

A OIL AND NATURAL GAS COMMISSION
v.
M/S M.C. CLELLAND ENGINEERS S.A.

APRIL 23, 1999

B [S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

C *Arbitration Act, 1940—Section 29—Interest upon interest—Grant of—Arbitration proceedings—Award for payment of balance amount claimed and interest on delayed payment—Interest on the amount awarded—Validity of—Held, Arbitrators have power to grant interest—Interest on the amount of interest may be termed as interest on damages or compensation for delayed payment, which becomes part of the principal—Thus, interest is not granted upon interest awarded but upon the claim made—Interest Act, 1978—Section 3.*

D *Limitation*

Arbitration—Claim for interest on delayed payment—Plea that it was barred by Limitation—Insufficient Pleadings before the arbitrators—Held, plea of bar of limitation cannot be entertained.

E In an Arbitration proceeding between the parties, an award was passed directing the appellant company to pay the amount claimed along with interest at 12% p.a. from the date of award till realisation. Subsequently a decree was passed in terms of the award, by single Judge of High Court. Appeal before Division Bench was also dismissed. Hence the present appeal.

F The appellant contended that what was awarded by the Arbitrators in respect of two claims was itself interest for different periods and under Section 3 of the Interest Act, the arbitrators could not have awarded interest upon interest; the claim of respondent for delayed payments was barred by limitation.

G Dismissing the appeal, this Court

HELD : 1.1. The Arbitrators have power to award interest under Section 29 of the Arbitration Act, 1940.

H 1.2. Interest is not granted upon interest awarded but upon the claim

made. The claim made in the proceedings is under two heads—One is the balance of amount claimed under invoices and letter and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by the time the claim was filed before the Arbitrators. Therefore, the power of the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. In the instant case Section 3 of the Interest Act has no relevance in the context of the matter. The High Court was justified in dismissing the appeal against the decree passed in terms of the award. [832-E-G]

2. Before the Arbitrator a very bald statement without setting out the details was made on the point of limitation. The plea raised was not sufficient to meet the claim on the bar of limitation. No foundation was laid in the course of the proceedings before the Arbitrators either in the pleadings or in the evidence. Thus, the plea regarding bar of limitation cannot be entertained. [833-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 932 of 1991.

From the Judgment and Order dated 25.10.88 of the Bombay High Court in A. No. 1253 of 1988.

B. Datta, (R.K. Joshi) for Sushil Kumar Jain for the Appellant.

E.C. Agrawala for the Respondent.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. This appeal arises out of certain arbitration proceedings between the parties to this appeal resulting in an award made on February 29, 1988. The Arbitrators by their award directed that the appellant shall pay to the respondent as follows :

“(i) US \$ 1004.50 being interest on US \$ 40, 102.97 at 12% p.a. from 10.12.1985 to 16.4.1986.

(ii) US \$ 59,583 being interest on US \$ 3,12,011.00 at 12% p.a. from 3.5.1983 to 5.11.1984.”

On these two items of claim the Arbitrators also awarded interest at 12%

A per annum from the date of award till realisation. The award so made by the Arbitrators was filed into the Court. Objections filed thereto stood dismissed and decree was passed in terms of the award. Against that order made by the learned Single Judge in his original jurisdiction an appeal was carried to a division bench which also stood dismissed. Hence this appeal.

B Shri B. Datta, learned senior counsel for the appellant, contended that what was awarded by the Arbitrators in respect of the two claims referred to earlier in the course of this order is itself interest for different periods. He, therefore, submitted that Arbitrators could not have further awarded interest on the claims awarded at 12% per annum from the date of award till realisation.

C He did not dispute, and very fairly and correctly, that the Arbitrators do have the power to grant interest on the amount claimed in the arbitration and the power of the Arbitrators was very characteristically described by him as 'before, during and after' of the arbitration proceedings. His point is that there cannot be interest upon interest when the claim itself is one of interest and interest upon that amount could not have been granted by the Arbitrators

D and relied upon Section 3 of the Interest Act.

There cannot be any doubt that the Arbitrators have powers to grant interest akin to Section 34 of the CPC which is the power of the court in view of Section 29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads - one is the balance of amount claimed under invoices and letter dated February 10, 1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment.

E That is how the claim for interest on delayed payment stood crystallized by the time the claim was filed before the Arbitrators. Therefore, the power of the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case.

F Therefore, the first contention raised by Shri Datta, though interesting, deserves to be and is rejected.

G The next contention urged by Shri Datta is that the claim made by the appellant for interest on the alleged delayed payments made by the respondent is barred by law of limitation. It is pointed out that the award itself notices H that the claimants cannot lose their right to interest due on the next delayed

payment at the end of the three years per each due date the claim would be barred and that principle was not applied on the delayed payment for the period May 3, 1983 to November 5, 1984. On this aspect of the matter we may notice the pleading raised before the Arbitrators. It is stated at para 10(a) as follows :

“The present arbitration itself is barred by limitation as the alleged claims are relating to the work done in 1981-82”

This is a very bald statement without setting out the details as to how the claim made by the respondent before the Arbitrators have become barred by the limitation particularly when the stand of the respondent is that they had running bills and payments were made from time to time and an account has to be taken as to what amount became due and when; the same has to be worked out. Whether all such details have to be worked out and whether the transactions between the appellant and the respondent did not become complete until the payment of final amount are matters for adjudication. Thus, it becomes very difficult to appreciate that the plea raised before the Arbitrators was sufficient to meet the situation to defeat the claim on the bar of limitation. Therefore, we do not think that we can examine the matter in the light suggested now by the learned senior counsel for the appellant when no foundation has been laid in the course of the proceedings before the Arbitrators either in the pleadings or in the evidence. We are, therefore, of the view that the High Court was justified in dismissing the appeal against the decree passed in terms of the award.

The appeal, therefore, stands dismissed. However, in the circumstances of the case, there shall be no order as to costs.

S.V.K.I.

Appeal dismissed.