IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 264 OF 1998

THE MUNICIPAL CORPORATION OF GREATER BOMBAY,
Represented by its chief Engineer (Roads & HWD), having its office at Mahapalika Marg, Mumbai-400 001. **...PETITIONER**

Versus

M/S. ATUL RAJ BUILDERS PVT. LTD.,
a Company incorporated under the provisions of the Companies Act No. I of 1956, having its office at D-2/22, Bharat Nagar, Grant Road, Mumbai-400 007. **...RESPONDENT**

Ms. Madhavi Nallure a/w Ms. Pooja Yadav & Mr. Sunil Khandagle i/b Ms. Komal Punjabi, *Advocates for the Petitioner-Corporation.*

Mr. Mukesh Vashi, Senior Advocate a/w Ms. Aparna Devkar i/b M. P. Vashi & Associates, *Advocates for the Respondent.*

CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 17th AUGUST, 2026
PRONOUNCED ON : 3rd SEPTEMBER, 2026

Judgment **:**

1. Heard **Ms. Madhavi Nallure**, learned counsel for the Petitioner-Corporation and **Mr. Mukesh Vashi**, learned Senior Advocate along with Ms. Aparna Devkar, learned Advocate for the Respondent.

2. By the present Arbitration Petition, filed under Sections 30 and 33 of the Arbitration and Conciliation Act, 1940 ("**the Act**"), the Petitioner-The Municipal Corporation of Greater Bombay ("Corporation"), challenges the Arbitral Award dated 28th March, 1996, passed by the Arbitrator in a reference made of the dispute arising between the parties in execution of the Work Order dated 27th March, 1991.

3. The facts giving rise to the present Arbitration Petition, in brief, are that, in the month of March 1991, the Petitioner-Corporation had invited tenders for construction of 27.43 meters of (90 feet) D.P. Wadala-Ghatkopar Road from Wadal Bridge to Anik Interchange-II to its junction with Eastern Freeway in F/North Ward. The Respondent-Company was successful in bidding and getting the contract for a period of 18 months for execution of the Work Order.

4. There was delay in carrying out the work, as such the original work awarded under the Work Order dated 27th March, 1991, was revised. The revised Work Order dated 21st October, 1991 was issued by the Petitioner-Corporation in favour of the Respondent

for additional work and the revised amount of Rs. 4,00,00,605/- was raised from the initially awarded work of Rs. 1,87,11,183/- and the time limit for completion of work was revised from 18 months to 24 months exclusive of monsoon period. On completion of 24 months, the work covered by the Respondent was of Rs. 1,31,01,327.42. On completion of 24 months, the Petitioner-Corporation did not grant further extension to complete the contracted work. On expiry of the contract period, the Respondent requested the Petitioner-Corporation to release Bank Guarantee of Rs. 4,38,462/- out of Rs. 4,88,642/- by retaining Rs. 50,000/- against the Bank Guarantee. The Petitioner-Corporation by letter dated 23rd December, 1993 has recorded that the contract period had expired on 29th October, 1993 and the Respondent had failed to complete the contract work during the extended period and therefore, liable for damages and imposed penalty of Rs. 500/- per day on the Respondent for committing default.

5. By letter dated 20th June, 1994, the Respondent gave notice to the Municipal Commissioner under Clause 96 of the General Conditions of Contract ("**GCC**"), thereby making claims and for settlement of final account. Thereafter the Arbitrator was appointed to adjudicate the dispute. The Respondent filed four claims and claimed Rs. 65,83,645.60 towards the settlement of their final accounts. On completion of arbitral proceedings, the Arbitrator has passed the impugned Award.

6. The summary of award is noted below :-

	CLAIMED SUM	**AWARD SUM / AMOUNT IN RS.**
CLAIM-I	47,37,855.90	24,91,253.00
CLAIM-II	63,53,833.02	46,23,503.00
		@18%
PAST INTEREST	@21.25% p.a.	10,08,957.00
		@18%
PENDENTE LITE INTEREST	@21.25% p.a.	7,01,888.00
COST OF ARBITRATION	1,74,000.00	50,000.00
	TOTAL	**88,75,601.00**

7. Challenging the Award dated 28th March, 1996, Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation submits that scope of Section 30 of the Act has been interpreted by several decisions to include any arbitrary and capricious decision made by an Arbitrator. Misconduct as given in Section 30 of the Act, has been interpreted to mean 'legal misconduct'. In the present case, learned Arbitrator's grant of Respondent's Claim-II of loss of profit amounts to legal misconduct. Similarly, learned Arbitrator's finding that "the contract had been virtually terminated" amounts to legal misconduct as it is in violation of the terms of the contract which clearly states that the contract is for a period of 24 months. This can also be said to be an error apparent on the face of record. This finding of virtual termination is the basis of grant of Claim-I. Also,

granting exorbitant interest and interest on interest in the absence of an enabling provision in the contract amounts to legal misconduct.

8. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation has made submissions as under :-

a. **Claim-I-Extension of Time** - At paragraph 29 of the Award, the Arbitrator holds that the Corporation ought to have extended time. The Arbitrator also holds that the contract was virtually terminated and that the plea that the contract expired by efflux of time on 29th October, 1993, is unavailable given the contractual provision for extension/liquidated damages, coupled with the finding that extension was justified. In arriving at this conclusion the Arbitrator places reliance on letter dated 20th February, 1993 seeking extension of time (Exhibit-D at page 82) and at the same time, completely disregards the Corporation's reply dated 27th March, 1993 to Claimant refusing the extension (Exhibit-F at page 85).

. The Award holding the Respondent-Claimant entitled to extension of time, is totally perverse and contrary to the terms of the contract. At paragraph 42 of the Award, the Arbitrator holds that depriving the Claimant of completing the work within the agreed/extended period, the Corporation made itself liable to the claim of compensation by the Claimant.

. The Arbitrator's grant of Claim-I and Claim-II based on the above reasoning thus amounts to legal misconduct.

