

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE DAY OF 01ST JUNE, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO.391 OF 2024

BETWEEN:

M/S AUTOMOTIVE AXLES
EMPLOYEES HOUSING
CO-OPERATIVE SOCIETY LTD.
A REGISTERED CO-OPERATIVE SOCIETY
HAVING ITS OFFICE AT
HOOTAGALLI INDUSTRIAL AREA
OFF HUNSUR MAIN ROAD
MYSURU, KARNATAKA - 570 018
REPRESENTED BY ITS PRESIDENT
ITS SECRETARY
SRI MURLIDHARA BHATTA V. &
SRI VARADARAJ PADIYAR B.

...APPELLANT

(BY SRI VENKATESH R BHAGAT, ADVOCATE)

AND:

SRI K.S. SRIDHAR
AGED ABOUT 57 YEARS
S/O SRI K.N. SRINIVASACHAR
RESIDING AT NO.40/A, 8TH CROSS
1ST STAGE, BRINDAVAN EXTENSION
MYSURU, KARNATAKA - 570 020

...RESPONDENT

(BY SRI ABHINAV R., ADVOCATE FOR C/RESPONDENT)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO SET ASIDE IMPUGNED JUDGMENT DATED 27.07.2024 PASSED IN COM.A.P.NO.04/2022 BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE, AT MYSURU VIDE ANNEXURE-A

AND CONSEQUENTLY TO SET ASIDE THE AWARD DATED 23.05.2022 PASSED IN A.C. NO.01 OF 2022 BY THE LEARNED SOLE ARBITRATOR VIDE ANNEXURE-B & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed under Section 13(1-A) of the Commercial Courts Act, 2015 [**CC Act**] r/w Section 37 of the Arbitration & Conciliation Act, 1996 [**A&C Act**] calling in question the judgment dated 27.07.2024 [**impugned judgment**] passed in Commercial A.P. No.4/2022 by the Principal District and Sessions Judge at Mysuru [**Commercial Court**] as well as the arbitral award dated 23.05.2022 [**impugned award**] passed by the arbitral Tribunal/sole arbitrator in A.C. No.1/2022.

2. The relevant facts are that the appellant/Society had acquired land situated in Hootagalli Industrial Area, Mysuru for formation of a residential layout and entrusted the work of developing the residential layout to one Sri Shankar. Since the said Shankar did not complete the work assigned to him, the appellant-Society had

offered, by a letter dated 13.06.2013, to the respondent, few items of unfinished works in the layout, which offer was accepted by the respondent.

3. Accordingly, the parties entered into an Agreement dated 22.08.2013, wherein it was agreed that the items of work as stipulated in the Agreement would be completed by the respondent for a total sum of ₹3,55,16,580/-, which amount has to be paid at various stage.

4. Subsequently, the appellant offered certain other items of work to the respondent and it was agreed between the parties that towards the said extra items of work, the appellant was to pay the respondent a sum of ₹52,19,861/-. Further, certain other extra works were also entrusted by the appellant to the respondent and the respondent had agreed to pay a sum of ₹84,80,052/-. In total, the appellant had agreed to pay the respondent a total sum of ₹4,71,17,786/- for the completion of works as agreed.

5. The respondent had carried out the works as required. However contending that various amounts were due and payable by the appellant to the respondent, the respondent got issued a legal notice dated 13.02.2018 calling upon the appellant to pay

various amounts including ₹32,96,143/- towards the balance amount due for the work done; interest towards FD amount of ₹10 lakhs that was made by the appellant; ₹5 lakhs towards damages towards watch and ward and other staff for the period from April 2015; a sum of ₹32,000/- towards the cost of stone and boulders which had been left behind in the property of the appellant; as well as interest @ 18%. The appellant vide reply notice dated 26.02.2018 contended that it had paid the respondent a total sum of ₹4,79,05,444/-, while the respondent had given a bill of ₹4,47,92,175/-. It was contended by the appellant that it had paid an excess amount of ₹38,39,269/- to the respondent. It is the further case of the appellant that despite the excess amount having been paid, the respondent had failed to complete the agreed work and had also not come forward to return the excess amount paid.

