

Saraswati Construction Co. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-08-2004

Reported in : AIR2004Delhi412; 2004(2)ARBLR429(Delhi); 112(2004)DLT736; 2004(76)DRJ36

Judge : R.C. Chopra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 21, Rule 23; Interest Act - Sections 3

Appeal No. : EA 563/2003 in ExP 144/2003

Appellant : Saraswati Construction Co.

Respondent : Delhi Development Authority

Advocate for Def. : Anil Sapra, Adv.

Advocate for Pet/Ap. : Sandeep Sharma, Adv

Judgement :

R.C. Chopra, J.

1. This application by the judgment Debtor under Order 21 Rule 23 read with Section 151 of the Code of Procedure, 1908 (hereinafter referred to as 'the code' only) is with the prayer to dismiss or defer the execution petition in view of the

payment of full decretal amount to the Decree Holder.

2. The controversy raised before this Court is in regard to a sum of Rs.54,798/- which the Decree Holder claims to be due on account of interest on the decretal amount calculated up to 10th November, 2003. According to the Decree Holder, the Arbitrator had awarded a sum of Rs.7,30,083/- in favor of the Decree Holder which included interest @ 15% per annum from 18.12.1991 to 10.8.1993 on the claims upheld by the Arbitrator. A further interest of Rs.10,25,117/- also became due to the Decree Holder from 11.12.1993 to 19.12.2002 making the total amount Rs.17,55,200/-. The Court while dismissing the objections filed by the judgment Debtor against the Award ordered future interest @ 12% per annum w.e.f. 20.12.2002. Since the payment was made by the judgment Debtor on 22.5.2003, a further amount of Rs.88,866/- became due to the Decree Holder on the total amount of decree @ 12% per annum but the judgment Debtor paid interest of Rs.36,984/- only calculating future interest on Rs.7,30,083/- on the plea that the interest was payable on the amount claims only and not on the interest. The Decree Holder, however, insists that a sum of Rs.54,798/- should be paid by the judgment Debtor, which is the balance amount of interest @ 12% per annum from 20.12.2002 to 21.5.2003.

3. The objection of the judgment Debtor is that the interest as claimed by the Decree Holder is not payable as no interest can be calculated on interest and as such, the entire amount under the decree/Award stands paid.

4. Learned counsel for the Decree Holder has relied upon a judgment of Apex Court in 'Oil and Natural Gas Commission Vs . M.C. Clelland Engineers, S.A'. reported in : [1999]2SCR830 in which their Lordships considered the question of interest on interest and held that the power of the Arbitrator to grant interest on the amount of interest, which may be termed as interest on damages or compensation for delayed payment, would also become part of the principal amount and as such, Section 3 of the Interest Act at sum adjudged.

5. In view of the aforesaid judgments, this Court is of the considered view that after the passing of an Award or the dismissal of the objections by the Court and passing a decree in terms of the Award, not only the amount of a claim upheld by

the Arbitrator or the Court but the pre-suit and pendente lite interest awarded in favor of the Decree Holder crystallizes into the decretal amount and the future interest becomes payable on the entire amount comprised of the claims as well as the pre-suit and pendente lite interest. thereforee, from the date of the passing of the decree, the future interest is not to be calculated merely on the amount of the claims upheld by the Arbitrator/Court but also on the amount of the interest awarded by the Arbitrator or the Court. In many cases, as in the present case, the amount of interest up to the date of the passing of the Award or passing of the decree is much higher than the principal amount and in case a view is taken that the future amount is not payable on the amount of interest, a Decree Holder may be put to substantial monetary loss by an unscrupulous judgment Debtor by withholding the amount and ultimately paying future interest only on the amount of claims. Courts cannot permit any party to take undue advantage of law and exploit legal provisions to cause wrongful loss to the opposite party.

6. Under the circumstances, this Court has no hesitation in holding that the judgment Debtor is liable to pay a sum of Rs.54,798/- on account of interest on the decretal amount from 20.12.2002 to 10.11.2003 which includes interest on the balance amount of interest from 24.5.2003 to 10.11.2003. Let this amount be paid to the Decree Holder forthwith failing which, coercive process may be issued.

EA No.563/2003 stands dismissed.

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