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M/S MISRA AND CO.

v.

DAMODAR VALLEY CORPORATION

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(Civil Appeal No.10502 of 2017)

AUGUST 16, 2017

[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

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Government litigation – Prolonging of – Contract between appellant and respondent-public sector corporation – Award by Arbitrator against the Corporation – Civil Court vide order dated 16.03.1991 passed decree in terms of the award – Application by appellant on 19.07.2000 for drawing of decree – Preparation of decree directed by Court on 21.02.2003 – Application for execution of decree by appellant on 30.06.2006 – Objection by Corporation that execution is barred by limitation – Trial court held the execution to be barred by limitation – Challenge before High Court, dismissed – On appeal, held: Public sector institutions should not enter into prolonged litigation and spend considerable sums of public money in cases which should have been adjusted by conciliatory and wise attitudes – In the facts of the case, award of the arbitrator was made rule of the Court on 16.3.91 and the Court decreed the award – However, neither the Corporation complied with the decree nor chose to file an appeal – It raised various objections at every stage which precluded the appellant from taking fruits of decree till now – Further, even according to the respondent, limitation period of twelve years had not run out from 16.03.1991 – Corporation to come up with conciliatory proposal to compensate the appellant – Code of Civil Procedure, 1908 – Or.XX, r.6A.

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Municipal Corporation of Delhi v. Rasal Singh and others (1976) 2 SCC 179 – relied on.

West Bengal Essential Commodities Supply Corporation v. Swadesh Agro Farming and Storage Pvt. Ltd. and others, 1999 (8) SCC 315 : [1999] 2 Suppl. SCR 399 – referred to.

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Case Law Reference

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[1999] 2 Suppl. SCR 399 referred to Para 7

(1976) 2 SCC 179 relied on Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10502 of 2017.

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From the Judgment and Order dated 09.08.2016 of the High Court of Calcutta in C.O 3033 of 2015

Siddhartha Chowdhury, Adv. for the Respondent.

Petitioner-in-person.

The following Order of the Court was delivered by

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ORDER

ASHOK BHUSHAN, J. 1. This appeal has been filed against the judgment of the Calcutta High Court dated 09.08.2016 by which the application under Article 227 filed by appellant, challenging the order and judgment dated 06.07.2015 of the Civil Judge (Senior Division), Durgapur has been dismissed. The appellant is a decree holder whose application to execute the decree has been rejected as barred by time which order has been affirmed by the High Court by the above mentioned judgment. Aggrieved by the judgment of the High Court, the appellant has come up in this appeal. The respondent to the appeal is a public sector corporation, namely, Damodar Valley Corporation (hereinafter referred to as 'Corporation').

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2. The present is a classic example of ill effects of prolonging litigation by parties and specially, when one of the party is a public sector corporation. The brief facts necessary to be noted for deciding this appeal are:

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3. The appellant was given a contract for construction of a new administrative building for the Corporation in the year 1983. The disputes and differences arose between the parties. The appellant requested for appointment of an arbitrator, which was not acceded to by the Corporation, an arbitrator was appointed by the Civil Court who gave an award dated 24.05.1988, awarding a sum of Rs.5,78,873/-. The award was filed in the Civil Court and various objections were raised by the Corporation in the Court. The Civil Court *vide* its order dated 16.03.1991 after rejecting the objections of the Corporation accepted the award dated 24.05.1988 and decree was passed in terms of the award with

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A interest at the rate of 10 per cent per annum. Neither any payment was made by the Corporation, after the award nor any appeal was filed against the order of the Court dated 16.03.1991.

4. An application was filed by appellant on 19.07.2000, stating that even after the award having been accepted by the Court on
B 16.03.1991 payment has not been made. The application stated that amount payable up to 30.06.2000 including interest is Rs.16,39,063/-. The appellant prayed that the order be passed drawing up a formal decree in the light of and as consequences of the final order dated 16.03.1991, so that decree can be put into execution for realization of outstanding dues as on 30.06.2000, amounting to Rs. 16,39,063/-. The above
C application filed by appellant dated 19.07.2000 was objected by the Corporation. Although, in the application dated 19.07.2000 the Corporation appeared on 12.09.2000 but took several adjournments thereafter. As per the provisions of C.P.C. Order XX Rule 6A, the decree was to be drawn within fifteen days, but due to objections and
D adjournments taken by the respondent, the Court could direct for preparation of the decree only on 21.02.2003.

5. The appellant filed an application for execution of decree on 30.06.2006. An objection was filed by the respondent to the execution application. The Executing Court transferred the decree to the Court of
E Civil Judge (Senior Division) Durgapur, District Bardwan by the order dated 09.06.2008. Before the transferee court an objection under Section 47 C.P.C. read with Section 151 C.P.C. was filed by the Corporation raising various objections. One of the objections raised was that execution application has been filed after more than fifteen yeras from the date of judgment & decree i.e. 16.03.1991 hence, the execution is barred by
F limitation.

