplied to the petitioneRs.inspite of the direction of the Honble Supreme Court dated 1st December, 2006 in the meantime. (Emphasis supplied) Looking at the prayer in the writ petition and in GA No.2093 of 2008, it is apparent no prayer was made for a direction on the respondent - ECL to refund the amount along with interest.

It becomes clear when compared to the reliefs sought for in G.A2093of 2008 against NEC.

In our view, since the Supreme Court in its final judgment in Ashoka Smokeless (supra) did not direct payment of interest rather in Eastern Coalfields Limited v.

Tetulia Coke Plant (supra) had directed grant of interest at the rate of 9% (nine per cent per) annum on the failure to pay the amount in terms of the settled accounts and as the amount cannot include interest, thus, the learned Single Judge erred in passing the order dated 22nd December, 2015 on the said application modifying the order passed on 1st October, 2015 in W.P.No.2068 of 2005 with GA No.2093 of 2008.

Since the Supreme Court in its judgments did not issue direction for grant of interest, the letter dated 2nd December, 2015 issued by the learned advocate on record for the respondent/writ petitioner claiming interest is a new cause of action.

In this background the principles of law laid down in State of Uttar Pradesh v.

Shri Brahm Datt Sharma (supra) supports the stand of the ECL.

That apart, as the principles of the Civil Procedure Code apply to writ proceedings, assuming grant of interest was a part of the claim of the respondent/writ petitioner, in view of Explanation V to Section 11 of the Code, which postulates that any relief claimed in the plaint, which is not expressly granted by the decree, shall be deemed to have been refused, as interest was not granted by the order earlier, the learned Single Judge erred in passing the order dated 22nd December, 2015 by granting interest modifying the earlier order.

Moreover, as Section 152 permits correction of clerical and arithmetical mistakes in judgments, decrees, orders or errors arising therein from any accidental slip or omission and as denial of interest in the parent order cannot be called a mistake, the learned Single Judge erred in modifying the earlier order.

So far as the judgments relied on by Mr.Mitra, are concerned, the judgment in Ram Chandra Singh (supra).passed primarily while considering the Supreme Court Rules 1966, does not support the case of the respondent/writ petitioner as in paragraph 13 thereof it was held that It is now well settled that an application for clarification or modification touching the merit of the matter would not be maintainable .

So far as the judgment delivered in Delhi Administration v.

Gurdip Singh Uban (supra) is concerned, it was delivered in the context of Rule XL of the Supreme Court Rules, 1966 as evident from paragraphs 16 and 17 thereof and is not applicable.

In K.A.Ansari (supra) it was held as under: 17.

It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case.

It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action.

If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning.

(See State of U.P.v.

Brahm Datt Sharma, SCC p.

188, para 10.) At the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words.

19. Having bestowed our anxious consideration on the rival submissions, we are of the opinion that keeping in view the terms of the final order dated 1110-2004,

the miscellaneous application could not be said to be founded on a separate or fresh cause of action so as to fall foul of the aforenoted legal position viz.

on termination of proceedings by final disposal of writ petition, it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided fresh cause of action.

21. In our opinion, in the miscellaneous application , no fresh relief, on the basis of a new cause of action, had been sought.

It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23-4-2003, was issued.

This was precisely done by the learned Single Judge vide his order dated 4-3-2005. Therefore, in view of the law laid down K.A.Ansari [supra]., a miscellaneous application within the purview of Section of 151 of the Code may be permitted only for getting implemented the relief granted in the writ petition and for no other purpose.

However, the case in hand is different as the prayer in the application for modification of the earlier order is a new cause of action, as it was neither a part of the prayer in the writ petition nor in the application being GA2093of 2008.

Further, as no interest was granted by earlier order, the direction to pay interest modifying the earlier order is not permissible under Explanation V to section 11 of the Code.

Thus, in view of the principles of law laid down State of Uttar Pradesh v.

Shir Brahm Datt Sharma (supra) and in K.N.Ansari (supra) and in view of the provisions contained in the Code of Civil Procedure, there cannot be any doubt that once a petition is disposed by passing a final order, a clerical mistake in a judgment, decree or order can only be corrected and any deviation granting further relief on the basis of a subsequent application is not permissible.

That apart the Supreme Court in its final judgments in Ashoka Smokeless (supra) and in Eastern Coalfields Limited v.

Tetulia Coke Plant (supra).which lay down the law, did not direct payment of interest.

Hence, for the reasons, as aforesaid, the judgment dated 22nd December, 2015 passed by the learned Single Judge is set aside and quashed.

The appeal is allowed.

The application is disposed of.

(SOUMITRA PAL, J.) I agree.

(MIR DARA SHEKO, J.) ssaha/dg2/sp/sm AR(CR)