. In this regard, Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation relies upon the following relevant judgments :

(a) ***Bharat Coking Coal Ltd. v/s. Annapurna Construction***[1];

(b) ***Associated Engineering Co. v/s. Government of Andhra Pradesh and Another***[2] and

(c) ***Government of Kerala and Another v/s. V.P. Jolly***[3].

b. Claim-II-Loss of Profit and Productivity, the Arbitrator at paragraphs 40-42 of the Award holds that there is no conflict in the claim for loss of profit and loss on account of reduced productivity. There is no reasoning except to say that the claim is correct and there is no contradiction. The Arbitrator does not refer to any evidence in arriving at this finding.

. More importantly, there is no evidence of any actual loss nor any evidence to show loss of productivity. There are important parameters to determine what loss of profit and productivity, if any, is suffered by a Claimant as held in the case of ***Unibros v/s. All India Radio***[4].

[1] (2003)8 Supreme Court Cases 154.
[2] (1991)4 Supreme Court Cases 93.
[3] 1991 SCC OnLine Ker 139.
[4] 2023 SCC OnLine SC 1366.

. In the case of ***Municipal Corporation of Greater Bombay v/s. Bharat Construction***[5], a Division Bench of this Court disallowed the claim of loss of productivity/reduced productivity when loss of profit's claim was allowed.

. In this regard, Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation relies upon the following relevant judgments :-

(a) ***MCGM v/s. Bharat Construction*** (*supra*);

(b) ***Bharat Coking Coal Ltd. v/s. L.K. Ahuja***[6] and

(c) ***Unibros v/s. All India Radio*** (*supra*).

c. <u>Claim-III-Interest</u>, the interest awarded at 18% is exhorbitant. As noted by the Hon'ble Apex Court in ***Atlanta Infrastructure Limited v/s. Municipal Corporation of Greater Mumbai and Others***[7], the interest rates are on a decreasing trend, the grant of 18% interest is unreasonable and perverse.

d. <u>Interest on interest</u> - While granting Claim-I, the Award includes the interest of Rs. 10,08,957/- and therefore, the total amount awarded for Claim-I is Rs. 35,00,210/-. In paragraph 44 of the Award, while considering Claim-III, the Arbitrator allows interest on the entire amount of Rs. 35,00,210/- of 18% amounting to Rs.

[5] 2017 SCC OnLine Bom 652.
[6] (2004)5 Supreme Court Cases 109.
[7] (2018)15 Supreme Court Cases 230.

3,02,418/-, thereby allowing interest on interest. Such compounding in absence of a term allowing the same in the contract is perverse and beyond the provisions of the contract. This amounts to legal misconduct.

. In this regard, Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation relies upon the following relevant judgments :-

(a) ***M/s. D. Khosla and Company v/s. Union of India***[8] (paragraphs 23-26);

(b) ***State of Maharashtra and Others v/s. Saifuddin Mujjaffarali Saifi***[9] (paragraph 45) and

(c) ***Krishna Bhagya Jala Nigam Ltd. v/s. G. Harischandra Reddy and Another***[10] (paragraph 11).

e. **Personal Knowledge –** In this regard Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation submits that at paragraph 28 of the Award, the Arbitrator notes that "After considering the documentary evidence and having verified the fact that hindrances are still continuing at the site of the work though not to the extent alleged,...". The Arbitrator bases the finding that the contract was illegally terminated, which itself is perverse, on a personal assessment of the situation on the ground. The Arbitrator's

[8] (2024)9 Supreme Court Cases 476.
[9] 1993 SCC OnLine Bom 203.
[10] (2007)2 Supreme Court Cases 720.

visit was in 1996 i.e. 3 years after the alleged events had taken place. In any case, any such fact finding by the Arbitrator runs contrary to the scheme of the Arbitration Act and the law itself. The same amounts to misconduct on the part of the Arbitrator.

. In this regard, Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***P.R. Shah, Shares and Stock Brokers Private Limited v/s. B.H.H. Securities Private Limited and Others***[11], wherein it is held in paragraphs 22 and 23 that

> "*22. The appellant contends that the Arbitral Tribunal had used personal knowledge to decide the matter. Attention was drawn to the following observation in the award by the majority:*
>
> > *"Also, it is known fact which is known to the arbitrators that as per the market practice such kind of transactions of one broker takes place with another broker either in their own name or in their firm's name or in the name of different entity which is also owned by the member. Same way these transactions are done by Respondent 2 (the appellant herein) in the name of Respondent 1 (the second respondent herein)."*
>
> *23. An Arbitral Tribunal cannot of course make use of its personal knowledge of the facts of the dispute, which is not a part of the record, to decide the dispute. But an Arbitral Tribunal can certainly use its expert or technical knowledge or the general knowledge about the particular trade in deciding a matter. In fact, that is why in many arbitrations, persons with technical knowledge, are appointed as they will be well-versed*

[11] (2012)1 Supreme Court Cases 594.

with the practices and customs in the respective fields. All that the arbitrators have referred to is the market practice. That cannot be considered as using some personal knowledge of facts of a transaction to decide a dispute."

. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation submits that the Petition is filed within limitation and opposes the submission of Respondent-Claimant that the Petition is barred by limitation because the same has been filed on 28th March, 1996, after 802 days of the publishing of the Award.

. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation submits that the Respondent has relied on paragraph 13 of the Award and paragraph 2 of the Affidavit-in-Reply to the Petition to contend that Petitioner-Corporation had knowledge of the Award. Neither paragraph 13 nor paragraph 2 are proof of service of the Award on the Petitioner-Corporation. There is no document on record to demonstrate that the Award was actually served upon the Petitioner-Corporation. The Hon'ble Supreme Court in the case of ***Oil & Natural Gas Corporation Ltd. v/s. Nippon Steel Corporation Ltd.***[12] at paragraphs 30 and 31 has held that "even if the lawyer representing the party in arbitration had filed the Award in Court on behalf of the Arbitrator, it cannot be said to be constructive notice to the party, nor can an intimation by one party to the other of filing of the Award in Court be taken as notice under Section 14(2) of the Act."

