

V?

SLP(C)No. 14657 OF 2000

L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
.PL55

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6895 OF 2001@@

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(Arising out of Special leave petition(C) No. 14657/2000)

Haryana State Electricity Board ...Appellant

Versus

M/s Universal Fasteners Pvt. Ltd. & Anr....Respondents

O R D E R

.....L.....I.....J
.SP2

Leave granted.

An award made on 19.6.1990 at Faridabad reads as follows:

.....L.....J
.SP1

"The case as referred to the undersigned by the CE/Arb. Vide his memo No.CE/ARB/125/1689 dated 11.5.1988 for adjudication of dispute between the parties related to the charges levied on the claimant-company by the respondent-HSEB on account of defaulting amount of another connection bearing account no.2SP-441, which existed in the same premises.

After going through the proceedings took place, documents/record produced and evidence/arguments adduced by the parties, I have come to the conclusion that the claimant-company is liable to pay the case of the above defaulting/disconnected connection and respondent is rightly entitled to recover the outstanding dues from the claimant company.

.SP2
.....L.....I.....J

When this award was sought to be made rule of the Court, inter alia, an objection was raised that the said award has been passed after expiry of the time within which

it ought to have been made. The appellant took the stand that the parties themselves had not only throughout agreed for the extension of the time but acquiesced in the proceedings and, therefore, it is not open to the respondents to contend now that the award is passed belatedly. The trial Court took the view that inasmuch as the parties had agreed for extension for time to make the

award and also participated in the proceedings of arbitration time must be deemed to have been extended and it was no longer open to them to contend to the contrary now. On that basis the trial Court made the award decree of the Court.

When the matter was carried in appeal, the Appellate Court accepted the contention put forth on behalf of the respondents and allowed the appeal setting aside the order made by the learned Trial Judge. Thereafter, that order was carried in revision to the High Court. The High Court affirmed the order made by the First Appellate Court and interfered with the award on two grounds: firstly that the award had been made on 19.6.1990 and in doing so the arbitrator had misconducted himself inasmuch as he passed the award beyond the time allowed in the law and secondly examined the matter on merits and decided the matter.

-3-

So far as the first question is concerned, Section 28 of the Arbitration Act regulates the enlargement of time which provides that the Court if it thinks fit whether the time for making the award has expired or not and whether the award has been made or not enlarge from time to time, the time for making the award.

Bearing this aspect in mind and looking to the conduct of the parties and the circumstances arising in the same, the Court could certainly exercise this power and extend the time in making the award. That power ought to have been exercised by the trial Court. However the First Appellate court and the High Court without due application of mind to this aspect of the matter decided this question.

Further we may notice that the award made by the arbitrator is a non-speaking award. In such matter the power of the Court to interfere with the award made by the Arbitrator is very much limited. In this case the Appellate Court and the High Court have virtually dealt with the matter as if in appeal over the award made by the arbitrator and such course is not open at all. At this stage, learned counsel for the respondents points out that in view of the communication sent on 9.2.1998 nothing is due from him.

Whether it is so or not, cannot be examined now and it would be appropriate to raise this point in appropriate proceedings.

Hence, the order made by the High Court affirming the order made by the Appellate Court is set aside and the order made by the Trial Court is restored. The appeal is allowed accordingly.

.SP1

.....J
[S. RAJENDRA BABU]

.....J
[DORAISWAMY RAJU]

New Delhi,
September 28, 2001

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.14657/2000

(From the judgement and order dated 02/11/1999 in CR 2683/98
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

HARYANA STATE ELECTRICITY BOARD

Petitioner (s)

VERSUS

M/S.UNIVERSAL FASTENERS PVT. LTD. & ANR.

Respondent (s)

(With prayer for interim relief)

Date : 28/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. Neeraj Kumar Jain, Adv.
Mr. Aditya Kumar Chaudhary, Adv.
Mr. Bharat Singh, Adv.
Mr. Ugra Shankar Pd., Adv.

For Respondent (s) Mr. Manoj Swarup, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....J
.SP2

Leave granted.
The appeal is allowed in terms of the signed order.

.SP1

(Meenu Sethi)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file