

Prakash Sharma Vs. D.D.A. and Others

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Court : Delhi

Decided On : Mar-03-2000

Reported in : 2000IIAD(Delhi)749; AIR2000Delhi459; 85(2000)DLT163; 2000(54)DRJ471

Judge : Vikramajit Sen, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6 Rule 17; [Arbitration Act, 1940](#) - Sections 17

Appeal No. : 11637 of 1998 Suit No. 1811 of 1989

Appellant : Prakash Sharma

Respondent : D.D.A. and Others

Advocate for Def. : Ms. Anusuya Salwan and ; Ms. Monika Sharma, Advs.

Advocate for Pet/Ap. : Mr. Girish Aggarwal, Adv

Judgement :

ORDER

Vikramajit Sen,J.

1. The facts relevant for the disposal of this petition are not in dispute. An Award was published wherein two claims were partly allowed, one was fully allowed and

two were rejected. Out of a total claim of Rs. 8,79,085/- a sum of Rs. 2,11,820.61 was granted by the Arbitrator. The 1st claim was for Rs. 2,94,309/- as the amount due in the Final Bill, towards work done but not paid. The finding was that this was partly justified to the extent of Rs.1,20,775.25. The next was for the refund of the Security Deposit of Rs. 84,776/- which was found to be fully justified. The third claim for Rs. 5,00,000/-, towards damages for work executed beyond the stipulated date of completion was rejected as being unjustified. The fourth claim for Rs. 2,00,000/- under Clause 10-C, was held to be partly justified to the extent of Rs. 6,279.36. And the final claim was on account of pendente lite interest, which was fully disallowed. Three Counter Claims were also filed.

2. Both parties have filed Objections, is No. 1344/90 being those of the PetitionerContractor. At the hearing before me, learned counsel for the Petitioner-Contractor made a statement that he was restricting his challenge only to the last Claim, wherein pendente lite interest had been rejected by the Arbitrator. Subsequent to the initial delay in filing the Objection being condoned in favor of the Contractor, I.A. No. 11637/98 was filed on its behalf, for amendment of the Objection Petition No. 1344/89, so as to incorporate the grounds of misconduct for disallowing the claim for pendente lite interest.

3. The findings of the Learned Arbitrator in this context are succinct and are spelled out in the following two sentences:

'Claim No. 5:- The claim is for pendente lite interest. The claim is not justified in view of the latest judgments of the Supreme Court.'

4. The present application for amendment has been strenuously contested by learned counsel for the Respondent on the grounds that it is barred by limitation. The argument is that the statutory period of thirty days for filing objections having expired, a right has accrued in favor of the Respondent which cannot now be altered to their detriment.

5. In Lachhman Dass Vs . Ram Lal & Anr., : [1989]2SCR250 , a distinction has been observed between the powers of the Court under the sundry provisions of the Arbitration Act, Viz. Sections 30 and 33, on the one hand, and Section 14 on

the other. In the objections filed under the former Sections, attention was drawn to the fact that the Award was hit by the prescription of Section 49 of the Registration Act. The Award was unregistered even though it created rights in immovable property of a value exceeding Rs. 100/-. It was held that despite that failure to take this Objection, the Court could take cognisance of this illegality under Section 17 and decline to make the Award the Rule of the Court since the failure to register the Award was per se sufficient reason to set it aside.

6. In the case at hand the Arbitrator declined to award interest because of the decision of the Supreme Court at that time. Subsequently in the judgments delivered in *Secretary, Irrigation Department, Government of Orissa and Ors. Vs . G.C. Roy*, : [1991]3SCR417 and in *State of Orissa v. B.N. Agarwalla* 1997 2 AD 234, the powers of the Arbitrator to grant pendente lite interest was recognised. The submission of learned counsel for the Petitioner is that since the law, as laid down by the Supreme Court had changed between the period when the Award was published and when it came to be considered as worthy of being made Rule of the Court, by the operation of Section 17 of the Arbitration Act, it should be remitted or set aside.

