

A

STATE OF RAJASTHAN AND ANR.

v.

M/S. NAV BHARAT CONSTRUCTION CO.

NOVEMBER 27, 2001

B

[M.B. SHAH AND B.N. AGRAWAL, JJ.]

*Arbitration :*

C

*Arbitration Award—Interest on delayed payment—Claim for—Award passed by arbitrator—Confirmed by High Court—On appeal, held, Arbitrator passed a reasoned award—Non-consideration of counter claim and grant of interest of delayed payment by Arbitrator justified—Order 2 Rule 2 not applicable to the second reference to the Arbitrator—Code of Civil Procedure, 1908 Order 2 Rule 2.*

D

**Respondent-contractor claimed interest on delayed payment from the appellants. Arbitrator passed an award and granted interest @ 18% on the principal amount claimed. District Court awarded interest at the rate of 15% from the date of decree. High Court confirmed the award made by the Arbitrator.**

E

**In this appeal, it was contended that the Award made by the Arbitrator was illegal because Arbitrator failed to consider counter-claim; and that the second reference to Arbitrator was not maintainable under Order 2 Rule 2 of CPC and that the Arbitrator awarded interest despite the contrary condition in the agreement.**

F

**Disposing of the appeal, the Court**

G

**HELD 1. As no set off or any counter claim was filed by the appellant for the alleged amount due and payable by the contractor on the alleged ground that Accountant General's Officer has raised objection for payment of labour charges at accelerated rate, Arbitrator has rightly not considered the same which was sought to be raised after lapse of 4 years of reference. [352-G; H; 353-A]**

H

**2. With regard to subsequent claims arising after the first reference, that is after the bill was prepared, second reference to the Arbitrator was**

not maintainable under Order 2 Rule 2 CPC as rightly held by the Arbitration and the courts below. [353-B; C]

3. The appellant did not raise the contention before the arbitrator or at any stage thereafter that under Clause 23 of the Agreement between the parties, contractor was not entitled to recover any interest on delayed payment. Thus, it cannot be held that arbitrator has committed any error apparent on the face of the record or has misconducted himself in passing the impugned award. Further as the contention was not raised before the arbitrator or at any stage thereafter, it is not necessary to deal with or decide the same in the present appeal. [353-C; F]

*State of U.P. v. Harish Chandra and Co.*, [1999] 1 SCC 63, referred to.

4. The Award is modified qua the rate of interest considering the dispute involved and overall circumstances of the case. Respondent-claimant is entitled to recover the said amount with interest at the rate of 6% only. [353-G; H; 354-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 8115 of 2001.

From the Judgment and Order dated 4.12.2000 of the Rajasthan High Court in S.B.C.M.A. No. 659 of 1999.

WITH

Special Leave Petition (C) No. 6172 of 2001.

Javed Mahmud Rao and V. Krishna Murthy for the appearing parties.

In-person for the Petitioner in S.L.P. (C) No. 6172 of 2001.

The Judgment of the Court was delivered by

**SHAH, J.** C.A. No. 8115 of 2001 @ S.L.P. (C) No. 7192 of 2001.

Leave granted.

Learned Senior Counsel Mr. Ashwani Kumar appearing for the appellant contended that the judgment and decree passed by the High Court confirming

A the award made by the arbitrator is on the face of it illegal because :

- (a) Arbitrator has failed to consider counter-claim.
- (b) second reference to arbitrator was not maintainable under Order 2 Rule 2 CPC, and
- B (c) the arbitrator has awarded interest despite the contrary condition in the agreement.

C As against this, Mr. G.L. Sanghi learned senior counsel for the respondent as well as the respondent who is appearing in person submitted that in the written statement, counter-claim or set off was neither pleaded nor proved by the appellant before the arbitrator. He also contended that in case of claims raised by the respondent after preparation of final bill, there is no question of application of Order 2 Rule 2 CPC as rightly held by the arbitrator and the Courts below. For the contention based on clause 23 of the Agreement, it is submitted that the appellant never contended before the arbitrator that clause D 23 provides for non-payment of interest in such cases. It is pointed out that neither before the arbitrator nor before the courts below, it was contended that arbitrator had no authority to grant interest in view of clause 23. Only contention which was raised with regard to grant of interest *pendente lite* for which E reliance was placed on various decisions of this Court.

We would state that the respondent who is appearing in person has in the alternative referred to the decision rendered by this Court in *State of U.P. v. Harish Chandra & Co.*, [1999] 1 SCC 63 and submitted that similar clause is interpreted by this Court and it is held that there is no such prohibition on F granting interest. He further pointed out that if such plea was raised, he would have produced the necessary documentary evidence or the letters written by the concerned officers and proved that interest was payable for wrongfully withholding the amount due and payable.

G In our view, it has been rightly pointed out that in the written statement, appellants have not claimed any set off or title counter claim for the alleged amount due and payable by the contractor on the alleged ground that Accountant General's Office has raised objection for payment of labour charges at accelerated rate. In our view as no such set off or claim nor any counter claim H was filed by the appellant, arbitrator has rightly not considered the same which

was sought to be raised after lapse of 4 years of reference. Further the High Court has noted that the learned Additional Advocate General was unable to point out any legal basis to support the contention that arbitrator was required to go into the counter-claim in the circumstances of the present case.

There is also no substance in the contention raised by Mr. Ashwani Kumar, learned senior counsel for the appellant that the second reference was barred by Order 2 Rule 2 CPC. As such the contention was not raised before the High Court. In any case, the dispute with regard to the subsequent claims arose after the first reference, that is, after the final bill was prepared and this aspect is rightly dealt with by the Additional District Judge.

Lastly, in the present case, the award passed by the arbitrator is reasoned one. The contention raised by the learned counsel for the appellant that under Clause 23 of the Agreement between the parties, contractor was not entitled to recover any interest on delayed payment was neither raised before the arbitrator, the District Court or before the High Court. This question depends upon the evidence which may be led by the parties as well as interpretation of clause 23 by the parties and the arbitrator. The parties have understood that there is no bar on granting interest on delayed payments. It appears that no such contention was raised on behalf of the State of Rajasthan. In this view of the matter, it cannot be held that arbitrator has committed any error apparent on the face of the record or has misconducted himself in passing the impugned award. It is settled law that scope for setting aside the award is limited to the grounds available under the Arbitration Act which have been well defined by long line of decided cases. In this view of the manner, it is not necessary for us to consider the contention of the contractor that similar clause is interpreted by this Court in *Harsish Chandra and Company's* case (supra) and it is held that there is no bar on granting interest. In our view as the contention was not raised before the arbitrator or at any stage thereafter, it is not necessary for us to deal with or decide the same in this appeal.

However, considering the dispute involved and overall circumstances of the case, we modify the award qua the rate of interest and reduce the same at the rate of 6% per annum. The arbitrator in paragraph 21.8.1. of the award has granted interest on the principal amount of claims no 1 to 8 from 1.7.1990 to 30.4.1998 and 10 to 18 from 29.4.1991 to 30.4.1998 at the rate of 18% and the District Court has awarded interest at the rate of 15% from the date of

A decree. That part of the award and decree is modified and it is held that respondent-claimant is entitled to recover the said amount with interest at the rate of 6% only. The appeal is disposed of accordingly. Parties to bear their own cost of litigation all throughout.

B *S.L.P. (C) No. 6172 of 2001*

In view of the aforesaid order, the S.L.P. filed by the contractor for enhancement of interest rate from 15% to 18% would not survive and is dismissed.

N.J.

Appeal disposed of.