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The Superintending Engineer Vs. Sleebachen

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Court : Chennai

Decided On : Feb-29-2012

Judge : Chitra Venkataraman; R.Karuppiah, Jj.

Appeal No. : C.M.A. (MD) No.1455 of 2011; C.M.A. (MD) No.1456 of 2011; C.M.A. (MD) No.1457 of 2011 and M.P.(MD)Nos.2, 2 and 2 of 2011

Appellant : The Superintending Engineer

Respondent : Sleebachen

Advocate for Def. : Mr.AR.L.Sundaresan, Adv.

Advocate for Pet/Ap. : Mr.K.Mahendran, Adv.

Judgement :

Civil Miscellaneous Appeal (MD)No.1455 of 2011 filed under Section 37 1(b) of the Arbitration and Conciliation Act, 1996) against the order dated 28.04.2011 passed in Ar.O.P.No.69 of 2007 on the file of the Principal District Judge, Tirunelveli.

Civil Miscellaneous Appeal (MD)No.1456 of 2011 filed under Section 37 1(b) of the Arbitration and Conciliation Act, 1996) against the order dated 28.04.2011 passed in Ar.O.P.No.110 of 2006 on the file of the Principal District Judge, Tirunelveli.

Civil Miscellaneous Appeal (MD)No.1457 of 2011 filed under Section 37 1(b) of the Arbitration and Conciliation Act, 1996) against the order dated 28.04.2011 passed

in Ar.O.P.No.111 of 2006 on the file of the Principal District Judge, Tirunelveli.

COMMON JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J)

1. Civil Miscellaneous Appeal (MD)Nos.1456 and 1457 of 2011 are filed against the orders of the learned Principal District Judge, Tirunelveli dated 28.4.2011 passed in Ar.O.P.Nos.110 and 111 of 2006 respectively and Civil Miscellaneous Appeal (MD)No.1455 of 2011 is filed against the order dated 28.4.2011 passed in Ar.OP. No.69 of 2007.

2. The facts leading to the filing of the appeals are as follows:- The first respondent herein was awarded the contract for the rehabilitation and modernisation of Kannadian Anicut and Channel Reach in Tirunelveli District. In respect of the agreement entered into between the first respondent and the appellant, certain disputes arose in the matter of execution of contract. The parties went in for arbitration proceedings and an award was passed on 25.4.2011 directing the appellant herein to pay a sum of Rs.42,56,419/- to the first respondent. For the purposes of considering the scope of the appeal, we do not find it necessary to get into the further details of contract and award proceeding.

3. Aggrieved by the award, the appellants preferred Original Petitions under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the awards passed in respect of the contracts granted to the first respondent. During the pendency of the Arbitration O.Ps. filed before the learned Principal District Judge, Tirunelveli, the Government is stated to have initiated talks on settling the claims, an effort which merits to be made as an Alternative Dispute Resolution, particularly in matters relating to damages on contractual rights. It is not disputed that in respect of the same O.P., two I.As. were filed - one to receive the documents relating to the terms and conditions of the offer on settlement and the other at the instance of the appellant to receive additional documents in the main O.P. filed to set aside the award. Under letter dated 2.12.2008, the Public Works Department initiated negotiations with the first respondent herein for settlement of the award amount. Accordingly, there were meetings held on 19.12.2008 and 9.1.2009.

4. Officials including the Superintending Engineer and the Contractor had a discussion, wherein, as per the first meeting held on 29.12.2008, the contractor/respondent was requested to reduce 40% of the principal award amount for all the three works covered under the independent arbitration O.Ps. The contractor came forward to reduce 40% over the interest accrued on the total award amount for all the three works, particularly with reference to interest in respect of the three works, which works out to 12.81% towards the principal award amount covered under these three O.Ps. However, the Superintending Engineer insisted for further reduction of the principal amount. Ultimately, on 9.1.2009, as evident from Ex.R2, in the meeting held in the Chamber of the Superintending Engineer, the contractor was asked to offer 10% reduction in the principal award amount, besides 40% offer made on the interest amount accrued. The first respondent, however, insisted on 5% reduction alone in the principal amount, in addition to 40% reduction in the interest amount. Since the reduction on the principal amount as well as the accrued interest therein was not agreeable to the Government, the Principal Secretary to the Government wrote a letter to the officials concerned on 9.9.2009, directing them to pursue the appeal in respect of the three awards pending before the Court.

