

Gautam Constructions and Fisheries Ltd.

Vs

National Bank for Agriculture and Rural Development and another

Civil Appeal Nos. 14826-27 of 1996

(Mr. M. Jagannadha Rao and Mr. Doraiswamy Raju, JJ.)

28.07.2000

JUDGMENT

Mr. Doraiswamy Raju, J.:- The controversy involved for consideration in these appeals is in a very narrow compass. The appellant M/s Gautam Construction & Fisheries Ltd., and the 1st respondent National Bank for Agriculture and Rural Development, Bombay, entered into an agreement for the sale and purchase of office accommodation admeasuring 48,000 square feet of built up area together with the land at the rate of Rs. 400/- per square feet of built up area. The transaction is governed by two agreements and whereas under the principal agreement, the total amount payable is 1,20,00,000/- at the rate of Rs. 250/- per sq.ft for 48,000 sq.ft. Under the subsidiary agreement, provision was made for amenities, extra works, fittings etc. in a payment of Rs. 150/- per sq.ft. and that is how the total rate constituted Rs. 400/- per sq.ft. Though originally there was a provision for construction of stilt for parking cars, subsequently what was desired and constructed was a basement for car parking. It appears that the conveyance of the buildings was to be after the construction of all floors and as further agreed upon between the parties and that it was a specific term of agreement between the parties also that no separate consideration shall be payable at the time of conveyance other than that which was agreed to between the parties under the agreements.

Disputes arose between the parties as to the actual amounts to be paid, though the building has been completed and handed over and payments have been made. As against the claim of the appellant for an additional cost of Rs. 48,36,000/- the 1st respondent made certain counter claims in a sum of Rs. 85,63,781/- with interest also claimed by both the parties on the amounts respectively claimed by them. The matter was referred to the 2nd respondent-Arbitrator and he passed an Award on 24.5.1990. It may be stated at this stage that the dispute in the present proceedings pertains to only the amount claimed and awarded by the Arbitrator and the courts below in respect of 12090 sq.ft of the basement portion provided for car parking in lieu of the earlier agreed stilt, and the rate, if at all to be allowed in respect of the same. So far as the Arbitrator is concerned, he allowed for the basement portion also at the rate of Rs. 400/- per sq.ft. with interest at 18% p.a. from the date of submission of the final bill, viz. 21.12.1987, till date of payment. There is no dispute with reference to the payment of an extra sum for the extra area of 870.30 sq.ft. and costs of extra items and deposit made by the appellant with the Electricity Board. The Arbitrator totally rejected all counter claims made by the 1st respondent-Bank.

The appellant filed O.P. No.216 of 1990 for a direction to the Arbitrator to file the Award into Court and make it a Rule of Court by passing a decree in terms of the Award for a sum of Rs. 78,02,247.15 with interest due thereon. The 1st respondent-Bank filed O.P. No. 483 of 1990 for setting aside the Award dated 24.5.90. The claimed Single Judge of the Madras High Court by a

judgment dated 4.1.1991 sustained the claim of the appellant for the basement area of 12090 sq.ft. at the rate of Rs. 400/- per sq.ft. though the interest was allowed only from the date of the judgment at 18% p.a. on the sum of Rs. 48,36,000, in question. The 1st respondent's counter claims were allowed in part only and there is no need to go into the details of the same. Aggrieved, the 1st respondent filed O.S.A. Nos. 75 & 76 of 1991 before a Division Bench. As found stated in the judgment of the Division Bench dated 1.8.1996, under challenge in this Court, the contest in the appeals before the Division Bench was only with reference to the additional cost of construction relating to the basement area for car parking and the rate of interest claimed at 18% p.a. as against the agreed rate of Rs. 12% p.a. in the contract. The learned Judges of the Division Bench held that the 1st respondent was bound to pay the cost of construction for the basement but it should be only at the rate of Rs. 150/- for the extent of 12090 sq.ft. and not at the rate of Rs. 400/- per sq.ft as allowed by the Arbitrator and affirmed by the learned Single Judge. So far as the rate of interest is concerned, it was held to be at 12% p.a. only and not at 18% p.a. since the agreed and contractual rate was only of 12% p.a. and the same was ordered from the date of judgment of the learned Single Judge, viz. 4.1.91. The Division Bench had also noticed the fact that the entire decree amount deposited in Court was allowed to be withdrawn under orders of Court-half without furnishing security and the other half on furnishing security and it was further made clear the pursuant to the judgment of the Division Bench the appellants will repay and the 1st respondent is entitled to the refund of the excess amount drawn by them. Hence, the above appeals against the judgment of the Division Bench.

Heard Mr. T.L. Viswanatha Iyer for the appellant in the appeals and Mr. Dushyant Dave for the 1st respondent-Bank. On a careful consideration of the respective submissions of the learned senior counsel appearing on either side, we are of the view that though no exception could be taken to the decision directing payment by the 1st respondent-Bank for the area of 12090 sq.ft. of basement portion of the building for car parking, the award of the sum at the rate of Rs. 150/- seem to us to be unwarranted and unjustified, having regard to the very terms of the contract which provided for payment at the rate of Rs. 250/- per sq.ft. and an additional sum of Rs. 150/- for amenities of the nature mentioned therein. The basement portion meant only for car parking cannot be equated to the regular office portion of the ground and other floors agreed to be constructed with all stipulated amenities and though the claim of Rs. 400/- on behalf of the appellant seem to be far fetched and unwarranted on the terms of the contract, the reasonable rate at which the appellant could claim for reimbursement in respect of the basement area for car parking constructed in lieu of the initially agreed stilt portion for the very same purpose of car parking only, at the rate of Rs. 250/- and nothing more since for the said portion, if at all the rate agreed under the principal agreement at Rs. 250/- will apply and could alone be allowed. Viewed in the context of the principle of quantum meruit also we feel that the said rate is reasonable and both the claims made for the appellant at the rate of Rs. 400/- per sq.ft as well that made by the 1st respondent at Rs. 150/- appears to be on the other extremes, and without any rationale or just and reasonable basis of law as well the terms of the contract. We, therefore, partly allow the appeals by awarding the rate of Rs. 250/- per sq.ft for the extent of 12090 sq.ft.

So far as the interest is concerned, no exception could be taken to the award at the rate of 12% p.a. The grant of interest at 18% p.a. is directly opposed to the specific terms in the contract and it is not permissible for the Arbitrator or the Court dealing with the validity of the award to award a higher rate than the mutually agreed rate which is binding on parties. The challenge to the judgment of the Division Bench in this connection fails and shall stand rejected.

Mr. Dushyant Dave reiterated that this Court should order restitution of the excess sum drawn by the

appellant under orders of the High Court out of the sum deposited in the Court with interest at 18% p.a. We find even the Division Bench has indicated about the right of the 1st respondent to get refund of the excess drawn from the Court deposit and the liability of the appellant to return the same. Since, interest at 12% p.a. has been allowed in favour of the appellant for the amounts due to the appellant, it is just and necessary and reasonable too, to only order for restitution by the appellant of the excess amount withdrawn, with interest due thereon also at 12% p.a. from the date of such excess withdrawal till date of repayment.

The appeals are ordered on the above terms. The parties will bear their respective costs.