

**Union of India and ors Vs. M/S. Ravi Construction Company and ors**

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**Court :** Karnataka

**Decided On :** Oct-27-2010

**Judge :** K.L.Majnunath; B.Manohar, Jj.

**Appeal No. :** MFA.NOs.4557/2006 C/W MFA NO.4554/2006, MFA.NO.4555/2006 AND MFA NO.4556/2006 (AA)

**Appellant :** Union of India and ors

**Respondent :** M/S. Ravi Construction Company and ors

**Advocate for Def. :** Sri.Somastindar Dikshit, Adv

**Advocate for Pet/Ap. :** Sri.N.S.Prasad, Adv

**Judgement :**

1. The Union of India is challenging the legality and correctness of the order passed by the VI Additional City Civil Judge, Bangalore dated 18th January 2006 passed in A.C.No.52/1996, A.C.No. 10009/1996 and also in A.C.No.51/1996 and A.C No. 10008/1996.

2. Though in these appeals, the appellant Union of India is challenging the finding of the court below on all the issues, at the time of arguments, learned counsel for the appellant has restricted the claim of the appellants only in regard to the legality and correctness of the interest awarded by the Arbitrator during the pendency of the arbitration proceeding and the interest payable from the date of award. The

Arbitrator has awarded interest pendent lite at 18% p.a. and at the same rate, the interest is awarded from the date of award till the date of payment, it is also submitted by the learned counsel for the appellant that Union of India has paid the entire principal amount and interest pendent lite and future interest at 9% p.a. Therefore, the actual dispute is in regard to the difference of 9% interest payable as awarded by the Tribunal.

3. We have heard the learned counsel appearing for the parties.

4. Mr.N.S.Prasad, learned counsel appearing for the appellant relying upon the judgment reported in ILR 2002 KAR 5326 between the parties herein only contends that in view of the provision of Section 29 of the Arbitration Act of 1940, this court has awarded interest at 8% p.a. Therefore he requests the court to exercise its discretion vested in this court under Section 29 of the Act and award interest only at 8% p.a. Considering that the aforesaid judgment has been delivered between the same parties, taking us through clause 16(2) of the Agreement, he contends that the appellant had not agreed to pay interest on the refund of EMI. Security, etc. Therefore he contends that awarding of interest either at 18% p.a. or at any rate during the pendent lite does not arise at all. To support his arguments, he has relied upon the judgment of the Hon'ble Supreme Court in SREE KAMACH1YAMMA CONSTRUCTIONS V/S. DIVISIONAL MANAGER (WORKS) reported in 2010(3) Arbitration L.R. 442 (SC) contending that in view of Clause 16(2) of the agreement, the appellant need not pay any interest pendent lite.

5. Mr. Dixit, learned counsel appearing for the respondents contends that the judgment in KAM AC HI YAM MA CONSTRUCTIONS' case has no application to the facts of this case since the Hon'ble Supreme Court while considering Clause 16(2) of the agreement, pendent lite interest cannot be awarded, under the provisions of Arbitration and Conciliation Act. 1996. According to him. the Hon'ble Supreme Court on an earlier occasion in 2009 AIR SCVV 7629 in the case of M/S.MADNANI CONSTRUCTION CORPORATION (P) LTD. v/s UNION OF INDIA AND OTHERS and further relying upon the judgment reported in (1996) SCC 5126 in the case of BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA v/s

ENGINEER'S-DE-SPACE-AGE held that in respect of the arbitration proceedings initiated under Old Act. The Arbitrator has discretion to award interest pendent lite. Therefore, the judgment in KAMACHIYAMMA CONSTRUCTIONS' case has no application to the facts of this case. He further contends that though the Coordinate Bench of this Court between the same parties has awarded interest at 8% p.a. the facts of the said case is different horn the facts of the present case. According to him, the respondent has borrowed loan to complete the contract work from the Bank by paying interest at 24% p.a. Therefore, awarding of interest pendent lite and interest from the date of the award at 18% p.a. cannot be said to be on higher side and according to him, the same is on lower side. He further contends that the appellant-Union of India is collecting interest at 18% p.a. on the mobilization funds paid to the Contractors therefore he requests the court to dismiss the appeal.

6. Having heard the learned counsel for the parties, the only point to be considered by us in these appeals is

"Whether awarding of pendent lite interest at 18% p.a. and future interest from the date of award till the date of realization at 18% p.a. awarded by the Arbitrator is on higher side and does it call for any interference?"

7. As noticed above, the Union of India has already satisfied the award with interest at 9% p.a. The dispute is only in regard to the difference of 9% interest. According to Mr.Dixit. the Union of India in fact has paid the pendent lite interest at 18% p.a. to the respondent-Contractor and the dispute is only in regard to difference of future interest of 9%p.a. Be that as it may, so far as the arguments advanced by Mr. Prasad is concerned, the decision of the Apex Court in KAMACHIYAMMA CONSTRUCTIONS' case has no application to the facts of this case, since the award has been passed by the Arbitrator under the Arbitration Act, 1940 and not under the Act of 1996. In view of the judgment of the Hon'ble Supreme Court in MADNANI's case, we are of the opinion that this court cannot interfere in regard to the pendent lite interest awarded by the Arbitrator. However, considering Section 29 of the Arbitration Act. 1940, if the Court is of the opinion that the interest awarded by the Arbitrator is unreasonable, excessive, this court

can always interfere with and award reasonable interest while confirming the award passed by the Arbitrator, such a power is vested in this court.

8. Admittedly, the arbitration proceedings has been commenced in the year 1994 and as on today, 16 years have been completed. Considering the total sum payable by the Government, We are of the opinion that awarding interest at 18% p.a. is on higher side. This Court between the same parties in the earlier round of litigation in respect of a different contract has awarded interest at 8% p.a. as against 18% p.a. Therefore, their

Lordships have held that awarding of interest at 18% p.a. is excessive and unreasonable.

9. Therefore, we are of the opinion that when this court has awarded interest at 8% p.a. in the year 2002 we are inclined to hold that the respondent is entitled for interest at 12% p.a. as against 18% p.a. Therefore, we have to allow these appeals in part.

10. If the Government has already satisfied the award with interest at 18% p.a. with regard to pendent lite interest, the same need not be reduced. Accordingly, the amount satisfied by the Union of India along with interest is not interfered with by this court. If the pendent lite interest has been paid only at 9% p.a. in such an event, the appellant is liable to pay interest at pendent lite at 12% p.a. (In other words difference of 3% interest only). So far as the future interest is concerned, the award of Arbitrator is modified by holding that the appellants are liable to pay future interest at 12% p.a. as against 18% p.a.

11. Four months time is granted for the appellant to deposit the difference of the interest payable in terms of the modified award of the Arbitrator.

Parties to bear their own casts.

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