

CASE NO.:
Appeal (civil) 3537 of 2006

PETITIONER:
Manalal Prabhudayal

RESPONDENT:
Oriental Insurance Co. Ltd.

DATE OF JUDGMENT: 18/08/2006

BENCH:
C.K. Thakker & Markandey Katju

JUDGMENT:
JUDGMENT

C.K. THAKKER, J.

Delay condoned.

Leave granted.

The present appeals arise out of an order dated January 21, 2004 passed by the High Court of Orissa at Cuttack in ARBA No. 20 of 2003 and an order dated August 3, 2004 passed in Review Petition No. 11 of 2004. By the said orders, the High Court partly allowed the appeal filed by the Oriental Insurance Co. Ltd. - respondent herein and reduced the rate of interest from 12 per cent per annum to 6 per cent per annum with effect from September 19, 1995, that is, from the date of the award passed by the arbitrator till the date of deposit of amount in the court. (A review petition, being R.P. No. 11 of 2004 filed by the appellant was also dismissed by the High Court on August 3, 2004).

The facts relevant for the purpose are that the appellant herein is a partnership firm and is having its shop in Bhubaneswar. It was insured with respondent-Insurance Company. Insurance policy was taken by the appellant in the year 1991 which was continued from time to time. The insurance coverage was to the tune of Rs.1,50,000/- (rupees one lakh fifty thousand only). It was the case of the appellant that due to communal riots in Bhubaneswar in March, 1991, the shop of the appellant-firm was ransacked, looted and was razed to the ground. The total pecuniary loss sustained by the appellant was to the extent of Rs. 4,00,000/- (rupees four lakhs only). Since, however, the liability of the Insurance Company was limited to Rs. 1,50,000/- (rupees one lakh fifty thousand only), the appellant lodged a claim of Rs. 1,93,075.00 (rupees one lakh ninety three thousand and seventy five only) on the basis of the amount insured at the rate of 12 per cent per annum. The Insurance Company instead of allowing the claim lodged by the appellant offered an amount of Rs. 50,425/- (rupees fifty thousand four hundred and twenty five only) since, according to the Insurance Company, as per the survey-report received by the Company, the loss was to that extent. As the appellant was not satisfied and the claim could not be settled, it invoked arbitration clause by issuing a notice for appointment of an arbitrator. An arbitrator was appointed who passed an award in Arbitration Case No. 1 of 1998 on June 13, 1999 allowing the claim of the appellant with interest at the rate of 12 per cent per annum. The Insurance Company was directed to pay to the appellant a sum of rupees one lakh fifty thousand "with interest @ 12 per cent per annum from the date of claim till payment". In other words, the arbitrator granted interest to the appellant @ 12 per cent per annum all throughout, that is, pre-reference period, pendente lite and after the award till the date of payment.

Proceedings had been initiated for making award a rule of the court by moving the court of Civil Judge, Senior Division, Bhubaneswar. It was

registered as O.S. No. 543 of 1999. The Insurance Company also filed Misc. Case No. 279 of 2002 for setting aside the award. After hearing the parties, the Civil Judge, (Senior Division), Bhubaneswar vide order dated October 9, 2002 'decreed' the suit in favour of the appellant herein. The award dated June 13, 1999 in Arbitration Case No. 1 of 1998 was made rule of the court and the respondent-Insurance Company was directed to pay the awarded amount to the appellant within three months from the date of the order.

Being aggrieved by the award passed by the arbitrator and the decree passed by the trial court, the respondent Company approached the High Court. According to the High Court, no case was made out by the Insurance Company insofar as award passed by the arbitrator regarding claim of the appellant-firm was concerned. The High Court was also of the view that the award granting interest @ 12 per cent per annum for pre-reference period, that is, from March 21, 1991 to September 19, 1995 was in consonance with law and upheld it. It, however, held that after the award, that is, with effect from September 19, 1995, the Insurance Company would be liable to pay interest @ 6 per cent per annum till the amount is deposited in the court.

Being aggrieved by the later part of the order reducing interest from the date of award till the date of payment/deposit, the appellant has approached this Court.

On July 22, 2005, notice was issued by this Court on the application for condonation of delay as also on special leave petition "to show cause why the rate of interest for the period 19.9.1995 to 13.6.1999 and then till realization be not enhanced to 12% per annum". The Insurance Company appeared in pursuance of the notice issued by this Court and has also filed affidavit-in-reply on March 30, 2005.

We have heard the learned counsel for the parties.

