

State of Orissa and Another

Vs

Uchhaba Pradhan

Civil Appeal No. 1790 of 1987

(L.M. Sharma, J.S. Verma JJ)

27.11.1990

JUDGMENT

SHARMA J

1. This appeal by the State of Orissa against the judgment of the High Court arises out of a proceeding for making an award of an arbitrator the rule of the court. The respondent was allotted by the State certain contract work for execution and a dispute arose between the parties, the appellant denying the claim of the contractor to the tune of Rs. 6,33,424/-. The matter was referred to the arbitration of a sole arbitrator, who made a non-speaking award for a sum of Rs. 4,45,448.66 paise in favour of the respondent. The award indicated that out of the aforesaid amount, the contractor was held entitled to a sum of Rs. 2,50,487.25 paise towards his claim for the work executed, and to the remaining sum of Rs. 1,94,961.41 paise as interest from 1-6-1975 to 25-11-1981. It was also directed that on the failure of the payment of the amount within a period of two months, the respondent would get future interest at the rate of 12% per annum on Rs. 2,50,487.25 paise.

2. In reply to the respondent's prayer for making the award a rule of the court the State of Orissa raised several pleas in defence. The award was challenged as not being supported by the materials produced by the parties before the arbitrator but, this ground was correctly rejected both by the trial court as well as the High Court, and need not detain us any further. Another objection taken by the appellant is to the non-speaking nature of the award. This point has now been settled against the appellant by a bench of five learned Judges of this Court and does not survive any more. The main dispute which, however, remains to be decided relates to the grant of interest.

3. The learned counsel for the appellant has relied upon the decision in Executive Engineer (Irrigation), Balimela v. Abhaduta Jena, (1988) 1 SCC 418: (AIR 1988 SC 1520) and several other cases in which this decision has been followed. As in the reported case, the reference in the present case also was made before coming into force of the Interest Act, 1978. It was contended before us that the question relating to payment of interest was not referred to the arbitrator at all, and he illegally allowed interest on equitable considerations, which only a court of law was entitled to do. The point centres around the question as to whether the dispute referred to the arbitrator included the issue of payment of interest or not. Besides a ground taken before the courts below in this regard, the counsel for the appellant could not place any material to support his stand and prayed for some more time to do so. The arguments in the case were, however, concluded the judgment reserved, and leave was granted to the parties to file the relevant documents in this regard. The

appellants thereafter filed an additional affidavit along with copies of their memo of appeal in the High Court and of the notice of the arbitrator addressed to the parties. A copy of the reference to arbitration, however, has not been placed before us in spite of adjournment; and the documents which have been filed do not establish the case of the appellants. On the other hand, the claim of the interest has been specifically mentioned in the claim statement of the respondent before the arbitrator, in reply whereof the appellants stated thus:-

"No amount of the claimant was blocked by the respondent and as can be evident from the date of reparation of bill and payment of the bill the payments were made promptly to him. Hence question of blocking of his capital does not arise. The claim for interest thereon is not tenable".

Further it was also said:-'

"As can be seen from the foregoing counters that the claimant is not entitled to any of the claims preferred by him. Hence the total amount shown in the claim is, therefore, not tenable. The question of payment of interest does not arise. The claim is, therefore, not tenable."

It was nowhere suggested that the question of interest was not included in the reference. We are, therefore, not in a position to accept the contention of the learned counsel for the appellant in this regard. It is true that it was permissible to the arbitrator to have awarded interest only if there was an agreement to pay interest or there was usage of trade having the force of law or some other provision of substantive law which entitled the respondent to interest. But as the award is not a speaking one, we cannot presume that the arbitrator included the claim of interest in his award illegally or on considerations which are not relevant for his decision.

4. The objection of the appellants with regard to the interest awarded for the period subsequent to the reference of the dispute to the arbitrator is well founded. As has been pointed out earlier, the reference was made on 6-3-1980, that is before coming into force of the Interest Act, 1978 on 19-8-1981, and the arbitrator, therefore, had no jurisdiction to award interest for the subsequent period. The award in question is accordingly modified and subject to this the appeal is dismissed. There will be no order as to costs.

Order accordingly.

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