

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 07.08.2012

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Date of decision: 07.09.2012

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EFA (OS) No.17/2010

INDIAN OIL CORPORATION LTD.

..... Appellant

Through: Mr. Abhinav Vashisht, Sr. Adv. with
Mr. Raman Kumar, Mr. Sumit Singh Benipal
and Ms. Amrita Jayan, Adv.

versus

G.S. JAIN & ASSOCIATES

..... Respondent

Through: Mr. Sandeep Sharma and Mr. Vikas
Sharma, Advocates.

AND

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EFA (OS) No.18/2010

INDIAN OIL CORPORATION LTD.

..... Appellant

Through: Mr. Abhinav Vashisht, Sr. Adv. with
Mr. Raman Kumar, Mr. Sumit Singh Benipal
and Ms. Amrita Jayan, Adv.

versus

G.S. JAIN & ASSOCIATES

..... Respondent

Through: Mr. Sandeep Sharma and Mr. Vikas Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

SANJAY KISHAN KAUL, J.

1. The appellant invited offers for construction of skirted granular piles foundation for 1 MCO Tank and 3 FO tanks at its ongoing work at

Haldia Refinery. A second NIT was issued for construction of skirted granular pile foundation for 1 Fire Water Tank within the precincts of the same refinery. Disputes regarding payments of amount to the respondent-contractor, who was awarded the work, arose and these disputes were referred to the sole arbitration of Sh. N.Guha Roy, a retired General Manager of IOC/appellant, who published two awards both dated 14.10.1987, dealing with similar issues.

2. The awards were non-speaking awards. The awards were made in favour of the respondent (barring one claim for the payment of mobilization charges in respect of four additional rigs, which was rejected) concluding that recoveries made by the appellant were unjustified. The appellant laid a challenge to the awards by filing I.A. No. 987-988/1988 in CS(OS) 2502-A and 2503/1987, predicated on bias and mala fide of the arbitrator. The learned Single Judge, however, found against the appellant while dismissing the objections of the appellant and making the awards 'rule' of the court vide judgment dated 15.12.2006 under the Arbitration Act, 1940 ('the Old Act' for short). The relevant para 71 reads as under:

“71. Awards dated 14.10.1987 published by Sh.N.Guha Roy are made a rule of the Court. Decree shall follow. Post decretal interest is awarded to the contractor and against Indian Oil Corporation @ 8% per annum from date of decree till payment.”

The judgment was confirmed by the Division Bench of this Court on 20.07.2009.

3. The respondent, in order to effect complete recovery of the decretal amount filed Execution Petitions – 1/2010 and 2/2010. It may be noted that the appellant made its own calculations post the order of the Division Bench and took into account the amount already deposited by the

appellant in the Delhi High court and thereafter sent a cheque for Rs.74,75,840.17 under cover of the letter dated 18.09.2009 which was encashed by the respondent. However, according to the respondent, this did not satisfy the claim under the decree and the Executing Court was thus required to look into the matter as per the impugned judgment dated 17.05.2010. In the Executing Court, both the counsels agreed that the only issue which remained to be examined was arising from the interpretation of Section 29 of the Old Act in the light of the judgment and decree of this Court dated 15.12.2006. The bone of contention was that while making the awards 'Rule' of Court, the learned Single Judge had observed that the post decretal interest was being awarded at 8 per cent per annum from date of decree till the date of payment. This, according to the appellant, was the interest payable only on what was determined under the award as the principal amount while according to the respondent, the interest was payable both on the principal and interest as determined under the awards as, for purposes of decree, that would constitute the total principal amount. The learned Single Judge opined that the judgment and decree dated 15.12.2006 left him in no doubt that the interest was being required to be paid on the principal sum as adjudged by the award and confirmed by the decree. The award was confirmed in its entirety including the pure principal sum and interest and thereafter interest had been award and thus the learned Single Judge opined that the post decretal interest would mean interest on the amount as adjudged in the award and confirmed by the decree while rejecting the contention of the appellant.