6. The appellant filed reply to the objection of the respondent and submitted that execution is not barred by limitation. One of the submissions made was that, decree was finally prepared only on 21.02.2003 hence, execution application is not barred by time. The trial court after hearing
G the parties held that the decree was enforceable on 16.03.1991 and money execution case having been filed on 30.06.2006, which is beyond the prescribed time limit of twelve years hence, the execution is barred by time. Against the aforesaid order of the trial court dated 06.07.2015, an application under Article 227 was filed in the Civil Revisional
H Jurisdiction of the Calcutta High Court by the appellant which has been

dismissed by the High Court against which present appeal has been filed. A

7. Learned counsel for the parties raised various submissions in support of their respective cases. On the one hand learned counsel for the appellant submits that the respondent had not filed an appeal and was raising objection at every stage from the stage of appointment of arbitrator against the application for drawing a formal decree and lastly filed an objection under Section 47 C.P.C. after execution was transferred. On the other hand, learned counsel for the respondent submits that the time taken for preparation of final decree cannot be excluded for computing the limitation as provided under Article 136 of the Limitation Act, 1963. Learned counsel for the respondent submits that case is fully covered by judgment of this Court reported in *West Bengal Essential Commodities Supply Corporation versus Swadesh Agro Farming and Storage Pvt. Ltd. and others, 1999 (8) SCC 315* where it was held that limitation period of twelve years starts from the date of the pronouncement of the judgment and not from the date of the signing and drawing up of the decree. B
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8. We have considered the submissions of the parties and perused the record. Before, we enter into the merits of this case and the legal contention raised by parties, it is pertinent to notice certain features of the case. The present is a case which arose out of arbitration proceedings under the Arbitration Act, 1940. The Arbitration Act, 1940 was enacted with the object of speedy adjudication of disputes arising out of contractual obligation of the parties providing a speedy mechanism for resolving the dispute by arbitration. The application was filed by appellant on 23.06.1986 for appointment of an arbitrator which was allowed on 10.01.1987. The appointment of arbitrator was modified on 31.08.1987, thereafter, award was given on 24.05.1988 which was submitted to the Court on 28.08.1988. Various objections were filed by the Corporation to the award and ultimately on 16.03.1991, the award was made rule of the Court. The operative portion of the order dated 16.03.1991 is as follows: E
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“ ORDERED

That the objection of D.V.C. against the award submitted by the Ld. Arbitrator S.N. Chanda is rejected on contest. The said award dated 24.05.1988 by Sri. S. N. Chanda be accepted

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A *and decreed accordingly in terms of laid down by the Ld. Arbitrator. The D.V.C. is to comply with the decree as per award. The decree shall carry interest @10% per annum till full realization.*

Sd/- Illegible

B *Asstt. Dist. Judge."*

C 9. Although, the Court made the award rule of the Court and decreed with interest at the rate of 10 per cent per annum, neither the respondent, public sector corporation complied with the judgment and decree nor chose to file an appeal. When the appellant filed an application on 19.07.2000 for preparation of final decree so that appellant could realise the amount of Rs. 16,39,063/- as on 30.06.2000 alongwith future interest, the said application was objected by the Corporation.

D 10. Order XX Rule 6A C.P.C. provides for preparation of decree which is to the following effect: -

E *"6A. Preparation of decree.-(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.*

F *(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XXI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose."*

G 11. The provision thus provides for preparation of decree within fifteen days from the date on which the judgment is pronounced. In the present case, due to several objections raised by respondent No.1, the decree could be directed to be prepared only on 21.02.2003. When the execution application was filed, the objection was filed that the decree is barred by time on 30.06.2006. The respondent public sector corporation by raising various objections at every stage which were rejected at different stages successfully precluded the appellant from taking fruits of decree up to now. Objections raised by the Corporation that execution is barred by time found favour by executing Court as well as by the High
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Court. Whether the public sector corporation when party to a litigation which involves a money decree can be allowed to prolong the litigation which may cause hardship to both the parties is one of the issues which has cropped up for consideration. We are reminded of weighty observations made by V.R. Krishna Iyer, J. in *Municipal Corporation of Delhi versus Rasal Singh and others*, (1976) 2 SCC 179 where following was stated:

“....Poor reflection on ‘principles’ prompting public sector undertakings and on prudence in litigation policy and outlay and the scant regard for the Supreme Court being approached on supreme issues. These observations are an expression of this Court’s allergy to the frequency with which, in the name of ‘principle’, the State and public sector institutions spiral up the litigation ladder and spend considerable sums of public money in cases which should have been adjusted by imaginative, conciliatory and wise attitudes, while professing profound concern for the welfare of Labour. An aware employer should be the last litigant, costs in Court being unproductive and even counter-productive.”

12. This Court has time and again emphasised that public sector institutions should not enter into prolonged litigation and spend considerable sums of public money in cases which should have been adjusted by conciliatory and wise attitudes. The present is a case where arbitration award was made rule of the Court on 16.03.1991 and the Court also passed an order for payment of interest at the rate of 10 per cent per annum. The Corporation neither filed an appeal nor obeyed the decree and even on the application for preparation of decree which was filed on 19.11.2000 raised various objections and in preparation of decree more than two and half years time was elapsed whereas Order XX Rule 6A C.P.C. provides for preparation of decree in any case within fifteen days from the pronouncement of judgment. On the date when application was filed by appellant for preparation of the decree, the due amount as on 30.06.2000 was to the sum of Rs. 16,39,063/-. Even according to the case of the respondent time period of twelve years had not run out from 16.03.1991 by that time. Even according to the case of the respondent, the time ran out thereafter.

13. Whether in the facts of the present case we should not ask the respondent to compensate the appellant, is the question which comes

- A to our mind? Whether the Corporation when it did not file an appeal challenging order dated 16.03.1991 by which, award was made rule of the Court with interest at the rate of 10 per cent per annum, should not have complied the decree to save the Corporation from future interest liability which was reckoning from day to day? Should Corporation be allowed to take benefit of prolonging of the litigation by various frivolous
- B objections taken from time to time at every stage?

14. We are thus of the view that in facts of the present case, Corporation be called upon to come up with conciliatory proposal as has been observed by this Court in *Municipal Corporation of Delhi (supra)*. We thus before proceeding further in the matter call upon to Corporation
- C to adopt the conciliatory method and come up with a proposal to compensate the appellants in facts of the present case.

15. Let this appeal be listed after six weeks to enable the Corporation to file an affidavit in the light of the observations, as made above. List after six weeks for further hearing.
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Divya Pandey

Matter adjourned.