

MUNICIPAL COUNCIL THANESAR

A

v.

VIRENDER KUMAR ETC.

(Civil Appeal Nos. 1751-1763 of 2019)

FEBRUARY 19, 2019

B

[UDAY UMESH LALIT AND

DR. DHANANJAYA Y CHANDRACHUD, JJ.]

Arbitration and Conciliation Act, 1996: s.31(7)(a) and (b) – Interest – Entitlement of Decree-holders to the statutory benefits under ss.31(7)(a) and (b) – Held: Decree-holders-respondents are entitled to post award interest in terms of s.31(7)(b) of the Act.

C

Code of Civil Procedure, 1908: Execution of award – Interest awarded in the arbitration award – In the award, it was not specifically stated that the interest @ 7% p.a. was to be awarded with quarterly rests – In fact, the award did not specify anything; whether it was quarterly rests or yearly rests – It simply awarded interest @ 7% p.a. – Executing Court put it with yearly rests which the High Court in revisions preferred by the appellants modified to quarterly rests – On appeal, held: Both the Executing Court and the High Court completely erred and awarded compound interest in favour of the respondents when the award had stipulated it to be 7% p.a. simplicitor – The award did not even remotely suggest that such award of interest would be with a direction that interest be capitalized on yearly or quarterly basis – It was pure and simple award of interest @ 7% and could not be taken to be a direction to award compound interest – Consequently, the pre-award interest on the amounts in question shall be calculated @ 7% p.a. simple interest – Arbitration and Conciliation Act, 1996 – s.31(7)(a) and (b).

D

E

F

Partly allowing the appeals, the Court

G

HELD: 1. The first issue that whether the decree-holders were entitled to the statutory benefits under Section 31(7)(a) and (b) of the Act was rightly answered in favour of the decree-holders/respondents. The question is no longer res

H

- A *integra* and stands answered in clear terms in *Hyder Consulting* case. [Paras 5.2, 7][833-F; 834-B-C]

Hyder Consulting (UK) Ltd. v. Governor, State of Orissa through Chief Engineer (2015) 2 SCC 189 – relied on

- B 2. As regards the second issue, the Executing Court correctly appreciated that the Award did not specifically state that the interest @ 7% per annum was to be awarded with quarterly rests. The Executing Court found that it was doubtful whether the award of interest was @ 7% with quarterly rests or yearly rests. The Executing Court put it with yearly rests which the
- C High Court in Revisions preferred by the appellants modified to quarterly rests. Both the Executing Court and the High Court completely erred and awarded compound interest in favour of the respondents when the award had stipulated it to be 7% per annum simplicitor. The Award did not even remotely suggest that such award of interest would be with a direction that interest
- D be capitalized on yearly or quarterly basis. It was pure and simple award of interest @ 7% and could not be taken to be a direction to award compound interest. Consequently, the pre-award interest on the amounts in question shall be calculated @ 7% per annum simple interest. The respondents shall be entitled to
- E the benefit under Section 31(7)(b) of the Act and post award interest shall also be @ 7% per annum simple interest. [Paras 8-12][834-C-D; 835-F-G; 835-A-B]

Case Law Reference

- F (2015) 2 SCC 189 relied on Para 6
- CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1751-1763 of 2019.

- G From the Judgment and Order dated 03.03.2017 of the High Court of Punjab and Haryana at Chandigarh in C.R. Nos. 6765 of 2015 (O & M), C.R. No. 5198 of 2015 (O & M) to C.R. No. 5205 of 2015 (O & M), C.R. No. 5510 of 2015 (O & M) to C.R. No. 5512 of 2015 (O & M) and C.R. No. 4253 of 2015 (O & M).

With

Civil Appeal Nos. 1443-1444 of 2019.

H

Ajay Majithia, Shekhar Kumar, Advs. for the Appellants. A

A. Tewari, Ms. Eliza Bar, Shree Pal Singh, Riju Mani Talukdar, Anupam Raina, Saurav Trivedi, Sunando Raha, Raktim Gogoi, Kartikeya Singh, Sarvwsa Chhajer, Anupam Lal Das, Chritarth Palli, Shubham Bhalla, Advs. for the Respondents.