4. On the appeals being filed, they were admitted on 18.10.2010. It may be noticed that even prior to admission of appeals, execution proceedings

had been stayed on 07.07.2010. In the course of hearing of the appeal on 25.07.2012, this Bench took note of the operative paragraph 71 of the judgment dated 15.12.2006 making the award 'rule' of the Court and the rival plea as to its interpretation. We were of the view that the operative portion of the judgment dated 15.12.2006 while specifying the rate of interest at 8 per cent per annum from date of decree till date of payment left open the question as to what is the base on which such interest is to be calculated i.e. it stopped short of saying 'on principal amount' or 'on decretal amount'. As to what would be the principal amount under the decree was a question which would arise for consideration only if interest would have been awarded on the decretal amount, but the order dated 15.12.2006 did not say either way. We, thus, considered it appropriate that the two original suits being CS(OS) Nos.2502-A/1987 and 2503/1987 be placed before the same learned Judge who had passed the order dated 15.12.2006 along with a copy of our order dated 25.07.2012, to have the benefit of his opinion seeking a clarification/completion of the last paragraph of the order as to whether 8 % per annum interest had been awarded (from date of decree till date of payment) on the decretal amount i.e. (on the principal and interest amount under the award), or on the principal amount awarded in terms of the award.

5. The learned Single Judge thereafter in terms of the order dated 01.08.2012 passed in the suit opined that he could not review the order passed by the learned Single Judge while deciding the execution objections and its interpretation of the decree, while adding that he had directed interest at 8% per annum on the decretal amount and not 15% per annum as awarded by the learned arbitrator because he had in mind the same view which had been taken by the Executing Court i.e. the

decretal amount would be the sum awarded by the arbitrator which would obviously include interest awarded by the arbitrator and that is what influenced him to scale down the rate of interest from 15% per annum to 8% per annum.

6. Learned counsel for the appellant, however, urged thereafter that his plea would now be confined to a purely legal aspect arising from interpretation of Section 29 of the Old Act i.e. what would be the meaning of the expression ‘principal sum as adjudged by the award and confirmed by the decree’. In order to appreciate this contention, we reproduce Section 29 of the Old Act:

“29. Interest on awards. Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.”

7. The submission of learned counsel for the appellant, thus, was that the only provision which has referred to post decretal interest is Section 29 which empowered the Court alone to grant post decretal interest. Section 29 empowers the Court to grant interest from the date of the decree at such rate as the Court deems reasonable. As to on what amount such interest is to be granted is specified by the last part of the Section after the comma ‘to be paid on the principal sum as adjudged by the award and confirmed by the decree.’ It was, thus, his submission that the legislature made a distinction between principal sum which may be adjudged under the award and any other sum which may be adjudged under the award inclusive of interest. The expression ‘and confirmed by the decree’ was to take care of the situation where, while looking into the merits of a

petition, the Court may vary the principal sum. Thus, naturally interest would be payable only on such portion of the principal sum which formed both a part of the award and is confirmed by the Court while passing the decree. He pleaded that if the expression 'principal sum' was to include both the principal and interest awarded under the award, and both together were to constitute the principal for purposes of the decree and award, then the use of the word principal would be otiose. He, thus, submitted that the last sentence should then have read 'to be paid on the sum as adjudged by the award and confirmed by the decree'. The submission, thus, was that no part of a statute can be made redundant by an interpretation when the wordings of the provision are quite clear. In order to support this line of reasoning, learned counsel has relied upon the judgment of the Supreme Court in Gurudevdatla VKSSS Maryadit vs State of Maharashtra; (2001) 4 SCC 534(para 26) which discussed the cardinal principle of interpretation of statutes emphasizing the golden rule that the wordings of a statute must be given their original meaning. Thus, where the words of the statute are clear, plain and unambiguous, the courts are bound to give effect to that meaning irrespective of the consequences and the words must be understood in their natural, ordinary and popular sense construed according to their grammatical meaning. The subsequent view of the Supreme Court in High Court Of Gujarat & Anr vs Gujarat Kishan Mazdoor Panchayat; 2003 4 SCC 712 is to the same effect.

