

CASE NO.:
Appeal (civil) 1511 of 2008

PETITIONER:
M/s. B.L.Gupta Construction Ltd

RESPONDENT:
M/s. Bharat Co-op.Group HNG.STY.Ltd

DATE OF JUDGMENT: 22/02/2008

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 1511 / 2008
(arising out of SLP (C)No. 4654/2007)

HARJIT SINGH BEDI, J.

1. Special leave granted.
2. The facts leading to the filing of this appeal are as under:
3. The appellant B.L.Gupta Construction Ltd. was awarded a contract by the respondent for construction of 308 dwelling units. The contract also provided for resolution of disputes through an arbitrator. A dispute having arisen, the High Court vide order of 5.12.1991 ordered the appointment of an arbitrator. The arbitrator rendered his award on 18.12.1992 for a sum of Rs.25, 14,424/- in favour of the appellant and a counter claim for Rs. 1, 18,393.32p. in favour of the respondent. The principal amount thus determined to be paid to the appellant was Rs.23, 96,031/-. The arbitrator also granted interest in the following terms:

"I award the following interest to be paid by the respondents to the claimants as under:-

(a) Interest at the rate of 18(eighteen) percent per annum on the amount awarded under claim No.1 after expiry of 50 days from the date of submission of Final bill dated 18.4.1990 i.e. 8.6.1990 to the date prior to the Arbitration proceedings i.e.5.12.1991.

(b) Pendente-lite interest at the rate of 18 (eighteen) percent per annum from 6.12.1991 to the date of Publication of award 18.12.1992.

(c) If the Respondents does not pay the awarded amount within a period of 60 days from the date of publication of the award, the Respondents shall also pay interest at the rate of 18 (eighteen) per cent per annum on the gross amount of award for all the claims from 19.12.1992 to the date of decree or date of payment whichever is earlier."

4. The respondent society thereafter filed objections under section 30 and 33 of the Arbitration Act, 1940. These objections were dismissed and the award was made a rule of the court and a decree Annexure P-2 was accordingly passed on 5.2.1996. An appeal [FAO(OS) No. 78/96] was filed in the High Court against the aforesaid order and on admission on 28.9.1996 a stay of execution was granted subject to deposit of the principal amount in Court. Concededly this amount has been released to the decree-holder appellant on furnishing a bank guarantee on 27.10.1998. The Division Bench while disposing of the aforesaid FAO in its order dated 1.8.2001 modified the decree to the extent that the interest prior to 18.12.1998 awarded by the Arbitrator was declined and future interest reduced from 18% to 10% per annum and as the respondent had deposited the amount in the High Court on 28.9.1996 it was directed that the interest would cease to be payable on and from the said date. The appellant thereupon filed a Special Leave Petition in this Court in which leave was granted. The respondent also made a part payment of Rs.8, 39,791/- as interest on 8.12.2001 to the appellant. The aforesaid appeal was allowed on 5.11.2003 and it was held that the respondent would pay pre-reference and pendente-lite interest at 10% per annum on the amount of the award. The respondent thereafter made another payment of Rs. 6, 14,911/- to the appellant. The appellant also filed an execution application (E.A.No.282/04) submitting its calculations and claimed a further sum of Rs.19, 07,872/- as on 19.7.2004. A copy of this application has been filed as Annexure P-5 to the grounds in the Special Leave Petition. The learned Single Judge in his order dated 21.7.2005 ordered the Registry to calculate the pre-reference interest at 10% per annum on the sum of Rs.23,96,030-38p. for a period from 8.6.1990 to 18.12.1992 and likewise the interest on the aforesaid amount for the period from 18.12.92 to 28.9.96 i.e. date on which the amount had been deposited by the respondent in Court and the matter was adjourned for further hearing to 16.8.2005. On 16.8.2005 the learned Single Judge held that the question of payment of interest both pendente-lite and future interest had been settled and accordingly dropped the proceedings. The appellant thereupon filed an appeal before the Division Bench challenging the orders dated 21.7.2005 and 16.8.2005 in Appeal (EFA (OS)No.12/05). By order dated 21.9.2006 the Division Bench dismissed the appeal holding that the learned Single Judge had rightly directed the future interest be calculated only on the principle amount of Rs.23,96,031/-. A review application filed by the appellant against the aforesaid order was also dismissed on 18.10.2006. Both these matters have been impugned in the present appeal.