The learned counsel for the appellant-firm contended that so far as the claim of the appellant is concerned, it had been upheld by the arbitrator and an award dated June 13, 1999 was passed which had been made rule of the court by the Court of Civil Judge, (Senior Division), Bhubaneswar and has also been upheld by the High Court. To that extent, therefore, the appellant has no grievance. The Insurance Company has also not challenged that part of the award and it has, thus, become final. The counsel, however, strenuously urged that the High Court has committed an error of law as well as of jurisdiction in reducing the rate of interest from the date of award till the date of realization from 12 per cent per annum to 6 per cent per annum without there being any legitimate cause, reason or ground. It was, therefore, submitted that that part of the order deserves to be set aside by restoring the award made by the arbitrator and by awarding interest @ 12 per cent all throughout.

The learned counsel for the respondent-Company, on the other hand, submitted that taking into consideration commercial rate of interest, it was reduced by the High Court from the date of award till the date of realization of amount though it was not expressly stated in the order. It was also submitted that the High Court has relied upon the judgment of this Court in M/s Channa Bros. & Co. v. Union of India, JT (2002) 2 SC 643 in which reliance was placed by this Court on an earlier order, dated November 27, 2001 in Vidyawati Construction Company v. Union of India & Ors., I.A. No. 1 in Civil Appeal No. 2337 of 1999. It was, therefore, submitted that no case has been made out by the appellant to interfere with the said part of the order.

Having considered the rival contentions of the parties, in our opinion, the appeal deserves to be allowed by granting relief to the appellant-firm. It is well settled that award of interest is in the discretion of court. Normally, when interest is granted, appellate, revisional or writ court would not interfere with exercise of discretion unless the discretion has

been exercised arbitrarily or capriciously. It is equally well settled that like grant of interest, rate of interest is also in the discretion of the court and in the absence of any agreement between the parties, usually, the court would not interfere with rate of interest unless it is convinced that the direction of the lower court was *ex facie* bad in law.

As far as arbitration proceedings are concerned, it is well established that an arbitrator, in absence of any prohibition in an arbitration agreement, has power to award interest. Though it is not a "court" within the meaning of Section 34 of the Code of Civil Procedure, 1908, an arbitrator has power to grant reasonable rate of interest at all the three stages; i.e. pre-reference period, pendente lite and post award period.

In *Bhagwati Oxygen Ltd. v. Hindustan Copper Ltd.*, [2005] 6 SCC 462, one of us (C.K. Thakker, J.), after considering the relevant case law on the point, held-

Now Section 34 of the Code of Civil Procedure has no application to arbitration proceedings since the arbitrator cannot be said to be a "court" within the meaning of the Code. But an arbitrator has power and jurisdiction to grant interest for all the three stages provided the rate of interest is reasonable.

(emphasis supplied)

It is, thus, clear that arbitrator has power to award interest at all the three stages, namely, pre-reference period, pendente lite and post award period provided there is no provision to the contrary in an arbitration agreement and the rate of interest is not unreasonable.

Once it is conceded that an arbitrator has power to grant interest and has also discretion in granting interest at a particular rate provided it is reasonable, the award of the arbitrator cannot be held to be bad in law or interfered with on the ground that he could not have granted interest or could not have awarded it at a particular rate unless the court is convinced that the grant of interest was not at a 'reasonable rate'. From the record, it is clear that the arbitration proceedings started in 1995 and the award was passed in 1999. The arbitrator had granted uniform interest @ 12 per cent per annum all throughout. The award was made rule of the court and the Court of Civil Judge, (Senior Division), Bhubaneswar did not find illegality therein. The High Court, in our opinion, therefore, should not have interfered with the said order and reduced the rate of interest from the date of award till the date of realization of the amount.

The High Court, no doubt, referred to M/s Channa Bros. In our opinion, however, the facts in that case were totally different. In that case, the arbitrator passed an award in favour of both the parties and granted interest in favour of one party and refused to award interest to the other party. This court in the light of facts before it, decided the matter. As we have already noted, this Court, in *Bhagwati Oxygen Ltd.* has held that an arbitrator has power to award interest at reasonable rate. In our considered opinion, the direction of the arbitrator cannot be termed as arbitrary or unreasonable and when it was affirmed by the trial court, it ought not to have been interfered with by the High Court.

For the foregoing reasons, the appeals filed by the appellant-firm deserve to be allowed and are accordingly allowed. The order passed by the High Court reducing the rate of interest from September 19, 1995 till the award and till the amount is paid/deposited in the court from 12 per cent to 6 per cent per annum is set aside and the order passed by the arbitrator in the award granting interest at the rate of 12 per cent per annum all throughout, that is, for pre-reference period, pendente lite and post award period is upheld. In the facts and circumstances of the case, no costs.