7. Reference must also be made to the decision of Division Bench of this Court in the case of *Rajender Prasad Sharma v. Ashok Kumar Sharma & Ors.*, 1996 (2) Arb. L.R. 362 where the following observations were made:

'We are not impressed by the submissions made by the learned counsel for the appellant. Looking to the scheme of the Arbitration Act, it cannot be said that if no objection is filed under Sections 30 and 33 of the Arbitration Act then under Section 17 of the Act, it is merely a mechanical order that remains to be passed by the court: or in other words, till the expiry of limitation for filing the objections against the award, if there are no objections preferred, a decree has to necessarily follow without any application of mind by the court on the prayer under Sections 14 and 17 of the Arbitration Act.

On a plain reading of section 17 of the Arbitration Act, it is clear that whether there be any objections preferred or not before passing the judgment in terms of the award followed by decree, the court has to apply its judicial mind and arrive at a

finding that it has seen no cause to remit the whole or any of the matters referred to arbitration for reconsideration or to set aside the award. Without burdening this order with the authorities we are very clear in our mind that there may be cases where inspire of no objections having been preferred under Sections 30 and 33 of the Arbitration Act, the court may be inclined to set aside award or to remit the same or to refuse to pronounce a judgment in terms of the award.'

8. The observation contained in M/s. Jagdish Rai and Brothers Vs . Union of India, : AIR 1999 SC1258 are extremely relevant in disposing of the present petition, and the decision applies on all fours to the facts of this case:

'There are four stages of grant of interest. Firstly, from the stage of accrual of cause of action, till filing of the arbitration proceedings; secondly, during pendency of the proceedings before arbitrator; thirdly, future interest arising between date of award and date of the decree; and fourthly, interest arising from date of decree till realisation of award.

The claim for interest not having been made before the Court in which proceedings for making the award the rule of the Court were pending would certainly disentitle the appellant for making such a claim during first three stages of prerbitration and postarbitration that is between award and filing of application inasmuch as several considerations will have to be examined before award of interest and at what rate. thereforee, when the award had not been challenged for not granting interest, the award could not be upset to that extent. The view taken by the High Court appears to be correct to that extent. However, that is not the end of the matter. The High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the award. The Courts have taken the view that award of interest under Section 34 CPC is a matter of procedure and ought to be granted in all cases when there is a decree for money unless there are strong reasons to decline the same. In the present case the appellant had made a claim for interest before the arbitrator but the same had been denied and no reasons are forthcoming thereto. Whatever that may be, at any rate after the SubJudge made an award the rule of the Court the decree ought to contain a provision for making payment of interest. If such

payment had not been made, appropriate correction of the decree could be ordered to be made when an application had been made before the High Court.

We are conscious of the fact that the appellant had not preferred any appeal against the order made by the Court of Subudge which made the award the decree of the Court but did not grant any interest. Even so, the grant of interest being a matter of procedure and the appellant having made an application before the High Court in that regard, we do not think there is any impediment to grant the same by bringing decree of subordinate Court in conformity with law, namely, by awarding appropriate interest.

The learned counsel for the appellant relied upon several decisions of this Court to state the proposition that such interest could be granted. It is unnecessary to make any detailed reference to them. We think it appropriate to modify the decree of the Court of Subudge by including a direction for payment of interest @ 12% per annum from the date when the award was made the decree of the Court of SubJudge till realisation. The appeal is allowed to the extent indicated above. However, in the circumstances of the case, there shall be no orders as to costs'.

9. Both parties have relied on Bijendra Nath Srivastava (Dead) through L.Rs. Vs . Mayank Srivastava & Ors., : AIR 1994 SC2562 , although I fail to appreciate how this case is an authority in favor of the Petitioner. In paragraph 13 thereof there is clear mention of the plea that the amendment application was wrongly entertained since an objection to the award could not be raised after the expiry of thirty days from the date of service of notice under Section 14. The High Court had accepted this ground of attack, and the Apex Court even having specifically noticed it, did not disagree with the High Court on this point. The ratio extractable is that Objections sought to be introduced by amendment after the statutory period of thirty days, cannot be entertained, unless these are merely elucidatory in nature.