[12] (2007)2 SCC 382.

. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation submits that Section 14(2) of the Act mandates notice of the Award being filed in Court has to be served on the parties. The limitation period under Article 119(b) of the Limitation Act, 1963 will start upon such service of notice by the Court in which the Award is filed. Under the Bombay High Court Original Side Rules, 1980, Rule 786 requires service of notice of the filing of the Award on the parties by the Prothonotary & Senior Master. In paragraph 45 of the Petition, the Petitioner-Corporation has made an averment that the Award had not been served on the Petitioner-Corporation until the filing of the Petition and therefore, it was not barred by limitation.

. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation submits that in the present case, the Respondent has failed to bring on record any proof of service of the Award, much less by the Court. In such a situation, it cannot be said that the Award had been served on the Petitioner-Corporation and/or that notice of the Award being filed in Court, was given by the Court to the Petitioner-Corporation.

. In this regard, Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation relies upon the judgment of Hon'ble Supreme Court in the case of ***Bharat Coking Coal Ltd. v/s. L.K. Ahuja*** (*supra*), which was followed in ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*). The Hon'ble Apex has held that notice of Court is mandatory for the limitation period to begin. The decision of the Hon'ble Supreme Court in the case of ***Indian Rayon Corpn. Ltd. v/s. Raunaq and Co. (P) Ltd.***[13], relied upon by the Respondent is considered by the Hon'ble Apex Court in the case of ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*) and not affirmed. In so far as the decision in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*), the same has been rendered in different facts, thus can be distinguished and in any case, does not consider the two decisions of Co-ordinate Benches prior to it i.e. ***Bharat Coking Coal Ltd.*** (*supra*) and ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*).

. It is submitted that the Arbitrator has not assigned any justification for extension of time by the Respondent. For this purpose, learned counsel for the Petitioner-Corporation has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Bharat Coking Coal Ltd.*** (*supra*), wherein it is held in paragraphs 19 to 22 that

> "*19. So far as these items are concerned, in our opinion, the learned sole arbitrator should have taken into consideration the relevant provisions contained in the agreement as also the correspondences passed between the parties. The question as to whether the work could not be completed within the period of four months or the extension sought for on one condition or the other was justifiable or not, are relevant facts which were required to be taken into consideration by the arbitrator.*

[13] (1988)4 Supreme Court Cases 31.

20. It is now well settled that the arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract.

21. In Associated Engg. Co. v. Govt. of A.P.[14]*, this Court clearly held that the arbitrators cannot travel beyond the parameters of the contract. In Sudarsan Trading Co. v. Govt. of Kerala*[15] *this Court has observed that an award may be remitted or set aside on the ground that the arbitrator in making it had exceeded his jurisdiction and evidence of matters not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which has been determined outside the award, whatever might be said about it in the award by the arbitrator. This Court further observed that an arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.*

22. There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record."

. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation has placed reliance upon the judgment of the Hon'ble

[14] (1991)4 Supreme Court Cases 93.
[15] (1989)2 Supreme Court Cases 38.

Supreme Court in the case of ***Food Corporation of India v/s. Chandu Construction and Another***[16].

. It is further submitted that the Award of Arbitrator holding that in the facts and circumstances of the case, the Respondent was justified in asking for extension of time under the terms of contract are totally perverse and contrary to the provisions of the Act. It is also submitted that the Arbitrator has used his personal knowledge in rendering the finding that there was disturbance in the area and such personal knowledge cannot be used by the Arbitrator.

. Ms. Madhavi Nallure, learned counsel has also submitted that the Arbitrator erred in computing interest. She has submitted that the interest @ 18% is very exorbitant. So also she has submitted that the overlapping interest is awarded and thus, there is computation of an interest on interest.

9. *Per contra*, Mr. Mukesh Vashi, learned Senior Advocate for the Respondent submits that the scope of interference by this Court under Section 30 of the Act in the Arbitral Award, is limited. The grounds raised in the Petition as required under Section 30 of the Act for interference by this Court in the Arbitral Award, are limited and the Petition has to be examined as per the scope of Section 30 of the Act. The Petitioner-Corporation has failed to make out any ground in the Petition for interfering with the Arbitral Award.

[16] (2007)4 Supreme Court Cases 697.

10. In this regard, Mr. Mukesh Vashi, learned Senior Advocate relies upon the judgment of the Hon'ble Supreme Court in the case of ***Ispat Engineering & Foundry Works, B.S. City, Bokaro v/s. Steel Authority of India Ltd., B.S. City, Bokaro***[17] (Paragraphs 3 to 6, 15 and 16).

11. Mr. Mukesh Vashi, learned Senior Advocate further submits that the Petition is filed beyond limitation and there is delay of 802 days in filing the present Petition.

12. Mr. Mukesh Vashi, learned Senior Advocate further submits about Claim-I in respect of Settlement of Final Accounts. Termination was recorded in the letter dated 23rd December, 1993. Claims have been awarded on the basis of actual work done, measurement book and joint measurement by both parties. The interest awarded was on the basis of production of proof of payment to the bank @ 21.25% per annum. The Arbitral Tribunal has scaled the interest down to 18% per annum. The interest claimed by the Petitioner-Corporation in the counter-claim filed by them itself is @ 24% per annum.

13. In this regard, Mr. Mukesh Vashi, learned Senior Advocate for the Respondent submits that the interest awarded would be in consonance with the law laid down by the Hon'ble Supreme Court in

[17] (2001)6 Supreme Court Cases 347.

the case of ***Hyder Consulting (UK) Limited v/s. Governor, State of Orissa***[18]. The Hon'ble Supreme Court has observed that,

> "*11. At this juncture, it may be useful to refer to Section 34 CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34 CPC Parliament conferred power on a court to order interest "on the principal sum adjudged and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31(7) of the 1996 Act is significant and shows the intention of Parliament.*
>
> *12. It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not been qualified by using the word "principal" before it. If it had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.*
>
> *13. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the*

[18] (2015)2 Supreme Court Cases 189.

sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

14. In fact this is a case where the language of sub-section (7) clauses (a) and (b) is so plain and unambiguous that no question of construction of a statutory provision arises. The language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum directed to be paid by the arbitral award.

