

Delhi High Court Babu Lal Barwa vs Delhi Development Authority And ... on 23 February, 1996 Equivalent citations: 63 (1996) DLT 35 Author: A Kumar Bench: A Kumar JUDGMENT Arun Kumar, J. (1) The respondent Dda has filed objections under Sections 30 and 33 of the Arbitration Act against the Award dated 17/07/1990 vide I.A. No.11384 of 1990. The learned Counsel for the objector has challenged the Award so far as it relates to Claims No. 1 and 2 of the contractor/petitioner herein. Under claimNo. 1, the claimant had claimed a sum of Rs. 30,000.00 on account of under payment due to part rates for the work executed and completed till rescission of the work. In the Award on this point the Arbitrator has noted that the respondent Dda had admitted that a sum of Rs. 20,506.00 had been withheld in part rates. The plea of there spondent regarding justification for withholding the said amount was rejected by the Arbitrator after considering the same on merits. At this stage, this Court is not sitting in appeal over the decision of the Arbitrator. I find no ground to interfere with the findings of the Arbitrator with respect to Claim No. 1 under which a sum of Rs.20,506.00 has been awarded by the Arbitrator in favour of the claimant. (2) The objection of the respondent Dda regarding Claim No. 2 is based on Clause No. 2 of the agreement between the parties. It is submitted that under Clause2, the decision of the Superintend ing Engineer regarding levy of penalty is final and,therefore, cannot be subject matter of arbitration. Clause No. 2 of the contract is reproduced below: "CLAUSE2.-The time allowed for carrying out the work as entered in the tender shall be strictly observed by the contractor and shall be deemed to be of the essence of the contract on the part of the contractor and shall be reckoned from the Tenth Day after the date on which the order to commence the work is issued to contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as compensation an amount equal to one percent, or such smaller amount as the Superintending Engineer, Delhi Development Authority (whose decision in writing shall be final) may decide on the amount of the estimated cost of the whole work as shown in the tender, for every day that the work remainsun commenced or unfinished, after the proper dates. And further, to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which the time allowed for any work exceeds, one month (save for special jobs) to complete one-eight of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed; three eight of the work, before one half of such time has elapsed, and three-fourth of thework, before three-fourth of such time has elapsed. However for special jobs if a time-schedule has been submitted by the Contractor and the same has been accepted by the Engineer-in-Charge, the contractor shall comply with the saidtime-schedule. In the event of the contractor failing to comply with thiscondition, he shall liable to pay as compensation an amount equal to one percent or such smaller amount as the Superintending Engineer, Delhi Development Authority (whose decision in writing shall be final) may decide on the said estimated cost of the whole work for every day that the due quantity of work remains incomplete; provided always that the entire amount of compensation to be paid under the provision of this clause shall not exceed

ten percent, on the estimated cost of the work as shown in the tender.” (3) It is settled law that if the decision of an authority is treated as final on some aspect of the contract as per the provisions of the contract, such a matter cannot be referred to arbitration. Such a provision deprives the Arbitrator of any jurisdiction to adjudicate upon the controversy. Reference may be made to Delhi Development Authority v. Sudhir Brothers, . In the present case, the discussion in the Award on Claim No. 2 itself shows that the Superintending Engineer had through his letter dated 3/05/1990 levied a penalty of Rs. 29,963.00. The levy of penalty and the amount of the penalty were thus beyond the scope of jurisdiction of the Arbitrator and the Award of the Arbitrator awarding a sum of Rs. 29,963/in favour of the contractor is, therefore, without jurisdiction. The Award with respect to claim No. 2 is liable to be set aside. (4) The result is that the Award dated 17/07/1990 is modified to the extent that the Award with respect to claim No. 2 is set aside. The Award so far as it relates to claim No. 1 for a sum of Rs. 20,506.00 is made a rule of the Court and a decree is passed in terms thereof to that extent. Besides this, the claimant will be entitled to interest on the said amount of Rs. 20,506.00 at the rate of 12 per cent per annum from the date of the Award till realisation. (5) The suit as well as the I.A. 11384/90 stand disposed of. No costs. (6) The learned Counsel for the Dda has objected to my awarding interest on the amount of the Award upheld by me from the date of Award till realisation. She submits that in view of the provisions of Section 29 of the Arbitration Act, this Court can award interest only from the date of decree passed on the basis of the Award and not from a prior date. In this behalf, the learned Counsel has also relied on Union of India v. Jain Associates and Another, Vol. 20 Arbitration Law Reporter p.494. This judgment proceeds on the basis of Section 29 of the Arbitration Act. Section 34 CPC which gives powers to the Court passing a money decree to grant interest pendente lite and future till the date of realisation was noted and the distinction between Section 34, Civil Procedure Code and Section 29 was pointed out. It was held that in view of the Section 29 of the Arbitration Act, the Court could not grant interest from a date prior to passing of a decree on the basis of the Award. (7) On the other hand, the learned Counsel for the petitioner submits that this Court is empowered to grant interest from the date of Award till realisation. He has invited my attention to a decision of the Supreme Court in Gujarat Water Supply and Sewerage Board v. Unique Erectus (Gujarat) (P) Ltd. and Another, . In para 14 of this judgment, the Supreme noted that reference to arbitration was made in that case after the commencement of the Interest Act, 1978. The Court also noted its earlier decision in Abnaduta Jena’s case, . It was observed that so far as interest for the period from the date of the Award till the date of the decree is concerned, the question was not specifically considered in Abnaduta Jena’s case. It was held that interest should be allowed from the date of the Award till the date of the decree on the principle that once proceedings under Sections 15 to 17 are initiated, the Court can grant interest pendente lite. The Court expressed a doubt about interest from the date of Award till decree being within the power of the Court to award in cases arising before the Interest Act, 1978 in view