6. The respondent initiated arbitration proceedings (A.C. No.1/2022) claiming a sum of ₹79,58,444/- together with interest @ 18% on ₹33,74,143/-. The appellant entered appearance before the arbitral tribunal. However, it did not participate in the arbitral proceedings. The Tribunal by the impugned award, allowed the claim petition and ordered that the respondent/claimant is entitled to a sum of ₹79,58,444/- together with costs and interest at 10%

on ₹33,74,143/-. Being aggrieved, the appellant preferred a petition under Section 34 of the A&C Act before the Commercial Court. The Commercial Court by the impugned judgment, dismissed the said petition. Being aggrieved, the present appeal is filed.

7. The respondent/claimant in the claim petition, made the following claims:

- "1. Balance of bill amount Rs.33,74,143/-
2. Cost of Size stone and boulders Rs.32,000/-
3. Expenditure for watch and ward staff Rs.5,00,000/-
4. Security deposit repayment. (face value of FDR receipt) Rs.10,00,00/-
5. Interest on balance amount at 18% for Rs.33,74,143/- from 1.04.2016 to 1.10.2020 Rs. 27,33,056/-
6. Interest amount on locked FDR amount Rs.3,19,245/-"

8. The prayer made in the claim petition is as under:

"Wherefore, petitioner prays that this Hon'ble Authority be pleased to pass suitable orders directing the respondent to pay to the petitioner a sum of Rs.79,58,444/- (inclusive of security deposit amount of Rs. Ten lakhs) together with court cost, current and future interest at 18% per annum on the sum of Rs.33,74,143/- along with GST and also grant such other reliefs deemed just and necessary under the circumstance of the case in the interest of justice."

9. The appellant who was arrayed as respondent in the claim proceedings, although entered appearance before the arbitral

tribunal did not file any statement of objections or contest the claim proceedings. The primary contention of the appellant in the present appeal as well as before the Commercial Court is that the appellant did not have an adequate opportunity to contest the proceedings before the arbitral tribunal. In this regard, it is relevant to notice the findings recorded by the Commercial Court which is as under:

"8. Point No.2:

Present petition is filed challenging the award passed by the learned Arbitrator. It is an admitted fact that, the petitioner had entrusted the unfinished work of the layout to be developed to the respondent and alleging unpaid dues, the respondent had Initiated Arbitration Proceedings and before that, he had given notice to the petitioner, which has been replied. In the Arbitration Proceedings which is initiated as per the order of the Hon'ble High Court in the CMP Petition, the present petitioner who was the respondent has appeared through counsel. When the case was posted for objection to the main petition, petitioner has not appeared. Order-sheet maintained by the learned Arbitrator shows that, on 28.02.2022, the respondent has appeared through counsel before the learned Arbitral Tribunal and the case was posted for filing objections and for payment of arbitration fees to 11.04.2022. On 11.04.2022, the claimant has prayed time to deposit arbitration fees and then the matter was posted to 20.04.2022 and again it was adjourned to 30.04.2022. On 11.04.2022 and on 20.04.2022, there was no representation for the respondent, counsel was also absent. On 30.04.2022 also, the respondent has remained absent. It is noted in the Order-sheet that, the respondent i.e. present petitioner was informed about the date of hearing. Then, learned Arbitrator has noted the respondent as placed *exparte* and posted the matter for evidence to 07.05.2022. On

that day, present respondent who was the claimant before the learned Arbitrator, has paid the arbitration fees and then on 10.05.2022, evidence was recorded and on 12.05.2022, argument was heard from the claimant's side and as the respondent i.e. the present petitioner had remained absent, the case was posted for passing Award and on 23.05.2022, Award was passed by the learned Arbitral Tribunal, which is challenged in the present petition."