25. The aforesaid question can be answered by a plain and simple reading of Section 31(7) of the Act which reads as under:

> *"31. (7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as itdeems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*
>
> *(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."*

26. Section 31(7)(a) of the Act deals with grant of pre-award interest while clause (b) of Section 31(7) of the Act deals with grant of post-award interest. Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay. Longer the proceedings, the longer would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance with the award. Pre-award *interest is at the discretion of the Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of the statute the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act i.e. 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.*

27. Section 31(7)(a) employs the words "... the Arbitral Tribunal may include in the sum for which the award is made interest...". The words "include in the sum" are of utmost importance. This would mean that pre-award interest is not independent of the "sum" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "sum" which includes within the "sum" component of interest, if awarded.

28. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an "interest" and takes the colour of "sum" for which the award is made.

30. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

31. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Clause (b) uses the words "arbitral award" and not the "Arbitral Tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under clause (a).

32. Therefore, in my view, the expression "grant of interest on interest" while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest."

14. Mr. Mukesh Vashi, learned Senior Advocate further submits about Claim-II in respect of loss suffered on account of extra expenditure incurred by way of overheads and reduced productivity from machinery and equipment as also loss of expected profit. The loss claimed is as per the GCC Clause No. 73. The argument of Corporation before the Arbitral Tribunal is contrary to the argument raised in the Petition. The Arbitral Tribunal awarded the claim under various heads i.e. cost of material, cost of labour, cost of machinery & equipment, overhead and profit. As the delay was on account of the Corporation and as there was no extension of time, despite provision in the contract, the Arbitral Tribunal partially

awarded the claim i.e. instead of 25%, awarded 22.5% towards overheads and profits and instead of 5%, awarded 2.5% towards machinery and equipment.

15. Mr. Mukesh Vashi, learned Senior Advocate has relied upon the judgment of Hon'ble Supreme Court in the case of ***M/s. S.D. Shinde Tr. Partner v/s. Govt. of Maharashtra & Ors.***[19] (paragraphs 22 to 25).

16. Mr. Mukesh Vashi, learned Senior Advocate further submits that in paragraph 45 of the Petition, the Petitioner-Corporation has contended that since the Petitioner-Corporation did not receive any notice from the Prothonotary & Senior Master as regards "the filing of Award", the Petition is filed within time; to which the Respondent has filed an Affidavit-in-Reply, wherein the date of filing of the Award, the month in which the notice was issued by the Prothonotary & Senior Master and the receipt of the notice by the Respondent, etc. have been mentioned and the Petitioner-Corporation has chosen not to file an Affidavit-in-Rejoinder to the Affidavit-in-Reply. It is also submitted that after publishing the Award, the sole Arbitrator had informed the Petitioner-Corporation and the Respondent of making and publishing of the Award and a signed copy of the Award has also been enclosed along with it. It is

[19] Civil Appeal No(s). 6107-6108 of 2017 with Civil Appeal No(s). 6109 of 2017 decided on 22.08.2023.

further submitted that even oral intimation to the party constitutes sufficient notice under Section 14(2) of the Act.

17. Mr. Mukesh Vashi, learned Senior Advocate further submits that the matter remains pending for a long period in this Court, as an objection was raised by the Petitioner-Corporation that the work contract was not executed in accordance with Sections 69 to 71 of the Mumbai Municipal Corporation Act, 1888 ("**MMC Act**"). The Full Bench of this Court had answered the issue. The preliminary issue was referred by this Court vide its order dated 18th August, 2005 to the Larger Bench for consideration. The Full Bench of this Court has decided the reference by observing that an execution of a formal contract as contemplated under Sections 69 to 71 of the MMC Act, is not mandatory prerequisite for a party to seek invocation of the arbitration clause contained in the contract/tender, where such arbitration clause is contained; moreso, if the parties have acted upon the contract.

18. It is also submitted that the Petitioner-Corporation had issued a work order dated 27th March, 1991 to the Respondent and directed the Respondent to take up the work in hand and commence the work from 5th April, 1991. It is submitted that the Petitioner-Corporation has got the work done from the Respondent for the original contract price, amounting to Rs. 1,82,11,583/-, which was later on increased to Rs. 4,00,00,605/-.

Consideration :-

19. Perused the records with the assistance of learned Advocates for the parties.

20. Having considered the rival submissions, the first issue that arises for consideration is "Whether the Arbitration Petition is filed within limitation?".

21. In this regard, the following facts are necessary to be noticed :-

. The Arbitrator in his Award at paragraph 13 has observed that with the consent of both the parties, the time for signing and publication of Award was extended upto 5th April, 1996. The Petitioner-Corporation has stated that they have not received the notice of Award being filed in the Court under Section 14(2) of the Act. The Respondent has stated that the Arbitral Award was filed in the Court and the notice of the Prothonotary & Senior Master has been received by the Respondent in August 1996. It is submitted that notice was issued to the parties as can be seen from the notice. The present Petition is filed on 8th June, 1998 with a delay of 802 days. The dates and events leading to filing of Petition are noted below :-

Sr. No.	Dates	Events
1	26th March, 1996	Covering letter by the Arbitral Tribunal informing of the Award being published and copy enclosed.

2	28th March, 1996	Award published
3	5th April, 1996	Time to publish the Award was extended by consent of both the parties till the date
4	10th May, 1996	The sole Arbitrator filed the Arbitral Award in this Court
5	10th May, 1996	Objection in paragraph 2 of the Affidavit-in-Reply – Dates, Award published on 28th March, 1996, filed in the Court by the Arbitral Tribunal.
6	August1996	The Respondent received a notice from the Prothonotary & Senior Master regarding filing of Petition Award
7	8th June, 1998	The present Arbitration Petition was filed on 8th June, 1998 i.e. after a delay of 802 days.