10. The law relating to amendments of pleadings no doubt encourages a liberal approach by the Court. Amendments have always been allowed unless it places the opposite party in a position where it cannot be adequately compensated by costs or where it is an attempt to introduce a new case. Learned counsel for the Petitioner has cited a number of precedents on this issue, but I intend to consider

here only those which contemplate situations where the amendment is sought for after the period of limitation has run out. A learned Single Judge of this Court has followed the ratio of L.J. Leach & Co. Ltd. & Anr. Vs . Messrs. Jardine Skinner & Co., : [1957]1SCR438 and has affirmed in Kartar Singh v. Sir Sobha Singh & Sons, 1974 RLR 491 that there is no impregnable barrier in allowing an amendment even post expiry of the period of limitation. In L.J. Leach's case (supra) the amendment was allowed because the justice of the case required it, and the following views were expressed:

'It is no doubt true that Courts would, as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice. In Charan Das v. Amir Khan, 47 Ind App 255: AIR 1921 P.C. 50 (A) the Privy Council observed:

'That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case.'

11. The decision in Allahabad Law Journal Co. Ltd. Vs . M/s. Skyways Construction Corporation & Ors., : AIR1992 Delhi9 is an authority for the proposition that amendments to pleading can be allowed even after the expiry of limitation, although it is to be done with circumspection. The amendment was allowed because it was 'an additional relief flowing from the same case of action and facts mentioned in the plaint'.

12. A Full Benches of the High Court of Andhra Pradesh in Bhoganadham Seshiah Vs . Budhi Veerabhadrayya (died) & Ors., : AIR 1972 AP134 has succinctly paraphrased the law in the following words:

'There is no reason to make any distinction between cases to which Section 48, Civil P.C. or Article 182 applies on the one hand and the cases covered by Section 3 of the Indian Limitation Act read with relevant entries in the schedule to the Indian Limitation Act.

It is a mistake to think that Section 48, Civil P.C. lays down any inflexible rule in not allowing any amendment whatever may be the circumstances of the case, to the execution petition merely on the ground that if permitted it would be contrary to Section 48, Civil P.C. or Article 182 of the Limitation Act. The same argument can relevantly be raised in regard to suits in which amendment is sought, and is quite often so raised. The two situations therefore are similar and not different in so far as the principle underlying the amendment is concerned. In either case the amendment would not normally be allowed if the effect of the amendment is to deprive the other side of a valuable right to plead limitation. Nevertheless there can be exceptional cases where special circumstances demand that in order to do substantial justice between the parties and with a view to settle all disputes necessary for the effective disposal of the cases amendment may be allowed. The rule therefore that ordinarily in such cases amendment should not be allowed is not a universal rule and in peculiar or special circumstances an amendment may be allowed even where it has the effect of depriving the other side of his right to plead limitation. What follows is that the question of limitation is one of the factors to be taken into account in the exercise of the Court's discretion as to whether the amendment should be allowed. It would be erroneous to confuse this discretion of the court with its power to permit amendment. It does not affect the power of the Court to order amendment, if that is required in the interests of justice.

In *Charandas v. Amir Khan* AIR 1921 PC 50, Lord Buckmaster in delivering the judgment of the Privy Council observed 'that there was full power to make the amendment cannot be disputed and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case.' To the same effect are the following decisions of the Supreme Court: : [1957]1SCR438 .'

