

CASE NO.:  
Appeal (civil) 5281 of 1996

PETITIONER:  
T.P. GEORGE

Vs.

RESPONDENT:  
STATE OF KERALA & ANR.

DATE OF JUDGMENT: 06/02/2001

BENCH:  
S. Rajendra Babu & S.N. Variava.

JUDGMENT:

S. N. VARIAVA, J.  
L...I...T.....T.....T.....T.....T.....T.....T..J

This Appeal is against a Judgment dated 15th February, 1989 wherein the appeal filed by the Respondent was partly allowed.

Briefly stated the facts are as follows: The Appellant was awarded a contract for construction of a Main Canal Driving Tunnel of the Kallada Irrigation Project. The work was to be completed by 4th March, 1983. A Supplemental Agreement dated 20th October, 1983 extending the period of completion was entered into. As disputes arose between the parties the same were referred to a sole Arbitrator, who gave a reasoned Award dated 12th August, 1985.

The Respondent filed objections to the Award, which were rejected by a judgment dated 31st March, 1986 and the Award was made a rule of Court.

In the Appeal, before the High Court, challenge was restricted to Award of claims under Items 12(i), 12(j), 12(k) and award of interest from date of Award. The Appeal filed by the Respondent was partly allowed by the impugned Judgment dated 15th February, 1989. By this Judgment the Award of claims under items 12(i) and 12(k) were set aside. Award of claim under item 12(j) was upheld. Further the award of interest was also set aside. The only ground on which the claims under Item 12(i) and 12(k) have been set aside are that the Arbitrator could not overlook the terms of the contract or agreement. It is held that the Arbitrator could not have awarded these claims as they were contrary to the Supplemental Agreement dated 20th October, 1983.

Mr. Tripurary Ray, pointed out that claim 12 (i) was for loss in connection with the price escalation and that it was under clause 32 of the original agreement. He pointed out that claim 12(k) was for revision of rates. He submitted that under the original contract the time for completion was fixed as 4th March, 1983. He submitted that

due to fault of the Respondents the work could not be completed by that time. He submitted that the Appellant was forced to execute the Supplemental Agreement in a form as dictated by the Respondent as otherwise the Respondents were not clearing the pending bills of the Appellant. He drew attention of this Court to a letter dated 6th October, 1983, addressed by the Appellant to the Superintending Engineer wherein the Appellant, before execution of the Supplemental Agreement, has recorded that he was protesting execution of the Supplemental Agreement and that he would be executing the Supplemental Agreement without prejudice to his claims. He submitted that even before writing of this letter the Appellant had already, by a letter dated 5th October 1983, made his claims. He pointed out that after the Supplemental Agreement dated 20th October, 1983 was executed the Appellant addressed another letter dated 24th November, 1983 to the Chief Engineer, stating that the Supplemental Agreement was got executed under coercion and undue influence and that the same was executed without prejudice to his claims.

Mr. Tripurary Ray submitted that one of the questions before the Arbitrator was whether this Supplemental Agreement was binding on the Appellant and/or whether he had been forced to sign the Agreement and/or whether the Appellant was entitled to maintain his claims in view of the Supplemental Agreement. He pointed out that after hearing parties and considering the submissions of the Respondents the Arbitrator had by a reasoned Award sanctioned the claims. He pointed out that in the Award the Arbitrator had held that the delay was not due to the fault of the Appellant and that the Supplemental Agreement was got executed from the Appellant. He pointed out that the Arbitrator had held that the Supplemental Agreement was without prejudice to the claims which had already been made. The Arbitrator held that the Supplemental Agreement did not debar the Appellant from making or maintaining his claims. Mr. Tripurary Ray submitted that this was a possible view of the matter. He submitted that the Court should be slow to interfere merely because another view was possible.

Mr. G. Prakash supported the impugned judgment on the ground that once the Appellant executed the Supplemental Agreement he could not make any claims. He submitted that the Supplemental Agreement provided that such claims could not be made. He submitted that the Supplemental Agreement was binding on the Appellant. He submitted that the High Court was right in holding that the Arbitrator had misconducted himself by awarding contrary to the Supplemental Agreement.

We have considered the rival submissions. It is to be seen that the question, whether the Supplemental Agreement dated 20th October, 1983 debarred the Appellant from pursuing his claims, was before the Arbitrator. Such a question having been referred to the Arbitrator the view of the Arbitrator would be binding if it is one which is possible. The Arbitrator has taken note of the Appellant letters dated 6th October, 1983 and 24th November, 1983 and come to a conclusion that the Supplemental Agreement had been got executed and that the same was executed without prejudice to the claims which had already been made. This is a possible view.

We have seen the impugned judgment delivered by the High

Court. The High Court has not at all considered the letter dated 6th October, 1983 and 24th November, 1983 nor dealt with the question as to whether or not the Supplemental Agreement was got executed. The High Court has not even considered the effect of the Supplemental Agreement having been executed without prejudice to the claims which had already been made. Even if the High Court had considered these aspects it could not have substituted its views for those of the Arbitrator as it could not be said that the view taken by the Arbitrator is unreasonable or one which cannot be arrived at by a reasonable person. In this view of the matter the impugned Judgment cannot be sustained and is set aside in respect of claims under items 12(i) and (k).

The next question is whether the High Court was right in setting aside the award of the interest from the date of the Award. This Court has held in the case of Jagdish Rao and Brothers vs. Union of India reported in 1999 (1) Arb. LR 696, that the award of interest ought to be granted in all cases when there is a decree of money unless there are strong reasons to decline the same. In the case of M/s. Jagdish Rai & Brothers vs. Union of India, reported in JT 1999 (2) S.C. 268, this Court has held that there are four stages of grant of interest, viz. (1) from the stage of accrual of cause of action till filing of the arbitration proceedings, (2) during pendency of the proceedings before arbitrator, (3) future interest arising between date of award and date of the decree and (4) interest arising from date of decree till realisation of award. The power of Court to grant interest from date of decree is not in doubt. In the case of Hindustan Construction Co. Ltd. v. State of Jammu and Kashmir reported in AIR 1992 S.C. 2192 this Court has held that the Arbitrator is competent to award interest from the date of the Award. This Court has held in the case of Secretary Irrigation Department, Government of Orissa and ors. vs. G.C. Roy reported in 1992 (1) S.C.C. 508, that the Arbitrator has power to grant interest pendente lite. Recently in the case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, etc. etc. v. N.C. Budharaj (Dead) by LRs. etc. etc. reported in JT 2001 (1) S.C. 486, this Court has held that Arbitrator can award interest for the pre-reference period. Thus as per law laid down by this Court interest can be awarded at all four stages. The reasoning given by the High Court that interest cannot be awarded by the Arbitrator is thus fallacious and cannot be sustained. In our view the direction to pay interest from date of Award cannot be faulted. The impugned judgment to the extent that it disallows the interest from the date of the Award is set aside.

However, the impugned judgment to the extent that it upholds the Award under item 12(j) is upheld. The Appeal stands disposed of accordingly. There shall be no order as to costs.