Thus, the Petitioner-Corporation has not stated as to how they became aware of the Award and how they have obtained the copy of Award and how they have challenged the same in this Court.

22. Article 119(b) of the Limitation Act prescribes the period of limitation of 30 days in challenging the Award from the date of notice under Section 14(2) of the Act. It is relevant to refer to the law declared by the Hon'ble Supreme Court as regards the commencement of period of limitation in challenging the Award with reference to Section 14(2) of the Act.

23. The Hon'ble Supreme Court in the case of ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*), has considered the question at paragraph 11 as under :-

> "*Whether the High Court was justified in extending the principle of constructive notice to the facts of the present case ignoring the express stipulations of Section 14(2) of the Act?*"

24. In this regard, the Hon'ble Supreme Court has observed in paragraph 30 that

> "*30. This Court has expressly laid down that the notice regarding filing of the award must be given to the parties by some act of court. The letter of Prothonotary & Senior Master cannot be regarded as an act of court. This Court also conclusively laid down in the aforesaid case that mere intimation from one party to the other of the filing of the award cannot be construed as notice in terms of Section 14(2) of the Act. Hence, in our view, the intimation from the Prothonotary seeking address of the parties for the purpose of issuance of notice cannot be characterised as notice in terms of Section 14(2).*"

25. So also, in the case of ***Bharat Coking Coal Ltd.*** (*supra*) the Hon'ble Supreme Court has held that mere knowledge of passing of the Award is not enough and that the notice regarding filing of the Award must be given to a party by the Court. The letter of Prothonotary & Senior Master cannot be regarded as an act of the Court. The Hon'ble Supreme Court in the case of ***Bharat Coking Coal Ltd.*** (*supra*) has also discussed the judgment in the case of ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*) and has observed that,

> "*The mere intimation of one party to the other of filing of the Award in the Court, cannot be considered as notice in terms of provisions of Section 14(2) of the Act. An intimation of the Prothonotary & Senior Master seeking addresses of the parties for the purpose of issuance of notice, cannot be characterized as the notice under Section 14(2) of the Act.*"

26. The Hon'ble Supreme Court has also observed in the case of ***Bharat Coking Coal Ltd.*** (*supra*) as under :-

> "*If there is no material to show that a notice of filing of the Award has ever been given to the parties, any period of limitation as prescribed in Article 119(b) of the Limitation Act, 1963 loses its significance. The law is clear to the effect that mere knowledge of passing of an award is not enough. The period of limitation will commence as provided in Article 119(b) only upon notice as to filing of the Award in the Court being given on the parties concerned.*"

27. However, recently, the Hon'ble Supreme Court while considering the issue of limitation under Section 14(2) of the 1940 Act, in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*) has held in paragraphs 15 to 18 as noted below :-

> "*15. From a plain reading of the provisions, it appears that the parties need to be notified of the filing of award. While Art. 119(b) of the Limitation Act requires that there be a 'service of notice' for the limitation to start running, Section 14(2) of the 1940 Act merely states that court 'give notice' to the parties. The precise form of what constitutes as a 'notice' of filing the award is unspecified. However, interpreted reasonably, what must be required is that the parties come to know about the existence of the award so that any objections to it may be filed. What appears from the usage of the word 'notice' is that the parties merely reach a state of awareness about the award and plan their next steps accordingly, and not the imposition of another procedural step.*
>
> *16. In our view, the appellant's submissions are correct insofar as they rely on this court's decision in Nilkantha Sidramappa*

Ningashetti (supra). Therein, while a partition suit was underway between the parties, an arbitral award came to decide the disputes partly. The suit was adjourned asking the parties to apprise themselves of the award, and this was taken as a sufficient compliance of Section 14(2) of the 1940 Act. It was held that the term 'notice' in this provision nowhere excluded its informal expressions. Furthermore, if the literal interpretation is taken and limitation is paused until a formal notice is issued, the Court held, would allow a party otherwise aware of the award to sit over it and delay filing objections. This would undercut the speedy intent governing arbitration. Similarly, the decision in Ramalinga Reddy (supra) allowed the mere receipt of information by the award-debtor's pleader as valid compliance with the text of Section 14(2). As is discernible from the texts of sub-sections (1) and (2) of Section 14, the notice is under sub-section (2) need not be a written one.

17. Apart from the authorities cited by the appellant, this Court has otherwise clarified that Section 14(2) merely functions to apprise the parties about the existence of the award. In Food Corporation of India v. E. Kuttappan, the communication of the filing of an award to the parties' pleaders was taken to be sufficient notice for Section 14(2). It was reasoned that what is required is that the party comes to know about the decision for/against it, and there was no insistence of a specific form in the 1940 Act. The pleader acts as an agent of the party and his awareness is sufficient for the parties to access and scrutinise the contents of the award. Even if a formal notice is issued thereafter, it is at best an act of court which cannot disturb rights accrued in law. This is squarely applicable to the case before us, wherein the order dated 21.09.2022 precisely laid out that the award is available, and the only formality withholding the respondent's access to it is clearance of the arbitrator's fees. While a formal notice of filing of the award was only issued on 18.11.2022, applying this decision to the facts this case, it does *not take away from the fact that the respondents were well aware of the award's filing on 21.09.2022 itself. Similarly, the decision in Indian Rayon Corporation Ltd. v. Raunaq and Co. (P) Ltd clarifies that the only objective of Section 14(2) is that the parties are aware of the award's existence and suggests that this a substantive compliance. If this were to be a procedural stipulation, the party intending to file objections can insist of technicalities like the mode of notice, and use those unfairly to gain time.*

