

Roads Act. The provisions of section 203 of the Act being consistent with the provisions of the Scheduled Roads Act, therefore, will remain operative.

(6) We do not find any infirmity in the conclusion arrived at by the learned Single Judge. We dismiss the appeals leaving the parties to bear their own costs.

R.N.R.

Before : N. C. Jain, J.

HARYANA STATE AGRICULTURAL MARKETING

BOARD,—*Petitioner.*

versus

TARA CHAND,—*Respondents.*

Civil Revision No. 2777 of 1987

September 21, 1988.

Arbitration Act (X of 1940)—Section 29—Arbitrator awarding interest till payment made—Award made rule of the Court—Court not awarding interest beyond the date of decree—Effect of award—Whether interest payable beyond decree.

Held, that the wording of Section 29 of the Arbitration Act, 1940 when interpreted leads one to the conclusion that the arbitrator is not empowered to award interest beyond the date of the decree. This power vests only in the Court. To put any other interpretation of Section 29 would amount to making additions in the language of the statute and would be rather doing violence to the very wording of Section 29 of the Act. Beyond the date of the decree if the interest has to be awarded it can be done only by the court in the decree. (Paras 5 and 9).

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri J. S. Khushdil P.C.S. Sub Judge First Class, Chandigarh dated 25th July, 1987 dismissing the petition, as the matter has since been decided by Smt. Raj Rahul Garg, Hence, the case cannot be re-opened. The whole award has been made as Rule of the Court. Hence, the objection of the objector is not sustainable that no interest has been awarded by the Court.

S. C. Kapoor, Advocate, for the Petitioner.

Munishwar Puri, Advocate with Ashwani Kumar Bansal and Suresh Goyal, Advocate, for the Respondents.

Haryana State Agricultural Marketing Board v. Tara Chand
(N. C. Jain, J.)

ORDER

Naresh Chander Jain, J.

(1) In this revision petition filed by the Haryana State Agricultural Marketing Board an important and interesting question of law has arisen for the decision of this Court, namely, whether the arbitrator can, in law, award interest till final payment, or is it that the arbitrator can only award interest upto the date of the decree to be passed by the Court within the meaning of Section 29 of the Arbitration Act (hereinafter referred to as the 'Act')?

(2) The facts giving rise to the present revision petition lie in a very narrow compass. The arbitrator Shri V. P. Duggal gave his award on March 24, 1986, in favour of the respondent-decree holder for a sum of Rs. 4,88,436 plus 18 per cent interest till realisation, which was made rule of the Court by Shrimati Raj Rahul Garg, Sub Judge 1st Class,—*vide* her judgment dated October 20, 1986, by making the following observations in the concluding paragraph of the judgment:—

“As a result of the discussion foregoing since the objections are not sustainable, therefore, I have no hesitation in making the award dated March 24, 1986, a rule of the Court and the same is ordered accordingly. Decree sheet be prepared accordingly and file be consigned to the record room.”

(3) When the execution was taken out by the respondent-decree holder, an objection was filed by the petitioner-judgment debtor that the arbitrator had no power to award interest at the rate of 18 per cent till final realisation in view of Section 29 of the Act. However, the objection did not find favour with the executing Court on the ground that the matter cannot be reopened as the whole award was made rule of the Court.

(4) The learned counsel for the petitioner has vehemently argued that the arbitrator cannot award the interest beyond the date of the decree till payment in view of Section 29 of the Act and it is only the Court which can, in the decree, order interest from the date of the decree at such rate as the Court deems reasonable to be paid on the principal sum as adjudged by the award and

confirmed by the decree. The learned counsel has, thus, argued that since the Court, while confirming the award, did not order in the decree the payment of interest from the date of the decree till realisation, the arbitrator's award is a nullity and without jurisdiction. In support of the proposition of law, the counsel has cited *Lal Chand Roy v. Nerode Kanta Goswamy*, (1) in which it has been held that the arbitrator has no power to make an award granting the interest after the decree and if the arbitrator exercises any such power, it would be in violation of the jurisdiction conferred upon the Court under Section 29 of the Act. It has further been laid down that where the arbitrator has made any award in respect of interest after the decree, it should not be confirmed.

(5) On the basis of the law laid down in *Lal Chand Roy's case* (supra) and while interpreting the provisions of Section 29 of the Arbitration Act the conclusion is irresistible that the Arbitrator can award interest upto the date of the decree only and not beyond the date of the decree (emphasis supplied). Beyond the date of the decree, if the interest has to be awarded it can be done only by the court in the decree.

(6) The learned counsel for the respondent decree-holder in support of the impugned order has relied on three rulings of the Delhi High Court reported as *Miss Mohinder Kaur Kochhar v. Punjab National Bank Limited, New Delhi and others*, (2) *Puri Constructions (P) Ltd. v. Union of India and another* (3), and *M/s Khushi Ram Jain & Co. v. New Delhi Municipal Committee & another*, (4).

(7) After going through the facts and the law laid down in the afore-mentioned judicial pronouncements, I am of the view that none of the authorities is helpful to the respondent.

(8) In *Miss Mohinder Kaur Kochhar's case* (supra) the Delhi High Court rather in its ultimate conclusion in paragraph 14 observed that it is correct that the arbitrator has authority only to grant interest from the date of the award to the date of the decree and, therefore, the direction in the award to pay interest till the date

(1) AIR 1966 Cal. 478.

(2) AIR 1981 Delhi 106.

(3) 1987 (one) Vol (6) A.L.R. 264.