10. It is clear and forthcoming that the appellant had entered appearance before the arbitral tribunal through its counsel on 28.02.2022 and the matter was adjourned to 11.04.2022 for filing of objections and for payment of its arbitration fees. Thereafter, the matter was adjourned to 20.04.2022 and 30.04.2022. The appellant did not appear before the arbitral Tribunal. Thereafter, the appellant was placed ex-parte and the matter was adjourned to 07.05.2022. Subsequently, evidence was recorded on 12.05.2022 and the award was passed on 23.05.2022.

11. It is clear from the aforementioned that despite the appellant having appeared before the arbitral tribunal, it had failed to contest the proceedings despite adequate opportunity having been given.

12. With regard to the claims made by the appellant, the arbitral tribunal framed the following points for consideration:

"1. Whether the claimant is entitled for Rs.33,74,143/-?"

2. Whether the claimant is entitled for Rs.32,000/- towards the size stones?

3. Whether the claimant is entitled for Rs.5,00,000/- towards watch and ward staff?

4. Whether the claimant is entitled for refund of security deposit of Rs. 10,00,000/-?

5. Whether the claimant is entitled for interest at 18% on Rs.33,74,143/- from 1-4-2016 to 1-10-2020?

6. Whether the claimant is entitled for interest on non return of FDR amount by the respondent?"

13. Point No.1 was with regard to the claim made by the respondent/claimant regarding the balance amounts due and payable to him by the appellant. In this regard, the Tribunal noticed that the appellant had sent an e-mail dated 29.09.2016 to the respondent, whereunder it had indicated that the cumulative value of the total bills received was ₹4,71,95,786/-. However, the appellant had disallowed interest of ₹24,03,611/- and the appellant had stated that the outstanding amount to be ₹4,47,92,175/-. The amount stated to have paid by the appellant was a sum of ₹4,39,00,444/- and had stated that the balance amount was payable ₹8,91,731/-. The e-mail dated 28.03.2017 sent by the appellant to the respondent also indicated that the total value of the bills submitted by the respondent-claimant was ₹4,47,14,175/- and a total payment made by the appellant made was ₹4,39,00,444/-.

The appellant had calculated interest at 12% in a total sum ₹4,16,214.01. The Tribunal considering the said emails (Exs.P19 and P20) had noticed that the same is not consistent with reply dated 26.02.2018 (Ex.P26) given by the appellant to the legal notice dated 13.02.2018 (Ex.P22) inasmuch as although it was contended by the appellant vide its reply dated 26.2.2018 (Ex.P26) that it had paid an excess amount, e-mails (Exs.P19 and P20) sent by the appellant to the respondent that did not indicate that there were any excess amount. The findings of the Tribunal on claim No.1 are as under:

"7. The reply notice sent by the respondent is not consistent. In Ex.P26 it says that the respondent was unable to release the amount due to the non-availability of bills from the claimant and there is no delay in payment from its side and if at all there is any it is because of the claimant's laches and hence question of payment of interest does not arise. If this reply is considered it becomes clear that it has not paid an account of non-giving of bills by the claimant to it. On the other hand in the same reply notice it says that it has paid excess amount and claimant is liable to refund the same. As stated earlier this cannot be accepted in view of its e-mail Ex.P19 and 20 where it has claimed that it has due along with interest to be paid to the claimant.

8. There is no contra evidence as against the oral evidence of the claimant and documentary evidence relied upon by the claimant and in particular Ex.P19 and 20 e-mail sent by the respondent to the claimant wherein it has admitted its liability to pay the amount and also

the Architect's report Ex.P15 to P18 recommending for payment to the claimant.

9. The documentary evidence produced by the claimant along with the oral evidence and also for the reasons stated above the respondent is due a sum of Rs.33,74,143/- to the claimant and hence point No.1 is held in the affirmative."

14. It is clear from the aforementioned that the findings of the Tribunal on Issue No.1 was having regard to the material available on record. Hence, the said findings cannot be stated to be patently illegal.

