

SUPREME COURT OF INDIA

P.K. Singh

Vs.

S.N. Kanungo

C.A.No.6551 of 2002

(J.M. Panchal and Dr. B.S. Chauhan J.)

18.02.2010

ORDER

1. The instant appeal is directed against the judgment dated April 9, 2001 rendered by the High Court at Calcutta in Contempt Application No. 010 of 2001 by which the appellant is held guilty of contempt of court and is directed to pay the cost of the application to the respondent which is assessed at 200 GMS.

2. From the record of the case it is evident that a contract was entered into between the respondent- contractor and the Andaman and Nicobar Administration through Union of India for execution of the work of extension of runway by 1542 meters (5000 ft.) at Port Blair Airport on 29.12.1995.

During the course of the execution of the said contract, dispute arose between the parties regarding payments of bills. The dispute was referred to sole arbitration of Mr. O.P. Goel. The arbitrator made his Award on March 22, 1999 and directed the Andaman and Nicobar Administration to pay to the respondent a sum of Rs.2,81,83,305/- (Rupees two crores eighty one lacs, eighty three thousand, three hundred and five only) with 12% interest per annum from the date of withholding of the amount of Rs.41,42,000/- (Rupees forty one lacs forty two thousand only) till the date of payment.

3. Feeling aggrieved, the Union of India, through the Executive Engineer, Andaman and Nicobar Public Works Department, filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 on 17th June, 1999 for setting aside the Award. By judgment dated 29.9.2000 the learned District Judge, Andaman and Nicobar Island, Port Blair, dismissed the application with cost of Rs.500/-. Thereupon, Union of India, through the Executive Engineer, preferred an appeal, i.e., FAT No. 4220 of 2001, before the High Court at Calcutta. The Division Bench of the High Court dismissed the appeal by judgment dated 26.2.2001.

“However, the High Court clarified that the claim No. 4 of the Award dated 22.3.1999 would stand modified and the respondent-contractor would be entitled to interest @ 12% per annum from the date of reference of the dispute to arbitration till the date of payment of the said amount.”

4. Thereafter, the appellant, who is Executive Engineer, Construction Division II, APWD, South Andaman, addressed a letter to the Superintending Engineer, Construction Circle No. 1, Andaman Public Works Department, on 5.3.2001 giving details of the financial implication of the Award dated 22.3.1999. The appellant received a letter dated March 30, 2001 from the Executive Engineer (PLG), CE's Office, APWD, Port Blair stating that the principal component of the Award might be released to the agency, i.e., the respondent herein, immediately. The appellant thereupon wrote a letter dated 30.3.2001 to the Chief Engineer, APWD requesting that the acceptance of the Award should be communicated with details regarding amount/principal component to be paid. It was also mentioned in the said letter that for delay, if any, in payment of the amount, he would not be responsible. The appellant thereafter addressed another letter on the same day to the respondent requesting it to intimate its acceptance of the Award amount to Rs.2,81,83,305/- in full and final settlement of its claim. The respondent thereupon replied by a letter dated 30.3.2001 to the appellant that it was not willing to accept the amount stated in the aforesaid letter. The appellant, therefore, wrote another letter on 30.3.2001 to the respondent informing that the principal component of the Award of Rs.2,81,83,305/- would be released on the same day and requested the respondent to reconcile with the appellant for mutual understanding about payment of interest. The respondent wrote a letter to the appellant on March 31, 2001 mentioning that it was willing to accept the principal amount of the Award "at present" but the remaining amount of the interest etc. should be released within a fortnight.

“Thereupon, the appellant addressed a letter dated 2.4.2001 to the Chief Engineer, APWD, Port Blair, forwarding a copy of the letter received by him from the respondent and pointed out that the respondent was unwilling to accept the amount of the Award without interest. The appellant addressed another 6 letter dated 2.4.2001 to the Chief Engineer informing him about the changed stand of the respondent regarding its willingness to accept the principal component of the Award and requested him to communicate the decision regarding payment of interest without further delay.”

5. The respondent filed Contempt Application No. 010 of 2001 in the month of April, 2001 under Section 14 of the Contempt of Courts Act, 1971 complaining about willful and deliberate violation of the judgment and decree dated February 26, 2001 passed in First Appeal T. No. 4220 of 2001. The High Court issued notice to the respondent. On notice being served, the appellant filed a reply denying that there was willful and deliberate breach of the decree passed by the court. By impugned judgment the Division Bench of the High Court at Calcutta, Circuit Bench at Port Blair, found the respondent guilty of contempt of court and while 7 accepting the unconditional apology of the appellant, imposed cost of

Rs.200 GSM upon him to be paid within a week. This judgment has given rise to the instant appeal.