The Judgment of the Court was delivered by B

UDAY UMESH LALIT, J. 1. Leave granted.

2. These appeals challenge the final judgment and order dated 03.03.2017 passed by the High Court of Punjab and Haryana at Chandigarh in C.R.Nos. 6765 of 2015 (O&M), 5198 of 2015(O&M), 5199 of 2015(O&M), 5200 of 2015(O&M), 5201 of 2015(O&M), 5202 of 2015(O&M), 5203 of 2015(O&M), 5204 of 2015(O&M), 5205 of 2015(O&M), 5510 of 2015(O&M), 5511 of 2015(O&M), 5512 of 2015(O&M) and 4253 of 2015(O&M). C

3. Pursuant to public notice for auction of shops/showrooms, the auction was conducted by the appellant on 18.10.2016 in which the respondents participated and were declared successful bidders. Thereafter, disputes arose between the parties whether the auctioned premises were ready to be delivered on the relevant dates; whether the construction was incomplete; and whether the civic amenities were made available or not? The matters reached the High Court in various Writ Petitions namely CWP Nos. 13548 of 2008, 1015, 1016, 1017, 1018, 1020, 1062, 14793 and 19228 of 2009 and by a common order dated 14.07.2010 the disputes were referred to a sole Arbitrator. After considering the matters, the Arbitrator passed a common Award on 14.10.2010. Para 21 of the Award was as under:- D
E
F

“21. In view of the above findings, award is passed in favour of the petitioners against the respondents with costs of Rs.10,000/- (Rupees Ten Thousand only) and Municipal Council, Thanesar, is directed to complete the work in all the respects of the Shopping Complex, situated in Kacha Gher, Thanesar, within one month; if already completed, a notice be issued to the petitioners to take possession of the respective shops and also to execute the agreement within a week. Municipal Council, is further directed to give interest on the advance rent as well as non-refundable security, at the rate of interest offered by Nationalised Bank, i.e. G
H

- A 7% per annum, till physical/possession is handed over to the petitioners/allottees. Petitioners are further awarded damages by way of 12% interest on non-refundable security till delivery of possession as they have suffered mentally as well as loss of business due to delay in completion of work of the shops and handing over their possession. Requisite stamp papers be filed within week.”
- B

4. The appellants preferred objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) which were dismissed by the Additional District Judge on 15.09.2012. The appellants, being aggrieved, preferred First Appeals which were dismissed by the High Court of Punjab and Haryana on 17.01.2014. The order of the High Court was also affirmed by this Court by dismissing Special Leave Petition (Civil) No.15550 of 2014 on 04.08.2014. The directions issued in the Award thus became final.
- C

5. In Execution Proceedings taken out by the respondents, the Executing Court in its order dated 23.03.2015 dealt with the matter as under:-
- D

- “5. As per the award dated 14.10.2010 the arbitrator had directed the judgment debtor i.e. Municipal Council, Thanesar to give interest on the advance rent as well as non-refundable security, at the rate of interest offered by nationalized bank i.e. 7% per annum till physical possession is handed over to the petitioners/allottees. Petitioners were further awarded damages by way of 12% interest on non-refundable security till delivery of possession. It is a settled legal position that an executing court cannot go beyond decree. A plain reading of award dated 14.10.2010 shows that interest @ 7% per annum has been given to the decree holder on the advance rent as well as non-refundable security. “At the rate of interest offered by nationalized bank” mentioned in the award has to be read in continuation and cannot be isolated to give it a separate meaning. The award clearly stipulates that the rate of interest being awarded by the arbitrator is at the rate which is offered by nationalized bank. The award is silent about the manner of calculation of interest. The award cannot be interpreted to mean that the manner of calculation of the interest has to be in accordance
- E
- F
- G

H

with the norms of a nationalized bank. Interpreting the award as calculation of interest of 7% per annum on advance rent and non-refundable security with quarterly rests would mean that compound interest has to be calculated. The same does not appear to be the intention of the learned arbitrator as it is not specifically stated that interest at the rate of 7% per annum was awarded with quarterly rests. A
B

