

M/S. Modern Design Group. Vs. M/S. Engineering Projects (India) Limited.

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Court : Kolkata

Decided On : Mar-23-2011

Judge : Sanjib Banerjee, J.

Acts : Arbitration and Conciliation Act - Section 31.

Appeal No. : EC No. 63 of 2010.

Appellant : M/S. Modern Design Group.

Respondent : M/S. Engineering Projects (India) Limited .

Advocate for Def. : Mr. K. R. Thakkar, Adv.

Advocate for Pet/Ap. : Mr. Raja Basu Chowdhury, Adv.

Judgement :

1. The remaining claim in the execution proceedings is on account of the interest claimed by the decree-holder. The decree holder says that since the award dated July 7, 2005 permitted the judgment-debtor to make payment of the principal sum awarded of Rs.12.5 lakh within a period of two months from the date of the award and did not refer to any interest, the decree-holder is entitled to interest at the rate of 18 per cent per annum in accordance with the mandate of Section 31 of the Arbitration and Conciliation Act, 1996. The decree-holder has agreed to accept interest at a lower rate of 14 per cent per annum if the claim on account of interest is immediately settled.

2. As at December 1, 2009, the principal amount of Rs.12.5 lakh together with interest thereon from the date of the award calculated at 14 per cent per annum amounted to Rs.20,16,164.38. The parties say that in a suit where both the decree-holder and the judgment-debtor herein are defendants, the plaintiff therein obtained an order of attachment in respect of a part of the amount due under the decree from the judgment-debtor.

3. The parties submit that following an order passed by the City Civil court in Money Suit No.421 of 2005, the judgment-debtor herein has made a deposit of a sum of Rs.5.45 lakh. The parties also represent that such sum of Rs.5.45 lakh was deposited on December 2, 2009.

4. Accordingly, the decree-holder has deducted the sum of Rs.5.45 lakh from the amount due till then of Rs.20,16,164.38 to arrive at a figure of Rs.15,71,164.38, which the decree-holder suggests that the judgment-debtor had no excuse to retain.

5. The decree-holder has calculated interest on the balance principal sum (treating the deposit of Rs.5.45 lakh to have been made against the principal sum due) from December 2, 2009 to March 31, 2010 to arrive at a figure of Rs.16,03,343.28 as at March 31, 2010. Out of such amount, the decree-holder has given credit to the payment of the principal sum of Rs.7.05 lakh (after taking into account the deposit made by the judgment-debtor) to suggest that the decree holder is entitled to a sum in excess of Rs.8.98 lakh on account of interest calculated at 14 per cent per annum.

6. The decree-holder has agreed to accept a sum of Rs.8.5 lakh in full and final settlement of its claim on account of interest subject to the judgment-debtor undertaking to make payment of the sum of Rs.5.45 lakh and the accretion thereto in the event the City Civil Court order of attachment is dissolved and further subject to the sum of Rs.8.5 lakh being released within three weeks from date.

7. The judgment-debtor has given an undertaking through counsel appearing on its behalf to release the money attached (together with all accretion thereto), if the order of attachment is dissolved, within three weeks from the date of removal of

the order of attachment. Let the matter appear four weeks hence to ascertain whether the sum of Rs.8.5 lakh is received by the decree-holder from the judgment-debtor. If the payment is not received by the decree-holder by then, it will not be bound by the offer recorded herein. Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

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