5. A reply has been filed by the respondent in response to the notice. It has been highlighted that 14 claims had been raised before the Arbitrator and whereas Claim Nos. 1 to 12 were under several heads including the payment for the work done, Claim No.13 was with regard to interest simplicitor both pre-reference and pendente-lite. It has been pointed out that the Arbitrator had in his award dated 18.12.1992 awarded a total sum of Rs.25,14,424/- to the appellant partly allowing his claim Nos. 1,2 and 5 in the following terms - Claim No.1 Rs.24,64,424/-, Claim No.2 Rs.10,000/- and Claim No.5 Rs.40,000/- and that the Arbitrator had awarded interest only against Claim No.1 at 18% per annum from 8.6.1990 to 5.12.1991 (Pre-reference) and pendente-lite interest at 18% per annum from 6.12.1991 to the date of the publication of the award i.e. 18.12.1992 and that no interest had been awarded with respect to the claim Nos.2 to 5 and that the award had clarified that if the amount awarded was not paid within the period of 60 days from the date of the publication of the award, the respondent would be liable to pay future interest at 18% on the gross amount of the award for all claims allowed from 19.12.1992 to the date of payment. It has further been highlighted that the respondent had filed an appeal before the Division Bench being FAO(OS) 78/96 and a direction had been issued to deposit the principal amount in terms of the award i.e. Rs.23,96,031/- which in fact had been withdrawn by the petitioner on 28.9.1996 without any objection and that the Division

Bench had finally disposed of the appeal observing as under:

"Consequently, the appeal is partly allowed to the extent aforementioned, the judgment of the learned Single Judge as also the award is set aside to that extent. Consequently, decree shall stand modified to the extent that the Claims of the respondent (the Petitioner herein) to interest prior to 18.12.92 stands rejected. The respondent shall be entitled to future interest @ 10% per annum on the amount of award under Claim No.1 from 18th December 1992 till the date of decree and from the date of decree till date of payment on the amount payable by the Society (respondent herein) to the respondent (petitioner herein) in terms of Award.

Since the appellant had deposited the amount in the Court on 28th September 1996, interest will cease to be payable on and from that date on the deposited amount."

6. The appellant aggrieved by the aforesaid order of the Division Bench, filed SLP in this Court against the judgment dated 1.8.2001 and this Court vide order dated 5.11.2003 finally disposed of the matter by partly allowing the appeal directing the respondent to pay pre-reference and pendente-lite interest at 10% per annum on Claim No.1 and affirmed the other parts of the judgment of the Division Bench which included the cessation of interest on the principal amount deposited as well as the future interest on Claim Nos. 2 to 5. It has accordingly been pleaded that as the respondent had already paid the entire amount in terms of the judgment of the Division Bench in FAO (OS) 78/96 on 28.9.1996 only pendente-lite interest for the period from 8.6.1990 to 18.12.1992 at 10% per annum on the principal amount under Claim No.1 i.e. a sum of Rs. 6, 14,911/- was payable and that the aforesaid amount had already been paid. The appellant thereafter filed yet another execution application in the High Court claiming that the entire amount in terms of the orders of the Court had not been paid on which the respondent in terms of the order dated 3.2.2005 deposited a further sum of Rs.63,658/- on 9.2.2005. It is this execution application which has now been disposed of by the impugned orders.

7. We have heard the learned counsel for the parties and have gone through the record. Several issues have been sought to be raised by the learned counsel for the appellant as to the method to be adopted for the calculation of and as to how the payments made from time to time had to be adjusted. We are, however, of the opinion that no such argument is open to the appellant as of now for the reason that interest had been awarded only against some claims and that the calculations have been made both at the stage of the Arbitrator and at the stage of the execution in the High Court and directions have been issued by this Court to make payment on interest on specific sums from particular dates. It is also to be noticed that the appellant has dragged on the proceedings for years together despite the orders clarifying all issues from time to time. We have given full details of the proceedings from the start of the arbitration till their culmination in the Supreme Court advisedly to bring home the point that the legal process has been misused by the appellant. We have therefore no hesitation in dismissing the appeal and while doing so impose Rs.50, 000/- as costs on the appellant.