15. Claim No.2 made by the respondent was with regard to the stones (size stones) and boulders stated to have been left behind by the claimant in the property of the appellant. In this regard, the finding of the Tribunal is as under:

"10. Point No.2: The claimant has stated that it had kept size stones and boulders worth of Rs.32,000/- for formation of layout and it was not allowed by the respondent to remove it. The respondent in the reply notice has denied and has stated that claimant is put to strict proof of the same. The evidence of the claimant are that he had kept the size stones and boulders in the layout for formation of the layout and that was not allowed to be taken by the respondent. He has further stated that he has lodged a complaint as per Ex.P21 before the police. It becomes clear from the evidence of the claimant that the respondent did not allow him to remove the size stones and boulders amounting to Rs.32,000/- and he is entitled for the same. In view of this Point No.2 is held in the affirmative."

16. It is clear from the same that apart from the FIR (Ex.P21), the respondent/claimant had not placed any material on record either to demonstrate the quantum of stones or the value of the same. Hence, the award of ₹32,000/- made by the Tribunal with regard to the claim No.2 is patently illegal and liable to be set aside.

17. Claim No.3 was the claim of ₹5 lakhs made towards watch and ward. In this regard, the finding of the Tribunal is as under:

"11. Point No.3: it is the case of the claimant that he engaged the services of watch and ward for the period August 2014 upto March 2018 as the respondent did not come forward to take possession of the layout. The claimant is claiming the said amount as damages for breach of contract by the respondent. The respondent has denied in the reply notice and has stated that the claimant is put to strict proof of the same.

12. The evidence of the claimant is that he engaged the watch and ward for safety as respondent did not took possession of layout and has spent Rs.5,00,000/- towards the same. The respondent in the reply notice has not stated that it took possession of the layout once it is completed and has denied that watch and ward was appointed by the claimant. The evidence of the claimant coupled with the non-denial of the fact of non-taking possession by it of the layout would probablize the evidence of the claimant that it appointed watch and ward to look after the layout after its completion as the respondent did not took the possession of the layout. Hence Point No.3 is held in the affirmative."

18. It is clear from the same that the Tribunal has merely noticed the period for which the watch and ward have stated to have been

employed i.e., August 2015 to March 2018, during which period it has been alleged by the respondent that the appellant did not come forward to take possession of the layout. There was no material placed before the arbitral tribunal with regard to the number of workmen that the respondent had employed. Further, there was no material placed on record to demonstrate that the said workmen were deployed at the property of the appellant. The Tribunal merely observing that the appellant, in the reply notice, had not stated that it had took possession of the layout, awarded the said claim in favour of the respondent/claimant. The said finding on Issue No.3 is without any basis or material on record and patently illegal. In view of the same, the said claim awarded in favour of the respondent is liable to be interfered with.

19. The claim No.4 pertains to the refund of the Fixed Deposit [FD] made by the respondent. In this regard, it is to be noted that the Agreement between the parties contemplated that the appellant was entitled to retain 5% of gross value of each running bill towards retention amount. In the alternative, respondent was required to make FD of ₹10 lakhs in the name of the appellant with the respondent being mentioned as nominee for the said deposit. It was the claim of the respondent that it was entitled to the said FD

amount of ₹10 lakhs together with interest, which had not been released by the appellant in favour of the respondent. The Tribunal noticing that the appellant had not raised any objection about the lapses in the formation of the layout within six months from its completion and is duty bound to return the security deposit. Hence, the Tribunal held that the appellant is liable to return the security deposit of ₹10 lakhs together with interest.

20. The security deposit amount of ₹10 lakhs, which was kept in a Fixed Deposit was made in lieu of retention of money that was entitled to retain in terms of the agreement. The relevant clause in the Agreement (Ex.P6) with regard to the retention of money is as under:

"Retention Money:

5% (Five percent) of the gross value of each running bill will be deducted from the monthly bills towards retention money. The retention money will be released in 2 instalments, first instalment being released immediately after the submission of the final bill. The second instalment will be released after completion of defects liability period of 6 months from the submission of final bill. Alternatively for retention amount, Second party will provide FDR (Fixed Deposit Receipt) for the retention money."

