

Munshi Ram Vs. Dda

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Court : Delhi

Decided On : May-26-2008

Reported in : 2008(104)DRJ226

Judge : Hima Kohli, J.

Appeal No. : Ex. P. No. 261/2002

Appellant : Munshi Ram

Respondent : Dda

Advocate for Def. : Gaurav Sarin and; Yatinder Chaudhary, Advs.

Advocate for Pet/Ap. : Debashish Moitra an; Rina Sarkar, Advs

Judgement :

Hima Kohli, J.

1. On the last date of hearing, i.e. 8.5.2008, counsel for the decree holder took time to respond to the correctness or otherwise of the computation handed over by the counsel for the judgment debtor on 2.4.2008. Instead of responding to the same, counsel for the decree holder has filed written arguments, without seeking or being granted leave of the Court. The same is neither necessary, nor permissible for the reason that the limited issue account of which the present execution petition has been lingering is the tanner of calculating the interest on the

amount awarded in favour of the decree holder.

2. Briefly stated, the facts of the case are that the decree holder assailed an award dated 31.3.1995 by filing a suit bearing No. 1012A/1995. The learned Sole Arbitrator awarded a sum of Rs. 15,10,684/- in favour of the decree holder. It was further clarified in the award that if the aforesaid awarded amount was not paid to the petitioner/decreed holder, it would attract simple interest payable @ 15% per annum on the amount of Rs. 8,69,459/- till the date of payment or decree, whichever is earlier, in addition to the sum of Rs. 15,10,684/-.

3. Vide judgment dated 7.12.2001, the suit preferred by the petitioner assailing the award dated 31.3.1995 was decided in the following manner...In view of this only claim No. 2 of the award is upheld whereas award with regard to claims 4 & 6 is set aside.

As regards the remaining claims which are on account of refund of the bank guarantees and interest, I do not find any merit in the objection of the respondent as these were well within the competence of the Arbitrator and have been awarded on reasoned grounds.

In the result claims 2, 7 & 9 are allowed. The suit is decreed for the amount awarded against these claims.

However, the interest @ 15% shall be calculated at the proportionate amount of award which has been upheld in this order from the date of the award till its realization.

4. It is pertinent to note that under claim No. 2, Rs. 3,92,203/- was awarded to the decree holder. Claims No. 7 & 8 related to refund of Bank Guarantee of Rs. 10,000/- and Bank charges of Rs. 5,000/-. Claim No. 9 related to pre-suit, pendente lite and future interest awarded @ 15% p.a.

5. The present petition came to be filed by the decree holder on the ground that the judgment debtor failed to pay the decree holder the amounts as awarded to it in terms of the decree dated 7.12.2001. A certified copy of the decree sheet is enclosed at pages 28-29 of the paper book. In the present proceedings, the

following amounts have been paid by the judgment debtor to the decree holder from time to time:

Date Amount paid1. 1.8.2002 Rs. 8,23,790/-2. 14.9.2004 Rs. 2,89,091/-3. 2.4.2008 Rs. 94,650/-

6. Counsel for the judgment debtor states that nothing further is due or payable to the decree holder. This submission is however denied by the counsel for the decree holder who states that the decree holder is entitled to receive interest on the pre-suit and pendentelite interest amount as awarded to it, till the said amount was received by it.

7. It is not denied that the principal amount payable by the judgment debtor to the decree holder was Rs. 3,92,203/-. It is also an admitted position that the pre-suit interest payable to the decree holder w.e.f. 1.5.1990 (date of initiating arbitration proceedings) to 18.9.1992 (date of making reference) and pendentelite interest w.e.f. 19.9.1992 (date of entering upon reference) to 30.3.1995 (date of passing of the award) comes to Rs. 2,89,091/-.

8. A perusal of the computation of payment made by the judgment debtor to the decree holder (at page 60 of the paper book) shows that a sum of Rs. 2,89,091/- (less Rs. 30,355/- being the amount deducted towards TDS) was paid to the decree holder on 14.9.2004 towards the interest element. The principal amount of Rs. 3,92,203/- was paid by the judgment debtor to the decree holder along with Rs. 4,31,587/- towards future interest @ 15% per annum w.e.f. 31.3.1995 (date of award) to 31.7.2002 (date of issuing of the cheque) by way of a cheque dated 1.8.2002, as indicated in the computation filed by the judgment debtor.

9. Counsel for the decree holder contends that as the judgment debtor did not pay the decree holder the pre-suit and pendentelite interest on the date due and payable i.e. 7.12.2001, the date of the decree, his client is entitled to receive further interest on the said amount. This aspect was considered by the Court while passing orders dated 6.7.2004 and 19.8.2004. It is pertinent to note that neither of the aforesaid orders were taken in appeal by the decree holder and have therefore attained finality. This aspect was also taken care of vide order dated 14.3.2008,

when the judgment debtor was called upon to pay the interest to the decree holder w.e.f. 7.12.2001, till release of the awarded amount on 1.8.2002. Subsequently, a cheque for Rs. 84,712/- (less TDS of Rs. 9,938/-) was handed over to the counsel for the decree holder as recorded in the order dated 2.4.2008. Thus, nothing further is due or payable by the judgment debtor to the decree holder.

10. In these circumstances, the decree stands satisfied. Nothing further survives in the present petition and, the same is accordingly-disposed of.

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