

CASE NO.:
Appeal (civil) 1006 of 2002

PETITIONER:
GREATER COCHIN DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
LEELAMMA VALSON & ORS.

DATE OF JUDGMENT: 06/02/2002

BENCH:
S. Rajendra Babu & Ruma Pal

JUDGMENT:

RUMA PAL, J

Leave granted.

An agreement was entered into between the appellant and the respondent by which the respondents undertook the construction of residential flats. The agreement contained an arbitration clause. After the completion of the work, disputes arose between the parties. The disputes were referred to a panel of three arbitrators under the provisions of the Arbitration Act, 1940 (referred to as the Act). By an award made on 31st December 1987 the arbitrators directed the appellant to pay the respondents various amounts towards the several heads of claim put forward by the respondents. The arbitrators also awarded interest in respect of certain of the respondents' claims. As the dispute in this appeal centers around the right of the respondent to claim interest, the relevant portion of the award in this context is extracted (wherein the appellant herein is referred to as 'the respondent' and the respondent herein as 'the claimant'):

"Respondent to pay claimant interest
@ 9% from 29.5.80.

Respondent to pay claimant interest at
10% from 1.2.1985 on claims III to IX
and on Claim XII only"

The award was filed in the local Court which issued notice under Section 14 (1) of the Act, to the appellant. The appellant filed an application challenging the award on several grounds, one of the grounds being that the award of interest pendente lite was illegal. The respondents also filed an application in which the first prayer was to pass a decree in terms of the award. The second prayer was to:

"Grant interest at 18% per annum
on the amounts due under the
decree to be so passed from the
date of decree till date of
payment or realization, in

accordance with Section 29 of the Arbitration Act."

Both the applications were heard and disposed of by a common judgment on 26th March 1990 by which the appellant's application was dismissed and the respondents' application was allowed and a decree in terms of the award was granted.

Soon after this an application was made under Section 114 of the Code of Civil Procedure by the respondents before the Court praying for review of the order dated 26th March 1990. According to the respondents' application, by an "accidental slip, omission or oversight" the Court while allowing the respondents' application "had not dealt with and passed any order on Prayer No.2 therein for the grant of future interest at 18% per annum on the amounts due under the decree from the date of decree till date of payment or realisation". It was further stated that unless the Court reviewed the order dated 26th March, 1990 and allowed the prayer for future interest to the respondents on the amounts due under the decree from the date of decree till the date of payment or realisation, serious prejudice and hardship would be caused to the respondents.

The application was dismissed by the Court on 29th October 1990. It was held on a construction of the order dated 26th March 1990 that it was not a case of any "omission or slip" but that the Court had chosen not to grant any interest to the respondents on the decretal amount. The respondents did not challenge this order nor did they prefer any appeal from the decree or order dated 26th March 1990. However, on 10th December 1990, the appellant preferred an appeal from the order dated 26th March 1990 before the High Court. The appeal was allowed to the extent that the award of interest pendente lite was set aside, but the High Court refused to set aside the award on merits. Consequently, the High Court confirmed the decree of the Court below with the modification that the interest granted for the period covering the pendency of the arbitration was deleted. The respondents did not challenge the conclusion of the High Court that the arbitrators could not have awarded pendente lite interest. The appellant sought to challenge the refusal of the High Court to set aside the award on merits before this Court by way of a special leave petition. The special leave petition was rejected. The appellant has since paid the decretal amount to the respondents.

In execution of the decree, the respondents claimed interest on the decretal amount. The Executing Court held that that the question whether the respondents were entitled to interest on the decree had been resolved finally by the order dated 29th October 1990 which had made it clear that no future interest was payable on the decree. According to the Executing Court, the decretal debt had been fully satisfied by the appellant. The execution petition was consequently dismissed.

The respondents challenged the order of the Executing Court in revision. The High Court construed the decree and came to the conclusion that the respondents were entitled to claim interest on the decretal amount. The reasoning was that arbitrators had awarded interest until payment and that the decree had been passed in terms of the award and therefore the appellants were entitled to claim interest on the

decree.

The reasoning of the High Court is faultless as a pure proposition of law and in keeping with the decision of this Court in *State of Orissa Vs. B.N. Agarwalla* 1997 (2) SCC 469 where it was held that:

"When the court does not modify the award with regard to grant of interest from the date of the award up to the date of payment, the effect would be as if the court itself has granted interest from the date of the decree till the payment at the rate which was determined by the arbitrator. The future interest would be regarded as having been ordered to be paid under Section 29 of the Arbitration Act when the court does not modify the award in this respect."

But in the facts of this case, the decision was erroneous.

In the case before us the parties, and certainly the respondents, had understood and proceeded on the basis that the arbitrators had awarded interest only upto the date of the decree. The respondents' application under Section 114 of the Code of Civil Procedure makes that abundantly clear. The submission of the learned counsel for the respondents that the application was in substance not under Section 114 but under Section 152 of the Code for correcting a clerical error is unacceptable. The language in the body of the application and the prayer made by the respondents was to consider the grant of future interest on the ground that the prayer had been overlooked while passing the decree in terms of the award.

The learned counsel for respondents then contended that the application filed by the respondents whether under Section 114 or 152 CPC had not been accepted but on the other hand dismissed on the basis that none of the grounds urged fell within the range of either of the said provisions. He elaborated that an order dismissing an application as not maintainable will not have any effect upon the decree as originally passed in terms of the award.

The argument may have had some substance had the scope of the decree not been put in issue between parties by the respondents themselves. The Court before which the application was made could have said that the grant of interest was implicit in the order dated 26th March 1990 and that by affirming the award, future interest had been granted. It did not say so. It said categorically that the prayer for future interest or interest on the decree had been considered and had been refused by the Court. When the High Court affirmed the decree in 1991, the decree had already been interpreted - an interpretation which was not questioned. In the light of *B.N. Agarwalla's* case (*supra*) the correctness of the decision may be doubtful. But the respondents accepted this interpretation of the decree. They could have challenged the interpretation but they did not. They also chose not to prefer an appeal from the decree itself. Not having adopted either course, the interpretation of the decree by the order dated 29th March 1990 was final inter partes.

Paradip Port Trust and Others V. Unique Builders 2001 (2) SCC 680 relied on by the respondents has no application. In that case this Court was disposing of an appeal from an order passing a decree in terms of the award and itself granted future interest from the date of the decree till payment. Here the impugned order was passed in execution proceedings after the scope and import of the decree stood concluded.

The High Court erred in ignoring the order dated 29th October 1990 and its effect on the rights of the parties. The issue of future interest had been raised and decided once and the respondents were barred by res judicata from reopening it.

For the above mentioned reasons, the appeal is allowed and the decision of the High Court is set aside. There will however be no order as to costs.

J.
(S. Rajendra Babu)

J.
(Ruma Pal)

February 6, 2002