18. As far as the respondents' contention of taking the date of receiving the copy of the award is concerned, it is taken to be an impermissible departure from Section 14(2)'s text. This Court in Bharat Coking Coal Ltd. v. L.K. Ahuja has laid down that what this provision requires is that parties simply become aware of the filing of the award. In the said case, the Supreme Court had referred a dispute to arbitration and its registry had issued a notice to both parties about the filing of the award. The award-holder, however, relied on the much later. date of a formal notice to calculate limitation for filing objections to the award. Relying on the authorities discussed above, it was held that the date of receiving a copy of the award is not the requirement of Section 14(2), but merely awareness that it is available to the parties. This holding signifies that the parties have to take steps to scrutinise the award themselves as soon as it becomes accessible and they are aware of its accessibility. We find that the interpretation in this decision is in line with the intent of the 1940 Act, which is designed to resolve disputes at a quick pace. Any contrary interpretation will give a licence to the award-debtor to delay the arbitration by insisting on procedural nuances despite of being aware that an award exists and that its contents are accessible to it."

28. In the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*), the Hon'ble Supreme Court has observed that from a plain reading of the provisions, it appears that the parties need to be notified of the filing of Award. The limitation period for challenging/filing objections in the Arbitral Award commences when the concerned party becomes aware of the existence of Award. While Art. 119(b) of the Limitation Act requires that there be a 'service of notice' for the limitation to start running, Section 14(2) of the 1940 Act merely states that the Court 'give notice' to the parties. The precise form of what constitutes as a 'notice' of filing the Award is unspecified. However, interpreted reasonably, what must be required is that the parties come to know about the existence of the Award so that any objections to it may be filed. What appears from the usage of the word 'notice' is that the parties merely reach a state of awareness about the Award and plan their next steps accordingly, and not the imposition of another procedural step. If the literal interpretation is taken and limitation is paused until a formal notice is issued by the Court, it would allow a party otherwise aware of the Award to sit over the Award and delay filing objections. This would undercut the speedy intent governing arbitration.

29. The Hon'ble Supreme Court in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*), has made reference and relied upon the earlier judgment of the Hon'ble Supreme Court in the cases of ***Nilkantha Sidramappa Ningashetti v/s. Kashinath Somanna***

Nigashetti[20], ***Deo Narain Choudhury v/s. Shree Narain Choudhury***[21], ***Ch. Ramalinga Reddy v/s. Superintending Engineer***[22] and ***Food Corporation of India v/s. E. Kuttappan***[23]. In the case of ***Jaydeo s/o. Mahadeo Parate v/s. State of Maharashtra and Others***[24], the Division Bench of this Court has observed at paragraph 24, as noted below :-

> "*24. While dealing with a question as to what course has to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from Benches of coequal strength, has held that the High Court is not necessarily bound to follow the decision later in point of time, but must follow the one which in its view is better in point of law.*"

30. Considering the conflict in the judgment of the Hon'ble Supreme Court in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*) with the judgment in the cases of ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*) and ***Bharat Coking Coal Ltd.*** (*supra*), this Court would apply the judgment in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*), as the same is in line with the purpose of the Arbitration Act that the disputes are to be resolved expeditiously and there cannot be a pause on limitation till a notice is issued by the Court if parties are otherwise aware of the Award.

31. Considering the judgment of Hon'ble Supreme Court in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*), wherein the

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[20] 1961 SCC OnLine SC 75.
[21] (2000)8 SCC 626.
[22] (1999)9 SCC 610.
[23] (1993)3 SCC 445.
[24] 2006(2) Mh.L.J. 497.

Court has relied upon various earlier judgments prior to the judgment in the cases of ***ONGC v/s. Nippon Steel Corporation Ltd.*** (*supra*) of the Hon'ble Supreme Court and keeping in tune with the line of reasoning that the intent of the Act is to resolve disputes at a quick pace, I proceed to apply the latter judgment of the Hon'ble Supreme Court in the case of ***Krishna Devi alias Sabitri Devi (Rani)*** (*supra*). The Petitioner-Corporation was aware of the Award as the Arbitrator himself has notified in the Award that with the consent of both parties, the time to decide Award is extended upto 5th April, 1996. The Prothonotary & Senior Master has also given notice to the parties and the Petitioner-Corporation has not clearly stated as to the date they became aware of the Award. The Petitioner-Corporation has merely stated that it has not received notice from the Prothonotary & Senior Master of this Court of the filing of the Award although the notice indicates that it is sent to both the parties. The delay caused is substantial and as such, the Petition is barred by limitation. Article 119(b) of the Limitation Act provides for 30 days period for filing of the Application for setting aside an Award.

32. For the purpose of completeness, I have proceeded with the examination of challenge under Section 30 of the 1940 Act to other claims of the Claimant. Section 30 of the 1940 Act is quoted below for ready reference :-

> "***30. Grounds for setting aside award.****-An award shall not be set aside except on one or more of the following grounds, namely:-*

> *(a) that an arbitrator or umpire has misconducted himself or the proceedings;*
>
> *(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;*
>
> *(c) that an award has been improperly procured or is otherwise invalid.*"

33. The law on the scope of interference under Section 30 of the 1940 Act are as noted in the judgment of the Hon'ble Supreme Court in the case of ***M/s. S.D. Shinde Tr. Partner*** (*supra*), wherein at paragraph 24 it has observed that,

> "*24. It is also noteworthy that the scope of jurisdiction of a court, under Section 30/33 of the Act, never extended beyond discerning if the award disclosed an "error apparent on the face of the award" which is an "error of law apparent on the face of the award and not an error of fact. The error of law can be discovered from the award itself or from a document actually incorporated therein." (Refer to Trustees of Port of Madras v Engineering Constructions"). In the facts of the present case, the award did not, facially disclose any error of law; damages were awarded in accordance with principles embodied in law, and the findings were based on the evidence placed before the tribunal. The ruling of the trial courts and the High Court is nothing short of intense appellate review, which is impermissible in law and beyond the courts' jurisdiction.*"

