

M/S B.L. GUPTA CONSTRUCTION (P) LTD.

v.

BHARAT COOPERATIVE GROUP HOUSING SOCIETY LTD.

NOVEMBER 5, 2003

[V.N. KHARE, CJ., S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

Arbitration :

*Interest—Pre-reference interest—Work contract—Dispute between parties referred to arbitrator—Contractor claiming pre-reference interest as also future interest @24% per annum—Arbitrator allowing 18% pre-reference, **pendente lite** and post award interest—Division Bench of High Court holding contractor not entitled to interest prior to date of award and reducing interest to 10% from date of award till date of decree—Held, in view of the agreement between the parties, contractor entitled to pre-reference interest @12% per annum—As regards interest **pendente lite**, arbitrator having exercised his jurisdiction u/s 34 CPC, High Court could not have interfered with the discretionary order wherefor no reason was assigned—However, on facts, contractor would be paid pre-reference and **pendente lite** interest @ 10% per annum—Code of Civil Procedure, 1908—s. 34.*

Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj and Ors., [2001] 2 SCC 721, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2902-2903 of 2002.

From the Judgment and Order dated 1.8.2001 Corrected on 3.9.2001 of the Delhi High Court in F.A.O. (OS) No. 78 of 1996.

O.P. Khadaria, Deepak Khadaria for M/s. Mitter & Mitter Co. for the Appellant.

Ram K. Watel, Ms. Praveena Gautam for Pramod B. Agarwala for the Respondent.

The following Order of the Court was delivered by

A These appeals arise out of a judgment dated 1st August, 2001, passed by a Division Bench of the High Court of Delhi in FAO (OS) No. 78 of 1996, whereby and whereunder the pre-reference interest and *pendente lite* interest has been denied and the post award interest was reduced from 18% to 10% per annum.

B The appellant' tender has been accepted by the respondent and an agreement was executed between the parties for raising 308 dwelling units. The agreement provided for resolution of dispute by arbitration. It is not disputed that the appellant completed the work. However, certain disputes arose. As per the arbitration agreement, the matter was referred to the sole
C Arbitrator, who entered into the reference. Before the Arbitrator, the appellant herein claimed pre-interest reference as also future interest at the rate of 24% per annum. On 18th December, 1992, the Arbitrator gave an Award for a sum of Rs. 24,64,424 against the appellant's claim of Rs. 46,92,461. The Arbitrator allowed the claim of interest raised by the appellant herein and directed that interest @ 18% per annum should be paid on the awarded
D amount in respect of pre-reference, *pendants lite* and post Award. The appellant filed the said Award for being made Rule of the Court. Before the learned Single Judge of the Delhi High Court, the respondent filed an objection. However, the said objection was rejected and the learned Single Judge of the High Court by judgment dated 5th February, 1996 made the Award as Rule
E of the Court and granted the decree in terms of the Award. It also further directed that future interest by payable at 18% per annum till payment is made. The Division Bench, although upheld the other part of the Award, *inter alia*, directed that the appellant would not be entitled to interest prior to the date of the Award. As regards the interest granted from the date of the Award till the date of decree @ 18% per annum was considered to be excessive
F and the same was reduced to 10%. It was directed as follows:

"Consequently, decree shall stand modified to the extent that the claim of respondent to interest prior to 18th December, 1992 stands rejected. Respondents shall be entitled to future interest @10% per annum on the amount of award under claim no. 1 from 18th December,
G 1992 till the date of decree and from the date of decree till date of payment on the amount payable by the society to the respondent in terms of the award.

H It is against the said judgment of the High Court, the appellant is in appeal before us.

Learned counsel appearing for the appellant urged that the view taken by the High Court in deleting the pre-reference interest and *pendent lite* is contrary to the decision of this Court in the case of *Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj (Deceased) by Lrs. and Ors.*, reported in [2001] 2 SCC 721. In view of the decision of the Constitution Bench in *N.C. Budharaj's* case (*supra*), the said argument has to be accepted.

The contention of the learned counsel for the respondent, however, is that as the appellant has not made any demand for grant of interest, no interest was payable in terms of Interest Act, 1978. It was further urged that grant of *pendente lite* interest being discretionary in terms of Section 34 of the Code of Civil Procedure, 1908, the High Court cannot be said to have committed any error in refusing to exercise the discretion. The submission of the learned counsel appearing for the respondent cannot be accepted for more than one reason. Firstly, no such case was made out before the Arbitrator or before the High Court and secondly, the parties entered into an agreement in terms whereof it was agreed that as regards the delayed payment, the interest @ 1% per month will be paid on the bills that are paid after three months, which comes to 12% per annum. The appellant, therefore, was entitled to pre-reference interest @ 12% per annum. Furthermore, the Arbitrator exercised his jurisdiction under Section 34 of the Code of Civil Procedure by grant of *pendente lite* interest @ 18% per annum. The High Court could not have interfered with the said discretionary order; wherefor no reason was assigned. However, keeping in view the facts and circumstances of this case, we are of the opinion that the interest of justice shall be subserved if the respondent is directed to pay to the appellant the pre-reference and *pendente lite* interest @ 10% per annum in tune with the other part of the judgment of the High Court.

The appeals are allowed in-part to the extent mentioned hereinabove. There shall be no order as to costs.

R.P.

Appeals allowed.