

NATIONAL ALUMINIUM CO. LTD. & ANR. A

V.

G.C. KANUNGO

Civil Appeal No. 62 of 2003

APRIL 29, 2009

(DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.) B

Arbitration Act, 1940 – s.39 – Works contract – Dispute in respect of dues – Arbitrator, appointed at the request of respondent–contractor, passing award – Civil Judge making the award, rule of the Court – Order challenged in appeal, on ground that the claim made by respondent–contractor was barred by limitation – High Court dismissed appeal – Held: On facts, there was no finality in the matter and the matter was alive for consideration – Since claim was made by respondent–contractor within period of three years, stand of appellant, that the claim was barred by limitation, not tenable – However, considering the peculiar facts of the case, interest directed to be granted @ 12% p.a. in place of 15% p.a. as awarded by the arbitrator – Limitation Act, 1963 –s.137. C D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 62 of 2003

From the Judgement and Order dated 28.02.2002 of the Hon'ble High Court of Judicature at Orissa at Cuttack in Miscellaneous Appeal No. 630 of 2001. F

A. Sharna, ASG, Farrukh Prasad, Ashok Kumar Gupta, for the Appellant.

R.K. Rath, Jana Kalyan Das, Milan Kanun, Avijeet Bhujabal, for the Respondent. G

The Judgement of the Court was delivered by

A **DR. ARIJIT PASAYAT, J.**

Heard.

B Challenge in this appeal is to the order of a learned Single Judge of the Orissa High Court dismissing the miscellaneous appeal filed by the present appellant. In the miscellaneous appeal which was filed under Section 39 of Arbitration Act, 1940 (in short the 'Act') challenge was to the order passed by learned Civil Judge, Senior Division, Angul making the award rule of the Court.

C The primary stand before the High Court was that the claim made by the respondent-contractor was barred in terms of Section 137 of the Limitation Act, 1963, (in short 'Limitation Act') The High Court did not accept the stand of the appellant.

D In the present appeal, Mr. A. Sharan, learned ASG appearing for the appellant submitted that the claim was barred and for substantiating this stand reference was made to certain dates which are almost undisputed. The work order in this case was issued on 18.12.1985 and the work was completed on 15.6.1987. On 20.05.1995, the respondent made a request for appointment of an Arbitrator and on 29.6.1995 an Arbitrator was appointed. It is the case of the appellant that sometime in 1989, final bill was paid and there was nothing remaining to be paid and therefore the further correspondence, if any, are of no consequence. In any event, the office notings on which reliance has been placed by the Arbitrator as well as the courts below did not confer any legal right on the respondent. It was also submitted that the award for the additional work done was against the terms of the contract. It was, however, fairly accepted that the later point was never argued before the High Court. It was also submitted that the rate at which interest has been awarded is high.

H In response, Mr. R.K. Rath, learned senior counsel appearing for the respondent submitted that there are several documents on which the courts below have placed reliance. This

unmistakably show that the matter was alive and more particularly the letter of the appellant dated 26.8.1992 to the respondent puts the controversy beyond doubt. A

“Dear Sir,

The case file for consideration of your different claims for the above said work is processed. B

The decision is awaited.

After the decision is known, the same shall be communicated to you.” C

In other words, there was no finality in the matter and the matter was alive for consideration. If this date i.e. 26.5.1992 is taken into account, the claim made was within the period of three years. That being so, the claim as made was within the period of limitation and the stand of the appellant that the claim was barred by limitation is not tenable. D

Another point which has been urged with some vehemence is that the rate at which interest has been granted is 15%. It is stated that rate is quite high. In response, learned counsel for the respondent stated that presently the applicable rate is 18% and there is nothing infirm in the award of interest @ 15%. E

Considering the peculiar facts of the case we direct that the interest payable will be 12% p.a. in place of 15% as awarded. The appeal is allowed to the aforesaid extent. F

The documents submitted by way of furnishing security as filed in this court shall be handed over to learned counsel for the respondent.

B.B.B.

Appeal allowed.