6. This Court has heard the learned counsel for the appellant and considered the documents forming part of the instant appeal.

7. From the facts mentioned above, it is evident that, after Award of the arbitrator was confirmed by Division Bench of the Calcutta High Court, the appellant had made an attempt to adjust the decree in terms of Order XXI Rule 2 of Code of Civil Procedure by requesting the respondent to accept the principal amount and waive the interest awarded thereon. The contents of the two letters written by the appellant to the respondent do not show that any attempt was made by the appellant to sit in appeal over the judgment of the High Court.

“Those two letters do not indicate that the appellant had criticized the High Court for awarding interest in favour of the respondent. The record would indicate that within the framework of law, the appellant had made an attempt to persuade the respondent to forego claim relating to interest.

Order XXI Rule 2 of Code of Civil Procedure relates to the payment of amount to a decree holder out of court and inter alia provides that when any wrong payment under a decree of any other kind is paid out of court to the decree holder, the decree holder has to certify payment made as required by the said Rule. An agreement, which extinguishes the decree as such in whole or in part and results in the satisfaction of the decree in respect of the particular relief or reliefs granted by the decree, is an 'adjustment' within the meaning of this Rule. It is open to the parties to enter into a contract or compromise with reference to their rights under the decree. If the contract or the compromise amounts to an 'adjustment' of the decree, it must be recorded under this Rule and unless so recorded cannot be recognized by the executing court. Adjustment is not the same as satisfaction of the decree but is some method of settling decree which is not provided for in the decree itself. The right of the judgment debtor to make an attempt to adjust the decree is independent and cannot be treated as contempt of court. Having regard to the interest of the department concerned, the appellant had addressed letters to the respondent to adjust the Award. The letters for adjustment of Award could not have been treated as contempt of court within the meaning of the provisions of the Contempt of Courts Act, 1971. The tenor of letters do not indicate that there was any willful disobedience on the part of the appellant in not complying with the judgment of the High Court.”

8. Even if it is assumed for the sake of argument that writing of the letter dated 30.3.2001 amounts to contempt, this Court finds that the two letters dated 30.3.2001 and 2.4.2001 addressed by the appellant to the Chief Engineer, APWD, Port Blair, indicate that the appellant had taken all possible steps to comply with the Award confirmed by the High Court. According to the High Court, asking the respondent to accept only the principal amount vide letter dated 30.3.2001 amounts to violation of the judgment of the High Court.

Having held so, the High Court proceeded to examine the question whether the violation of judgment of the High Court would amount to the contempt of court. The High Court also considered the question whether violation of judgment by the appellant was willful and deliberate. The High Court noticed that after addressing letter dated 30.3.2001, another letter on the same day was addressed by the appellant inviting the respondent for negotiation with 11 reference to the rate of interest payable to the respondent and concluded that even if previous letter amounted to violation of the judgment of the court, the appellant did not do so willfully and deliberately. Though the High Court ostensibly proceeded to examine the question whether violation of the judgment of the High Court would amount to contempt of court, the said question is neither determined nor answered one way or the other. The error of law committed by the High Court is that without answering the question whether the violation of the judgment amounts to the contempt of court, the High Court presumed that the violation of the judgment amounts to contempt of court and proceeded to examine the question whether the violation of judgment was willful or deliberate. After reaching the conclusion that the violation is neither willful nor deliberate, the High Court should have at once dropped the contempt proceedings and could not have accepted 12 the unconditional apology tendered by the appellant nor could have imposed cost on the appellant. In any view of the matter, the High Court, after accepting the unconditional apology tendered by the appellant, should not have imposed cost on the appellant for negligence and reckless manner in which it had allegedly acted in the instant case.

9. Further, the High Court itself came to the conclusion that a letter being written by the Executive Engineer would not amount to willful and deliberate disobedience of the decree of the court.

10. On the facts and in the circumstances of the case, this Court is of the opinion that the judgment impugned cannot be sustained and is liable to be set aside.

11. For the foregoing reasons, the appeal succeeds. The impugned judgment is set aside. The cost, if any, recovered from the appellant be refunded to him.

The appeal stands, accordingly, disposed of.

12. There shall be no order as to costs.