(4) 1987 (two) Vol. (7) A.L.R. 137

State of Haryana and others v. Kartar Singh and others.
(G. R. Majithia, J.)

of realisation is technically beyond his power. After making the afore-mentioned observations their Lordships by way of practical measure did not think it necessary to sever the award as the learned Single Judge had made the award the rule of the Court. The practical measure was the basic and primary factor which weighed with the court. Moreover, the Division Bench was hearing the appeal against the order of the learned Single Judge making the award the rule of the court. In any case, the view of their Lordships in *Lal Chand Roy's case* (supra) is quite clear. The other case reported as *Puri Construction (P) Ltd.* is also not helpful because the precise question which has arisen before me was not the question raised before the Bench of the Delhi High Court. On the other hand, while dealing with the various objections to the award, his Lordship at the end of the judgment specifically held that the claimant was entitled to the grant of future interest at the rate of 18 per cent per annum from the date of the decree till realisation. Not only that, it was further observed that if the amount was not paid within one month from the date of the judgment, the decree was to be drawn after the expiry of one month. In this manner, the learned Single Judge of Delhi High Court made the award the rule of the Court. In other words, the Hon'ble Single Judge of the Delhi High Court was hearing the objections to the award and at the time of deciding the objections and at the time of making the award the rule of the court, the above mentioned finding was recorded. This is the precise point which has been argued by the learned counsel whose submission is quite clear that the court while passing the decree awarded interest beyond the decree till the realisation. This is what has not been done by the court while making the award the rule of the Court. Had the Court while confirming the award in the present case made the observations of the type which were made by his Lordship in *Puri Construction (P) Ltd. case* (supra) the decision would have been altogether different and the ratio of law laid down by the Single Judge of the Delhi High Court would have been fully applicable to the facts of the instant case. The view taken in the last ruling, that is *M/s Khushi Ram Jain & Co's case* (supra) rather goes against the view propounded by Mr. Puri, learned counsel for the respondent. The following observations made by his Lordship go against the respondent decree-holder :—

“There remain only the ground of the award of interest which according to the learned counsel for the claimants,

the learned arbitrator has given on the higher side. As per claim 12 relating to interest the claimant contended that the pendente lite and future interest is within the exclusive domain of the learned arbitrator. He asked for the grant of interest at the rate of 19½ per cent for withholding/delay in the payments by the respondents. The learned arbitrator on consideration of the material on record did not allow interest for the period prior to the date of the award. He also declined to allow interest for the first month from the date of the award and thereafter interest @ 15 per cent till the payment is made was allowed. On the face of it there does not appear to be any mistake in the conclusion arrived at by the learned arbitrator. *However, in my view the learned arbitrator could have awarded the interest from the date of the award till payment or the decree passed thereon, whichever is earlier. The future interest could only be awarded by the court passing the decree. On this aspect also it cannot be said that the learned arbitrator acted without jurisdiction.*"

The pertinent observations out of the above mentioned observations are "however, in my view the learned arbitrator could have awarded interest from the date of the award till payment or the decree passed thereon, whichever is earlier. The future interest could only be awarded by the court passing the decree," are dead against the proposition of law propounded by Mr. Puri, learned counsel for the respondent decree-holder.

(9) In view of the above mentioned observations. I am of the firm view that the ratio laid down in *Lal Chand Roy's case* (supra) is fully applicable to the facts of the instant case. "The wording of the Section 29 of the Arbitration Act when interpreted in the light of the observations made in *Lal Chand Roy's case* (supra) leads one to the conclusion that the arbitrator is not empowered to award interest beyond the date of the decree. This power vests only in the court. To put any other interpretation of Section 29 would amount to making additions in the language of the statute and would be rather doing violence to the very wording of Section 29 of the Act." I am of the considered view that the Delhi High Court in *Miss Mohinder Kaur Kochhar's case* (supra) does not go against the ratio laid down in *Lal Chand Roy's case* (supra). In any case, the facts before the Delhi High Court in *Miss Mohinder Kaur's*

Om parkash Gupta v. State of Haryana and another
(Amarjeet Chaudhary, J.)

case (supra) were altogether different and it is for this very precise reason that the decision in *Miss Mohinder Kaur's case* (supra) did not form the basis of the latter two decisions in *Puri Construction Pvt. Ltd's case* (supra) and *M/s Khushi Ram Jain & Co.'s case* (supra). On the other hand, as has been observed above, the observations made in the aforementioned two cases are against the proposition of law unequivocally enunciated by the High Court of Calcutta in *Lal Chand Roy's case* (supra).

(10) For the reasons recorded above, this revision petition is allowed and the impugned order is set aside. However, in view of the fact that intricate questions of law arose for decision before this Court, the parties are left to bear their own costs.

S.C.K.

Before J. V. Gupta and Amarjeet Chaudhary, JJ.

OM PARKASH GUPTA.—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER.—*Respondents.*

Civil Writ Petition No. 3854 of 1986

September 27, 1988.

Constitution of India, 1950—Art. 226—Class II Officers—Adverse report during probation period—Confirmation granted—Allowed to cross efficiency bar—Promoted to Class I—Adverse reports conveyed to him—Representation made against those reports—No decision taken thereon—Employee retired pre-maturely—Recent conduct more relevant—Public interest—Whether the government servant can be retired prematurely only in public interest.

Held, that the order of compulsory retirement is to be passed with abundant caution as the employee who is to be adversely affected by such order becomes ineligible for any Government service at that stage and he is unable to start his life afresh. Generally, his family remains unsettled at that juncture. The record is to be screened with great caution. Even a minor lapse can adversely affect the service career of an employee. The record is to be screened objectively. In case of an employee who has successfully completed probationary period, allowed usual increments and allowed to cross