6. Even as per the Reserve Bank of India guidelines liberty has been given to the nationalized banks to pay interest on domestic savings deposit accounts either at quarterly intervals or by giving longer rests. Admittedly different nationalized banks have their own rate of interest and are free to determine the manner of calculation by giving shorter or longer period of rests. In the absence of any specific direction given by the learned arbitrator in the award dated 14.10.2010, no further interpretation in the award is feasible and the rate of interest has to be read as 7% per annum which has to be calculated with yearly rests. As per award dated 14.10.2010, the interest has to be calculated only till the delivery of possession. The possession of the respective shops has already been handed over to the decree holders.” C
D

5. The appellants being aggrieved, filed aforementioned Civil Revisions in the High Court which were disposed of on 03.03.2017. The questions that arose for consideration were formulated by the High Court as: E

“Twin questions that fall for consideration of this Court are; (i) whether the decree-holders are entitled to the statutory benefits under Section 31(7)(a) and (b) of the Act; and (ii) whether the decree-holders-petitioners are also entitled to calculate the amount of interest on advance rent and nonrefundable security, at the rate of interest offered by nationalized bank, i.e. 7% per annum, with quarterly rests.” F

Relying on the majority view in *Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa through Chief Engineer*¹, the High Court answered the first issue in favour of the respondents and concluded that they were entitled to post award interest in terms of Section 31(7)(b) of the Act. As regards second issue, it was held that the respondents were G

¹(2015) 2 SCC 189

- A also entitled to interest @ 7% per annum with quarterly rests. The view so taken by the High Court is presently under challenge.

6. We have heard Mr. Ajay Majithia, learned counsel for the appellants and Mr. A. Tewari, Mr. Anupam Raina, Mr. Raktim Gogoi and Mr. Chritarth Palli, learned advocates for the respondents.

- B 7. The first issue was rightly answered in favour of the respondents. The question is no longer *res integra* and stands answered in clear terms in Para 10 of the Judgment of Bobde, J. and paras 27-28 of the Judgment of Sapre, J. in ***Hyder Consulting (supra)***. The view taken by the High Court on this issue is absolutely correct.

- C 8. As regards the second issue, the Executing Court correctly appreciated that the Award did not specifically state that the interest @ 7% per annum was to be awarded with quarterly rests. In fact, the Award did not specify anything; whether it be quarterly rests or yearly rests. It simply awarded interest @ 7% per annum. Since the Award was completely silent on that aspect, at the stage of execution, no addition or alteration could be made in the operative directions issued in the Award. The Award had seen the challenges at three levels and at none of those stages, there was any modification in the operative directions of the Award.

- E 9. The Executing Court found that it was doubtful whether the award of interest was @ 7% with quarterly rests or yearly rests. In fact, the situation was more fundamental, whether there was award of any compound interest at all. The Executing Court put it with yearly rests which the High Court in Revisions preferred by the appellants modified to quarterly rests. In our view, both the Executing Court and the High Court completely erred and awarded compound interest in favour of the respondents when the award had stipulated it to be 7% per annum simplicitor. The Award did not even remotely suggest that such award of interest would be with a direction that interest be capitalized on yearly or quarterly basis. It was pure and simple award of interest @ 7% and could not be taken to be a direction to award compound interest.

- G 10. We, therefore, accept the submission made by the learned counsel for the appellants as regards second issue and direct that the direction issued in the para 21 of the Award shall be construed as simple interest @ 7% per annum.

H

MUNICIPAL COUNCIL THANESAR v. VIRENDER KUMAR 835
ETC. [UDAY UMESH LALIT, J.]

11. Consequently, the pre-award interest on the amounts in question shall be calculated @ 7% per annum simple interest. The respondents shall be entitled to the benefit under Section 31(7)(b) of the Act and post award interest shall also be @ 7% per annum – simple interest. A

12. With the aforesaid modification the appeals are partly allowed. No order as to costs. B

Devika Gujral

Appeals partly allowed.