21. It is clear that in lieu of the appellant retaining 5% of the gross value of each running bill, the respondent deposited a sum of ₹10

lakhs. In the claim petition (at para 7) it is averred that the said sum of ₹10 lakhs was deposited with the State Bank of India, Market Branch, Mysuru, on 06.06.2014 vide receipt No.64143001471. The amount was required to be refunded after completion of the defect liability period of six months from the date of submission of the final bill.

22. It is relevant to note that the appellant in the reply notice dated 26.02.2018 (Ex.P26) had not denied the assertion of the respondent/claimant that it had kept the said amount of ₹10 lakhs as FD. In fact, the appellant had stated that it had no objection to return the said FD amount. In view of the same, the Tribunal was justified in allowing claim No.4 with regard to refund of the security deposit amount.

23. Claim No.5 was with regard to the interest @ 18% on ₹33,74,143/- from 01.04.2016 to 01.10.2020. In this regard, the Tribunal held as under:

"15. Point No.5: The claimant has stated that the respondent is due Rs.33,74,143/- from 1-4-2016 to him and in view of this the respondent is liable to pay 18% interest as it is a commercial transaction and also as the said rate of interest is levied by Financiers.

16. The respondent in Ex.P20 e-mail has admitted about payment of interest. It has been held in the Point No.1 that the respondent is due Rs.33,74,143/- to the claimant

and it has not paid the same. It becomes clear that on account of non-payment of the same the respondent is liable to pay interest. The present transaction is a commercial transaction and the respondent is liable to pay interest at the rate of 18% as claimed by the claimant. In view of this Point No.5 is held in the affirmative."

24. It is relevant to note that having regard to Section 31(7)(a) and (b) of the A&C Act, the Tribunal is entitled to award interest prior to the arbitral proceedings, during the arbitral proceedings as well as future interest. In the present case, the Tribunal had noticed that the transaction is a commercial one and has awarded interest @ 18% on the amount claimed by the respondent up to 01.10.2020. The Tribunal has awarded future interest @ 10% on ₹33,74,143/-. The said award of interest is by taking into adequate consideration of the material on record and also taking note of the fact that the transaction between the parties is commercial one. Hence, the said finding on claim No.5 cannot be stated to be patently illegal.

25. The claim No.6 is with regard to the interest on the FD amount. However, the claimant claimed a sum of ₹3,19,245/- towards interest. The basis of the said calculation has not been stated. The claimant has also not averred that the period or the rate of interest on the basis of which the said sum of ₹3,19,245/- has been claimed. The Tribunal has also not set out any reasons for

allowing claim No.6. The relevant portion of the award of the Tribunal regarding claim No.6 is as under:

"17. Point No.6: The claimant has claimed the interest on the non-return of the security deposit amount by the respondent to it. In view of the non-returning of the same the claimant is entitled to the interest on the said security amount from the respondent. The interest claimed by the claimant from the respondent in the claim petition cannot be said to be excessive and hence he is entitled for the interest claimed by him from the respondent. In view of this Point No.6 is held in the affirmative."

26. The Tribunal merely noticed that in lieu of the non-returning of the security deposit, the claimant is entitled to interest on the said security deposit. The Tribunal further reasoned that the interest claimed by the claimant in the claim petition cannot be said to be excessive. However, neither the rate nor the period of the said claim has been mentioned either in the claim petition or in the award.

27. Hence, the award made by the Tribunal on claim No.6 is patently illegal and without any basis and without any material on record.

28. The commercial Court had merely noticed that in respect of all the claims, the Tribunal had awarded the same having regard to

the material on record. The specific amounts awarded and the basis of the same have not been noticed.

29. In view of the aforementioned, the award of the Tribunal on claim Nos.2, 3 and 6 are patently illegal and are accordingly set aside. The award of the Tribunal on claim Nos.1, 4 and 5 are not interfered with. The above appeal is partly allowed in the aforementioned terms.

30. Parties are at liberty to avail further remedies, as may be available in law.

**SD/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**SD/-
(C.M. POONACHA)
JUDGE**

BS