

STATE OF ORISSA AND OTHERS

A

v.

CONSTRUCTION INDIA

DECEMBER 4, 1987

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

B

*Unreasoned award by arbitrator—Award of interest from the date of reference—Validity thereof.*

A contract was entered into by the parties in 1970-71. The award was made by the Arbitrator in 1982. The award was challenged before the subordinate Judge who upheld the same. Appeal to the High Court against the order of the Subordinate Judge was dismissed. The petitioners moved this Court by special leave against the order of the High Court and contended *inter alia* that since a similar matter of unreasoned award had been referred by the Court to a Constitution Bench of the Court, this petition for special leave be also similarly referred to the Constitution Bench.

C

D

Dismissing the petition with a modification of the award, the Court,

HELD: In the facts and circumstances of this peculiar case, the matter is not referred to the Constitution Bench. [147B]

E

It appears from the order of the High Court that the point of unreasoned award, though taken in the petition of appeal, was not pressed before the High Court. Further, the Arbitrator had been appointed by the Court out of the panels submitted by the contesting parties. Also, in the case of an allied contract in respect of another flat in the same building, an award had been made and the same had been made the rule of the Court subject to the certain conditions. [146G-H]

F

The award is modified to the extent that the interest awarded from the commencement of the reference before the Arbitrator to the date of the award, is set aside, which is in consonance with the views expressed by this Court in *Executive Engineer Irrigation Galimala and Ors. v. Abaaduta Jena*, [1987] 2 Scale 675. [147C-D]

G

CIVIL APPELLATE JURISDICTION: S.L.P. (Civil) No. 7389 of 1987.

H

A From the Judgment and Order dated 18.3.1987 of the Orissa High Court in Miscellaneous Appeal No. 423 of 1982.

R.K. Mehta for the Petitioners.

Anil B. Divan and Vinoo Bhagat for the Respondent.

B

The Judgment of the Court was delivered by

C **SABYASACHI MUKHARJI, J.** This is a petition for leave to appeal against the judgment and order of the High Court dismissing an appeal from the order of the learned Subordinate Judge dismissing a challenge to the award. This is an unreasoned award. The petitioners challenge the award made in this case and ask for leave in view of the order passed by this Court on 16th July, 1986 in similar matters where the question of the validity of the unreasoned award has been referred to the Constitution Bench for consideration. Mr. R.K. Mehta, learned counsel for the petitioners submitted that this matter should also be referred for consideration before the Constitution Bench.

D

In this matter it appears that the contract was entered into by the parties in 1970-71 and the award was made in 1982. The High Court disposed of the objections to the award in 1987. It is true that the grounds of objections were filed before the learned Subordinate Judge and before the High Court. The ground was taken that it was an unreasoned award, *inter alia*, amongst many other grounds in the order of the High Court which have been gone into and these were that the arbitrator had misconducted himself and the proceedings and the award did not allow or reject the counter claim made by the appellants and further that the award of interest with effect from a date prior to the date of reference is bad in law. The High Court in its judgment had gone into all these aspects but it appears from the order of the High Court that this point of unreasoned award though taken in the petition of appeal was not pressed before the High Court. It also appears that in the grounds of appeal of the special leave petition no grievance has been made on the point although it had been taken by the petitioners. It appears to us that this point was not pressed before the High Court. It further appears that the arbitrator had been appointed by the court out of the panels submitted by the contesting parties. Furthermore in an allied contract, i.e. in respect of a contract of another flat in the same building an award has been made and the same has been made the rule of court subject to certain conditions.

H

It is true that the question of validity of unreasoned award is pending consideration before the Constitution Bench of this Court. It is for consideration before the Constitution Bench as to whether even if unreasoned award be bad, such award of ancient vintage be bad. That would be a matter of grave consequence. In that view of the matter we are not inclined to interfere with the order of the High Court in this case. In the facts and circumstances of this particular case and the features mentioned hereinbefore, we declined to refer the matter to the Constitution Bench.

We must note that the award inasmuch as the interest which had been awarded is set aside to the extent that the award of interest from the commencement of the proceedings before the Arbitrator to the date of the award. Subject to this modification the special leave petition is dismissed. The award will stand modified by deletion of interest for that period namely from the commencement of reference before the arbitrator to the date of award. This is in consonance with the views expressed by this Court in the case of *Executive Engineer Irrigation Galimala & Ors. v. Abaaduta Jena*, [1987] 2 Scale 675. The special leave petition is dismissed as indicated before.

S.L.

Petition dismissed.