5. Thereafterwards, on 9.4.2011, the first respondent came forward with a memorandum that, apart from the offer made during the negotiation on 9.1.2009 for foregoing the interest at 40%, the first respondent expressed his willingness to forego further accrued interest on the award amount after 9.1.2009. At that time, since the offer appeared to be final to the Government, learned Government Pleader made a written endorsement for the Government that it had no objection for this memo. Without going into the merits of the matter, this petition was partly allowed and the award of the Arbitrator was modified that from the award amount, 5% reduction on the principal amount was ordered, apart from 40% reduction on the interest awarded till 9.1.2009; beyond that period, whatever was the interest, the same was also waived. However, from the date of award 25.4.2006 to 9.1.2009, interest was calculated at 18% p.a. from where the reduction was granted.

6. The Superintending Engineer, Palayamkottai, has now come on appeal before this Court challenging the order of the learned District Judge on the ground that the State never agreed to the terms as had been endorsed by the learned Government Pleader, who was never authorised to state so.

7. Learned Special Government Pleader submitted that when the order passed is just based on an unauthorised endorsement, in fairness to the claim of the appellant, the second respondent should have considered merits of the O.P. In the circumstances, he seeks setting aside of the order passed by the learned District Judge, restoring the matter to the learned District Judge for fresh disposal on merits of the appeal pleaded by the State.

8. While learned Special Government Pleader submitted that in the absence of any authorisation, such endorsement of compromise would not be binding on the State, this Court suggested that the State should once again consider the possibility of compromise. Hence, the matter stood adjourned to 23.2.2012.

9. Today, learned Special Government Pleader submitted that the State would like to have an order on merits and hence, pleads for remanding the matter before the Court below for fresh consideration.

10. On going through the order passed by the Court below and considering the stand taken that there was never an authorisation for the State permitting the Government Pleader to make an endorsement to that effect, there being no material to show that the counsel for the appellant was authorised to record the compromise, the proper course herein would be to set aside the order and restore the matter to the files of the learned District Judge for disposal of the O.Ps. in accordance with law.

11. It may be noted that during the pendency of the appeals before this Court, this Court passed an order in the said petition, directing the appellant herein to deposit 50% of the award amount. Subsequently, when the petition was filed for vacating the order on the ground of default committed by the appellant, of this Court's order dated 30.11.2011, on the submission made by the learned Special Government Pleader, the Government had deposited the amount; hence, sought for stay.

Following the order passed by this Court on 30.11.2011 directing the appellant to deposit 50% of the award amount, that on such deposit, the Contractor/first respondent was entitled to withdraw 30% of the deposit amount, the first respondent was permitted to withdraw 30% of the deposited amount. Evidently, the appellant has no grievance as far as the order of the Court directing to deposit 50% and the withdrawal of 30% by the first respondent was concerned.

12. Going by the facts narrated before, in fairness to the claim of the first respondent, this Court holds that the withdrawal of the amount already made by the first respondent shall not be revoked under any circumstances pending disposal of the O.Ps. So also, the deposit lying in credit shall remain as it is and shall not be refunded to the appellant.

13. Thus, considering the circumstances and the submissions made in this matter, the impugned orders are set aside and the matter is remitted back to the Principal District Judge, Tirunelveli. Considering the long pendency of the matter and the award is of the year 2007 and that the first respondent had been made to suffer on account of the appellant alone, this Court feels that the Principal District Judge be directed to take up the appeal on day-to-day basis on receipt of the order copy of this Court and have the appeal heard and disposed of within a period of six weeks from the date of receipt of the order copy of this Court.

14. It is also a matter of regret to note that for the mistake committed by the appellant in not giving proper instruction to their counsel, serious allegations are made in the grounds of appeal preferred before this Court. Although learned Government Pleader expressed his regret, yet, we feel, the same merits to be extracted in this order that at least in future, the State would instruct its officers to file grounds of appeal with dignity, on matters which are precise and to the point.

15. Ground No.24 reads as under:

24. The learned Judge ought to have considered that the appellant has not accepted the memo filed by the respondent and the matter should be decided on merits and the Learned Judge failed to deal with the aspects elaborately. Hence, the award passed by the Learned Judge is liable to be set aside.

16. Even though the learned Special Government Pleader regretted for the above-said ground and made his submission that the Government Pleader who appeared before the District Court appears to have made such endorsement, there is hardly even a single line in the grounds of these appeals on this aspect. The grounds neither support nor comment on the conduct of the Government Pleader who represented the case of the appellant herein before the District Court. All that we can hope is that, at least in future, while drafting grounds, the State may do well to look at its conduct before commenting on the learned judge and observe certain degree of discipline and uphold the dignity of the Court.

In the result, these appeals stand allowed. No costs. Connected Miscellaneous Petitions are closed.

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