34. The Hon'ble Supreme Court in the case of ***Associated Engg. Co.*** (*supra*) has also dealt with the ground of challenge under Section 30 of the 1940 Act in the following paragraphs :-

> "*24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the con-tract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the con-tract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it.*
>
> *25. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill and Boyd's Commercial Arbitration, 2nd edn., p. 641). He commits misconduct if by his award he decides matters excluded by the agreement (see Halsbury's Laws of England, Volume II, 4th edn., para 622). A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award.*
>
> *27. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking into material*

outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the con-tract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined out-side and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award. [See Alopi Parshad & Sons, Ltd. v. Union of India"; Bunge & Co. v. Dewar & Webb'; Christopher Brown Ltd. v. Genossenschaft Oesterreichischer'; Rex v. Fulham, Falkingham v. Victorian Railways Commission'; Rex v. All Saints, Southampton, Laing (James), Son & Co. (MIC) Ltd. v. Eastcheap Dried Fruit Co.; Dalmia Dairy Industries Ltd. v. National Bank of Pakistan, Heyman v. Darwins Ltd."; Union of India v. Kishorilal Gupta & Bros., Renusagar Power Co. Ltd. v. General Electric Company"; Jivarajbhai v. Chintamanrao; Gobardhan Das v. Lachhmi Ram, Thawardas Pherumal v. Union of India"; Omanhene Kobina Foli v. Chief Obeng Akessee"; F.R. Absalom, Ltd. v. Great Western (London) Garden Village Society, Limited[25] and M. Golodetz v. Schrier[26]."

35. Considering the above legal position about the scope of interference by this Court under Section 30 of the 1940 Act, this Court would examine the claims granted by the Arbitrator.

36. With respect to the objection raised by the Petitioner-Corporation as regards the Bank Guarantee, the Arbitral Tribunal has

[25] (1933) AC 592 : 1933 All ER Rep 616.
[26] (1947)80 LIL Rep 647.

observed that the incorrect name on the Bank Guarantee was an honest mistake, which was rectified before the Bank Guarantee was accepted. It was also observed that since the Bank Guarantee was rectified and since no monies have exchanged hands, the allegation of fraud would not survive.

Claim-I :-

37. As regards Claim-I, the Arbitral Tribunal held that the amount claimed by the Respondent was as per the measurement book, recording, joint measurement by both parties. Thus, the claim was made on the basis of actual work done. The measurement book was made available to the Respondent only after the direction of Arbitral Tribunal. The working was on the basis of rates, which were mutually agreed by the between the parties.

38. The Arbitrator held that the delay in completion of the project work was not attributable to the Respondent, as the increase in the width of the road to 120' had not been finalized; nearly 40% of the length of the road work in Anik-I and II was not handed over after removal of the encroachments until after 20th February, 1993; and part of the site providing access to the remaining portion could not be made available as it was in the possession of the Salt Commissioner, who had in turn leased the same to a private party. The Arbitrator also noted that a bill amounting to Rs. 25,00,000/- for the work done remained unpaid. The contention of the Petitioner

that the delay was attributable to the Respondent was negated by the Arbitral Tribunal on the basis of documentary evidence.

39. The Hon'ble Supreme Court in the case of ***Ispat Engineering & Foundry Works, B.S. City, Bokaro*** (*supra*) has observed that in case of specialized technical experts as Arbitrator only in a speaking award, the Court can look into the reasoning of the Award and it is not open to the Court to probe the mental process of the Arbitrator and speculate, where no reasons are given by the Arbitrator as to what impelled the Arbitrator to arrive at his conclusion. The Court has also observed the similar view in the case of ***Associated Engg. Co.*** (*supra*) and has held that if the Arbitrator has remained inside the parameters of the contract and has construed the provisions of the contract, his Award cannot be interfered with unless he has given reasons for the Award disclosing an error apparent on the face of it. Arbitrator has no authority or jurisdiction beyond that defined by the terms of the contract or what the parties desire under the contract and not beyond the same.

40. Insofar as Claim-I is concerned, the Arbitrator, on the basis of the material on record and joint measurements, held that certain amounts towards the work actually done, remained unpaid in the final bills and accordingly awarded Rs. 15,72,650/- towards the value of the work done but not paid. The Arbitrator further awarded Rs. 4,30,141/- towards the cost of overtime, being the escalation in the cost of the work done due and payable under the terms of the

Agreement but not paid. The Petitioner, by way of the present Petition, is essentially seeking re-appreciation of the evidence considered by the Arbitral Tribunal. The scope of inquiry under Section 30 of the 1940 Act being limited, this Court would not re-appreciate the evidence and rejects the challenge to Claim-I.

Claim-II :-

41. As regard Claim-II with respect to compensation for loss of profit allowed due to extra expenditure, the Arbitral Tribunal held that the Respondent suffered losses on account of rise in cost of material, labour, machinery and equipment, overhead and profit. The Arbitral Tribunal further held that if the work is not completed in time, the cost is incurred accordingly and the profits are affected adversely. The Arbitral Tribunal has observed that as per the provisions of Agreement if the value of work is more than Rs. 1 crore, if there is any extra work, the overheads and profits for such extra work would be paid at 25%.

> "***GCC Clause 73 :***
>
> *(b) Rates for Extra (Contd.)*
>
> *(i) If rate for additional, altered or substituted item of work is specified in the bill of quantities and rates, the contractor shall carry out the additional, altered or substituted item at the same rate. Subject to 73(a) above.*

(ii) If rate for any additional, altered or substituted item of work is not included in the bill of quantities and rates, such item of work shall be carried out at the relevant corporation's fair market schedule rates prevailing at the time of submission Tof the tender (subject to the addition or deduction at the same percentage quoted by the contractors). This sub-conditon viz., 73(b) ii will not apply to item rate tenderers /contracts.

(iii) if the rate for any additional, altered or substituted item of work cannot be determined in the manner specified in (i) and (i (ii) above, or the rate so determined is found to be unreasonable, then the contractor will be paid at such fair and reasonable rates as worked out by the Engineer on the basis of material, labour and operation of plant and machinery etc. required to execute the item and allowing following percentage to cover profits and overhead charges.

