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AR-10-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 2nd OF DECEMBER, 2024ARBITRATION REVISION No. 10 of 2019*M.P. AUDYUOGIK KENDRA VIKAS NIGAM LTD AND OTHERS**Versus**MR. ASHOK KUMAR JAIN*

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Appearance:

*Shri Siddhartha Kumar Jain - Advocate through Video Conferencing along
with Shri Navneet Shukla - Advocate for petitioners.*

None for the respondent.
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ORDER

Per. Justice Sanjeev Sachdeva

1. Petitioners impugn award dated 18.01.2019 to the limited extent that the Arbitratral Tribunal has awarded interest on the refund of security deposit and earnest money.

2. Notice in the reference was served on the respondent. However, none appeared for the respondent despite service. On 21.11.2023 this Court noticing that the respondent had been served and no one appeared for the respondent directed that the matter can proceed in the absence of the respondent. Thereafter, also none has appeared for the respondent on several dates when the matter was listed and none appears for respondent Shri Ashok Kumar Jain even today.



Consequently, the proceedings are taken *ex parte*.

3. Learned counsel for petitioners contends that Clause 3 of the General Conditions of Contract specifically stipulates that no interest would be payable on the earnest money and security deposit or amount payable to the contractor under the contract.

4. Petitioners entered into works contract with the respondent for construction of external electrification at village Pipalkhiria, District Raisen. Though, the stipulated period of contract was four months including rainy season however, the contract was completed by the respondent belatedly. Final bill was raised. Disputes arose between the parties which led to the reference been made to the Arbitral Tribunal. The Arbitral Tribunal by its award dated 18.01.2019 *inter alia* allowed the reference and directed the payment of interest @ 8% from 13.04.2016 to 13.10.2016 on the amount of security deposit and earnest money. 13.04.2016 is the date when the reference was filed by the respondent and 13.10.2016 is the date on which the security deposit and earnest money were refunded by the petitioners to the respondent. The tribunal in its award specifically framed a question as to whether the respondent (petitioner in the reference) was entitled to receive interest for the delayed payment of amount of security deposit and earnest money. The tribunal while referring to Clause 3 held that though it was manifestly clear that interest on security deposit and earnest money was not payable because of the prohibition contained in the contract. However, held that the interest was payable post filing of the reference petition till the payment of the amount. The tribunal has taken a view that the Clause did not prohibit payment of interest for the period from pendency of the reference petition till the actual payment.



5. Reference may be had to the judgment of the Supreme Court in *Sree Kamatchi Amman Constructions vs. Divisional Railway Manager ; (2010) 8 SCC 767* wherein the Supreme Court while interpreting an identical clause in the contract subject matter of that petition specifically held that Section 31(7) of the Arbitration and Conciliation Act, 1996 by using the words "unless otherwise agreed by the parties" categorically clarified that the arbitrator is bound by the terms of the contract in so far as award of interest from date of cause of action to date of award is concerned. The Supreme Court held that where the party has agreed that no interest shall be payable Arbitral Tribunal cannot award interest between the date when the cause of action arose to the date of award.

6. Said judgement of the Supreme Court in *Sree Kamatchi Amman Constructions (Supra)* has been further followed by the Supreme Court in *Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation ; (2022) 9 SCC 286* wherein the Supreme Court has specifically held that if Section 31(7) (a) of the Arbitration and Conciliation Act, 1996 is given a plain and literal meaning the legislative intent would be clear that discretion with regard to grant of interest would be available to the Arbitral Tribunal only when there is no agreement to the contrary between the parties. The Arbitral Tribunal does not have any discretion with regard to the aspects mentioned in the said provision and only in the absence of such an agreement, the Arbitral Tribunal would have a discretion to exercise its powers under Section 31(7)(a) of the Act.

7. In the instant case as noticed hereinabove, Clause 3 of the Contract specifically provides "no interest will be payable on the earnest money and security deposit or amount payable to the contractor under the contract, but



government securities will be payable with interest accrues thereon".

8. Since the contract between the parties specifically prohibits grant of interest on the earnest money and security deposit, the Arbitral Tribunal did not have the discretion to grant interest even post the filing of the reference till payment. The case of the petitioners is squarely covered by the judgments of the Supreme Court in *Sree Kamatchi Amman Constructions (Supra)* and *Delhi Airport Metro Express Private Limited (Supra)*. Consequently, the award to the said extent is not sustainable and is liable to be set aside.

9. We note that the award further grants costs of stamp duty of Rs.37,000/- to the respondent besides costs towards advocate fee. Since the award only pertains to grant of interest, which we have held contrary to the specific provisions of the contract and found not allowable, the direction for payment of stamp duty as well as costs is also liable to be set aside.

10. Consequently, the entire award is set aside and petition is allowed in the above terms.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE

m/-