13. In *Ram Saran v. Misrilal*, 1984 RLR 149, the amendment was sought to be carried out at the stage of consideration of whether 'Leave' was to be granted to the tenant for contesting the eviction petition. From the reports, it appears that no challenge was made to this application on the ground of its having been filed after the period of limitation had expired. But the Learned Single Judge has observed that a party is not debarred from raising a legal plea even at a late stage, irrespective of any question of limitation being involved, because permitting the amendment would be necessary for promoting the ends of justice. Since some amendments were allowed to the application/affidavit for grant of leave to defend at a very late stage, this decision is supportive of two propositions viz. (a) that limitation laws are not inviolable and (b) that this is certainly so where purely legal pleas are in contemplation.

14. As in the case of amendments at the stage of consideration of a tenants plea for grant of leave to defend where these pleadings are to be filed within fifteen days of service, identical situations would also arise in suits governed by Order xxxv II of the Code of Civil Procedure. In *M/s. Bashista Bros. v. Munshi Lal Om Perakash*, 1973 RLR 549, this is what transpired. After quoting the now oft-repeated, passage from *Jai Jai Ram Manohar Lal Vs . National Building Material Supply, Goregaon*, : [1970]1SCR22 , another Learned Single Judge of this Court held that claims barred by limitation are not absolutely beyond consideration. It was held that where no new cause of action was being introduced questions of limitation were irrelevant. The observations of the Supreme Court are as follows :

'Rules of procedure are intended to be a handmaid to the administration of justice; a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure; the Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by blunder, he had caused injury to his opponent which may not be compensated for by an order of costs; however, negligent or careless may have been the first omission and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.'

15. In Shiv Singh v. NPCC Ltd. 1998 6 A.D. 24 my learned Brother J.B. Goel J., after noticing several precedents had in the interests of justice, condoned the delay in filing objections, and corrected the error committed by the Arbitrator in not awarding interest pendente lite. In V.K. Dewan & Co. v. M.C.D. my learned brother Manmohan Sarin J. had proceeded on similar lines and awarded pendente lite interests although it has not been granted by the Arbitrator.

16. It will also be apposite to mention that even the initial delay in filing objections, or in preferring a petition under Section 20 of the Arbitration Act 1940, has been held to be condonable by an access to Section 5 of the Limitation Act. A Division Bench of this Court in U.O.I. v. Vijay Construction AIR 1981 Del 193 entertained and allowed a petition under Section 20 after the period of three years. It invoked the provisions of Section 5 of the Limitation Act and granted relief to the Petitioner on the grounds that the view of the Single Judge supported the computation of time adopted by the petitioner and thus it could not be assailed that there was no reasonable or sufficient cause. Learned Chief Justice and a Single Judge of the Orissa High Court, in Executive Engineer, Rural Engineering Division Puri Vs . M/s. Construction India : AIR1982 Ori18 and Gangaraman Vs . Chief Engineer : AIR1983 Ori262 have separately held that delay in filing Objections can be condoned by resorting to Section 5 of the Limitation Act. Similar views have also been expressed by a Division Bench in Government of Andhra Pradesh Vs . Durgaram Prasad : AIR 1984 AP14 .

17. Applying these precedents to the facts of the case, I am convinced that the application deserves to be allowed. As has been firmly established, it is the duty of the Court to ensure that justice is done whether objections are filed or not. Where there is a patent illegality, it must be corrected even if the jurisdiction of the Court is not invoked under Sections 30 and 33 of the Act. This duty is found articulated in Section 17. Furthermore the ubiquitous view of the High Courts, and of the Supreme Court is that amendments can be allowed even after the expiry of the period of Limitation. The claim for payment of interest had been made before the Arbitrator. It was declined by the latter because of the view of the Supreme Court prevailing at that time. Allowing the amendment would not tantamount to opening up a completely new case. Both sides are well aware of it. In fact, it could well be

said that an injustice would be worked on the Claimant if the Court were not even to consider its claim for interest. In the circumstances of the case, therefore, the application is allowed. The amended objections are taken on record. There shall be no orders as to costs.

S.NO. 1811/89

18. Vide separate order passed today is 11637/98 has been disposed of. Renotify for disposal of all the pending IAs on 21st July, 2000.

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