of there stricted scope of Section 29 of the Arbitration Act. However, it was expressly laid down that there can be no doubt about the Court's power to grant this interest incases governed by the Interest Act, 1978 as Section 3(1)(a) which was applied by Abnaduta Jena to Arbitrators will equally apply to enable this Court to do this. IT is to be noted here that Section 2(a) of the Interest Act, 1978 provides that Court'includes a Tribunal and a Arbitrator'. Thus for purposes of application of the provisions of Interest Act, an Arbitrator has been placed at par with the Court. (8) My attention has also been drawn to a later decision of the Supreme Court in Renusager Power Co. Ltd. v. General Electric Company, . The relevant paras in the said decision are following : "134.In an international commercial arbitration, like any domestic arbitration,the award of interest would fall under the following periods :(i) Period prior to the date of reference to arbitration;(ii) Period during which the arbitration proceedings were pending before the Arbitrators;(iii) Period from the date of award till the date of institution of proceedings in a Court for enforcement of the award;(iv) Period from the date of institution of proceedings in a Court till the passing of the decree; and(v) Period subsequent to the decree till payment. 135.The interest in respect of the period covered by item (i), namely, prior to the date of reference to arbitration would be governed by the proper law of the contract and the interest covered by Items (ii) and (iii), i.e., during the pendency of the arbitral proceedings and subsequent to the award till the date of institution of the proceedings in the Court for the enforcement of the award would be governed by the law governing the arbitral proceedings. These are matters which have to be dealt with by the Arbitrators in the award and the award in relation to these matters cannot be questioned at the stage of enforcement of the award. At that stage the Court is only required to deal with interest covered by items (iv) and (v). The award of interest in respect of these periods would be governed by *lex fori*, i.e., the law of the Forum where the award is sought to be enforced. According to Allen Redfern and Martin Hunter"once an arbitral award is enforced in a particular country as a judgment of a Court, the arbitral post-award interest rate may be overtaken by the rate applicable to civil judgments." (See; Redfern and Hunter, Law and Practice of International Commercial Arbitration, 2nd Edition, page 406). 137.Unlike Section 34 of the Code of Civil Procedure whereunder the Court can award interest for the period of pendency of the suit as well as for the period subsequent to the decree till realisation. Section 29 of the Arbitration Act empowers the Court to award interest from the date of decree only. It has,however, been held that while passing a decree in terms of the award, the Court can award interest for the period during which the proceedings were pending in the Court, i.e., the period from the date of institution of proceedings for the enforcement of the award in the Court till the passing of the decree in cases arising after the Interest Act, 1978. (See: Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd., ." (9) Thus, the aforesaid two decisions of the Supreme Court make it absolutely clear that the Court has power to grant interest from the date of Award till decree and from the date of decree till realisation. Basing myself on these decisions of the Supreme Court, I reject the contention of the

learned Counsel for the respondent that the interest cannot be awarded by this Court from the date of Award till the date of passing of a decree.