(i) For contracts originally valued at Rs. 5 lakhs or less 12 percent

(ii) For contracts originally valued at over Rs. 5 lakhs upto Rs. 50 lakhs 15 percent

(iii) For contracts originally valued at over. Rs. 50 lakhs and upto Rs. 1 crore. 20 percent

iv) For contracts originally valued at over Rs. 1 crore. 25 percent"

42. The Arbitral Tribunal held that the Claimant had applied for completion of work and the Petitioner-Corporation had refused to give extension and thus, granted 25% towards the overhead and profits for such extra work.

43. Claim-II covers overheads of machinery and workforce deployed over the extended period of contract. The execution of work was stalled on account of disturbance and consequent non-availability of site. Claim-II also covers loss of profit and the same relates to profit for non-completion of contractual work although the Claimant has sought extension for completion of work. Claim-II also covers loss on account of overheads (labour + machinery), as the overheads were deployed over the extended period of time. Claim-II in its entirety is granted of 22.5% for non-completed work plus loss on account of the overheads. Although, both the aspects of claim should have been separately dealt with, but the Award cannot be interfered with. Claim-II represents both the aspects (i) Profit for non-completed work and (ii) Overheads stretched over the entire contract period.

44. As regards Claim-II is concerned, it was demonstrated that the work completed is merely half of the allotted work and 50% balance work remained to be executed, on which 25% cost of machinery and equipment, as also loss of expected profit were claimed.

45. The Arbitral Tribunal has observed that if the work is not completed within the stipulated period, but the euipment and machinery is continuously deployed or earmarked by the contractor for the said work, there is bound to be loss on account of reduced productivity from the machinery and equipment. Similarly, the

overheads deployed for the extended period will also have direct effect on its estimate of receipts and expenses. The Arbitral Tribunal has also observed that these are not contradictory claims and accordingly has directed that the Petitioner-Corporation to pay to the Claimant 25% of the balance cost, i.e. 22.5% for overheads and profit and 2.5% for machinery and equipment for the balance amount of work, which the Respondent was entitled to complete.

46. The Arbitrator has come to the conclusion that in view of the disturbance in the area, work could not be completed. That, the Claimant was not at fault for not completing the work. This is not a direct personal knowledge of facts of the case but on site inspection the Arbitrator has noticed the facts. The parties were present for site inspection.

Claim-III :-

47. As regards interest part is concerned, the Arbitrator has taken into consideration that the Claimant has produced evidence in support of the fact that interest of the bank @ 25% per annum was paid. The awarded interest is @ 18% per annum. The Petitioner-Corporation in their counter-claim has also made a claim of interest @ 25% per annum.

48. As regards Claim-III is concerned, Mr. Mukesh Vashi, learned Senior Advocate for the Respondent has relied upon the

judgment of ***Hyder Consulting (UK) Limited*** (*supra*). This Court is of the view that the said judgment is related to the Arbitration Act of 1966 and thus cannot be relied upon in the instant case, which relates to Arbitration Act of 1940. This Court is of the view that the judgment of Hon'ble Supreme Court in the case of ***M/s. D. Khosla and Company*** (*supra*) can be relied upon as it deals with the powers of an Arbitrator to grant interest under the Arbitration Act of 1940 and which has held as under :

> "*21. In Hyder Consulting (UK) Limited v. Governor, State of Orissa MANU/SC/1078/2014: 2014:INSC:807: (2015) 2 SCC 189, this Court was dealing with Section 31(7) of the Arbitration and Conciliation Act, 1996, wherein for the purposes of payment of post-award interest, the phrase 'sum directed to be paid by award was used and it was held that it includes the pre-award interest and, therefore, post-award interest is payable on the sum awarded which includes pre-award interest. However, a distinction was made between Section 31(7) which simply uses the word 'sum' and Section 34 Code of Civil Procedure wherein the phrase 'on principal sum adjudged' has been used. The departure in the use of the language in the two provisions was held to be of great significance which clearly showed that the term 'sum' Under Section refers to aggregate amount of the award and the pre-award interest whereas 'principal sum adjudged' Under Section 34 Code of Civil Procedure refers only to the amount awarded.*
>
> *23. In the light of the above legal provisions and the case law on the subject, it is evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is specific stipulation to that effect under the terms and conditions of the*

contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but where no such power is conferred ordinarily, the courts do not award interest on interest."

49. As regards the *pendente lite* interest on the full amount awarded under Claim Nos. I and II is concerned, interest @ 18% per annum from the date of entering on the reference, i.e. 5th October, 1995 till the date of Award i.e. 28th March 1996 and thereafter in the final Award, on the outstanding sum of Rs. 24,91,253/- from 1st July, 1993 to 4th October, 1995, the interest @ 18% per annum i.e. Rs. 10,08,957/- is granted.

50. The judgment in the case of ***Hyder Consulting (UK) Limited*** (*supra*) relates to the interest on Award under the 1996 Act. Instant case is covered under the 1940 Act, which has no parallel provision as similar to Section 31(7) of 1996 Act. Thus the submission of the Petitioner-Corporation that the Award grants interest on interest with regard to Claim-I is acceptable. Claim-III, i.e., interest part needs to be interfered with. However, this Court has held that the Petition is barred by limitation.

51. In the result, Arbitration Petition No. 264 of 1998 stands dismissed and disposed of accordingly.

52. Ms. Madhavi Nallure, learned counsel for the Petitioner-Corporation seeks stay to the order passed.

53. Considering that this is an Arbitration Petition and huge delay has already been caused in passing the order, the prayer for stay of the order, is rejected.

[ARUN R. PEDNEKER, J.]

GITALAXMI KRISHNA KOTAWADEKAR

Digitally signed by GITALAXMI KRISHNA KOTAWADEKAR Date: 2026.09.05 13:12:30 +0530