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IN THE HIGH COURT OF DELHI AT NEW DELHI

+Ex. P. No. 66/2001

Date of Decision: 21-11-2005

#M/s. Jagan Nath Ashok Kumar
I

.....Decree Holder
Through Mr. D. Moitra

Versus

\$Delhi Development Authority
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.....Judgment Debtor
Through Ms. Anusuya Salwan

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

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In view of the disputes between the parties, matter was referred to the Arbitrator who rendered his award dated 22nd March 1991 and claims in the sum of Rs.3,57,295/- were awarded. As far as interest is concerned for which claim no.10 was preferred by the decree-holder, learned Arbitrator awarded only future interest. Both the parties filed objections to this award. Objection of the decree-holder was against non grant of pre-suit and pendente lite interest. Objections of both the parties were

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rejected and the award was made rule of the court. Interest was also granted @ 15% per annum till the date of decree and thereafter till the date of payment. As per the decree drawn in the aforesaid manner, it is not in dispute that a sum of Rs.5,18,114/- became payable as on 9th December 1994 and entire decretal amount was paid.

However, decree-holder filed appeal against dismissal of his objections before the Division Bench wherein he had claimed, as aforesaid, pre-suit and pendente lite interest. The Division Bench set aside the order of the learned Single Judge and remitted the matter back to the learned Arbitrator for deciding this issue afresh. After fresh consideration, the learned Arbitrator rendered his award dated 25th September 1997 awarding pre-suit and pendente lite interest @ 15% per annum. In fact, the Arbitrator even computed the amount at the aforesaid rate and the for the aforesaid period and came to the conclusion that a sum of Rs.2,03,211/- was payable on this account. It is clear from para 11 of the award which reads as under:-

"Now, therefore, in consideration of the Claimants claims as remitted to me by the Hon'ble High Court of Delhi I hereby award that:-

- i. The Respondent to pay to the Claimants an amount of Rs.1,65,248/- (Rupees one lac sixty five thousand two hundred forty eight only) as presuit interest on the

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awarded sum of Rs.3,57,295/- for 37 months @ 15% per annum as discussed above and

- ii. The Respondents to pay the Claimants an amount of Rs.37,963/- (Rs. Thirty seven thousand nine hundred sixty three only) as pendentelite interest on a total awarded sum of Rs.3,57,295/- @ 15% per annum as discussed above.

The claim of the claimants against claim no.10 as remitted by the Hon'ble High Court is, therefore, justified for payment of Rs.2,03,211/- (Rupees two lacs three thousand two hundred eleven only) by the Respondents to the Claimants."

When this award was filed, both the parties again filed objections. Objections of the judgment-debtor/DDA were against the grant of the interest whereas the decree-holder contended that interest should have been granted from a prior date. Objections of the DDA were dismissed and that of decree-holder allowed and the award was modified by awarding interest with effect from 8th April 1985 till the date of the award and not from 3rd June 1987, as awarded by the Arbitrator and the modified award was made rule of the Court. With this modification the decree-holder became entitled to interest for the period from 8th April 1985 to 2nd June 1987 on the principal amount awarded earlier, namely, 3,57,295/-.

The judgment-debtor/DDA has calculated the interest for the period 8th April 1985 to 2nd June 1987 also. Thus, by calculating the interest @

15% per annum for the entire period, namely, 8th April 1985 to 22nd March 1991, figure of Rs.3,19,333/- is arrived at. Since part of the award given in favour of the decree-holder was set aside in appeal filed by the Division Bench, which order was upheld by the Supreme Court, the interest given on that amount earlier for the period 23rd March 1991 to 9th November 1994 was deducted and the net amount of Rs.2,58,352/- calculated in the following manner has been paid to the decree-holder:-

"c) Hon'ble High Court vide judgment dtd.09.08.2001 allowed Respondent (DDA) to make payment of Award minus Rs.54791/- (within 3 weeks Rs.37791/2) claim No.2 + interest @ 12% w.e.f. 23.03.91 to 09.11.94 (Rs.17000/-)	Payment of Rs.258352/- was made to the claimant as per details given below:
	Rs.319333/-
	<u>Rs. 54791/-</u>
	Rs.264542/-

Total = Rs.54791	Less
	Income Tax(-)
	S. Charge 17%
	(15+2%)
	<u>Rs. 899/-</u>
	<u>Rs.258352/-</u>

According to the judgment-debtor/DDA, by making the payment in this manner, entire decree stands satisfied.

Learned counsel for the decree-holder, on the other hand, contends that after the supplementary award was given and decree-holder was granted pre-suit and pendente lite interest and the said award was made

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rule of the Court, that also merged into the original award and there should be calculation of interest from the date of the award on the amount so awarded. For this proposition he relies upon this Court in DDA Vs. Saraswati Construction Co. & Anr., 114 (2004) DLT 385 (DB) wherein it is laid down that after the interest is awarded and it forms part of the decree, future interest has to be calculated on the entire decretal amount, i.e. after adding principal amount as well as interest component.

While there is no quarrel about this proposition of law, it would not be applicable in the peculiar facts of this case. Admittedly, when the award was made rule of the court, in the first instance on 7th July 1994, as per the said award, decree-holder was paid the entire decretal amount, i.e. sum of Rs.5,18,714/- on 9th December 1994 i.e. inclusive of future interest as well. Thereafter when the matter was remitted back to the Arbitrator to determine the question of pre-suit and pendente lite interest on the award given on this aspect and decree having been passed with modification in the award on 5th February 2001, the amount as per this decree is calculated and paid. In this manner decree(s) are satisfied. However, the decree-holder wants this award to be treated as part of the original award and on this interest component he wants future interest with effect from 22nd March 1991. This cannot be allowed inasmuch as when the matter

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was referred for fresh adjudication on the question of pre-suit and pendente lite interest, award was given for specified period and this Court, while making the said award rule of the court, modified the period and held that interest should be calculated from 8th April 1985. This would be clear from the last para of the order dated 5th February 2001, which reads thus:-

"In the result, Ex. 430/98 is partly granted to the extent that the claimant is entitled to interest at 15% from 8.4.1985 whereas E.A. 431/98 deserved to be dismissed. The award dated 25.9.1997 is modified to the above extent and the modified award is made a rule of the court.

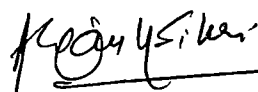
Decree be drawn up accordingly."

Thus, separate decree is drawn in view of the aforesaid award, as directed in para 14 quoted above. As per this decree, the decree-holder is entitled to interest @ 15% per annum with effect from 8th April 1985. There is no discussion of any future interest. It is stated at the cost of repetition that in so far as earlier award which was made rule of the court on 7th July 1994 is concerned, decree passed in terms thereof stood satisfied by making payment of entire decretal amount on 9th December 1994. Therefore, on this amount which represents pre-suit and pendente lite interest, the petitioner cannot claim further interest on this interest with effect from the date of the award. In the peculiar facts of this case, ratio of

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DDA Vs. Saraswati Construction Co. & Anr. (supra), as cited by the learned counsel for the decree-holder, will not apply. In this execution proceedings this Court has only to determine as to whether amount is paid as per the decree drawn. I am convinced that it is so done. The decree stands satisfied and, therefore, no further amount is payable to the decree-holder and decree as drawn stands satisfied and is disposed of accordingly.

November 21, 2005
hp


(A.K.SIKRI)
JUDGE