8. Learned counsel for the respondent really does not dispute the rules of construction of statute, but contends that judicial pronouncements of High Courts have given a meaning to the provisions of Section 29 of the Old Act and the decree which is drawn up on an award being made

‘Rule’ of the Court is the base on which interest has to be calculated. Thus, according to him, the expression ‘principal sum’ refers to the amount confirmed by the decree which includes both principal and interest element and the whole thus becomes the principal on which interest has to be calculated. He further submits that whatever doubt may have arisen regarding the interpretation of the judgment dated 15.12.2006 while making the award ‘Rule’ of the Court on account of para 71, stands not only clarified/interpreted by the Executing Court, but even by the learned Judge who had made the award ‘Rule’ of the Court.

9. Within the narrow contours of the aforesaid controversy, learned counsel for both the parties relied upon a catena of judgments. Since the respondent seeks to support the reasoning adopted by the Executing Court, we proceed first to consider the judgments referred by the respondent.

THE RESPONDENT RELIED UPON FOLLOWING JUDICIAL PRONOUNCEMENTS

Union of India v. Roshni Devi; 2005 (1) Arb.L.R. 363 (J&K)

10. In the facts of the case, there was a separate claim for interest and the principal amount. Both the claims were separately granted. It was held that once the claim of interest was allowed by the arbitrator, it became part of the sum awarded under the award and thus had to be considered as part of the principal. Reliance was placed on the observations in Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A.; AIR 1999 SC 1614. The plea against grant of interest on interest was predicated on Section 3 of the Interest Act, 1978. The Supreme Court observed that there cannot be any doubt that the arbitrators had power to

grant interest akin to Section 34 of the Code of Civil Procedure ('CPC' for short) which is the power of the Court in view of Section 29 of the Old Act. Thus, interest was not granted upon interest awarded, but upon the claim made. The claim in turn was under two heads – all that was claimed under the invoices and paid by the appellant therein and the interest on account of delayed payment and that is how the claim for interest on delayed payments stood crystallized by the time the claim was filed. The award of interest on the amount of interest was, thus, termed as really interest on damages or compensation for delayed payment which would also become part of the principal and thus Section 3 of the Interest Act, 1978 was held not to aid the case of the party. The Division Bench also relied upon the pronouncement in Union of India v. Harbans Singh Tuli and Sons Builders (P) Ltd; AIR 2000 P&H 313 concluding that the principal sum adjudged was the amount which was awarded by the arbitrator under all the claims, one of which was interest, being the amount payable under the award. Hence, the contractor therein was entitled to claim future interest on the pendent lite interest awarded to the contractor under one of the claims.

Union of India v. Harbans Singh Tuli, (2000) ILR 2 P&H 397

11. This judgment referred to aforesaid has relied upon the principles as set out in Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A.'s cas (supra), Mehar Chand v. Tulsi Ram; AIR 1981 Orissa 32, M/s. Andhra Civil Construction Company, Hyderabad v. State of Orissa; AIR 1982 Ori 263 and Executive Engineer, Rural Engineering Division, Dhenkanal v. Biswanath Agarwalla; AIR 1982 Orissa 263.

The reliance of the appellant on the judgment of the High Court of Orissa in the case of Executive Engineer, Rural Engineering Division, Dhenkanal V. Biswanath Agarwalla; AIR 1982 Orissa 263, according to the respondent, is stated to be misplaced.

State of Haryana v. S.I. Arora; (2010) 3 SCC 690

12. The Supreme Court in the context of the Arbitration and Conciliation Act, 1996 ('the New Act' for short) has held that compound interest can be awarded only if there is a specific contract or authority under a statute for compounding of interest and thus such compound interest ought not to be granted. In that context, Section 3 of the Interest Act, 1978 has been referred to, which enables the Court and the arbitral tribunal to award interest from date of cause of action to date of institution of legal proceedings or initiation of arbitration proceedings. It has been specifically stated in sub Section 3(c) of Section 3 of the Interest Act, 1978 that nothing in the said Section would empower the Court or the arbitrator to award interest on interest.
13. We may note that this provision was incorporated by the 1976 amendments in pursuance to the recommendation of the Law Commission of India vide its 63rd Report specifically recommending that there should be no interest on interest and the same should be expressly provided.
14. The Supreme Court took note of its earlier judgment in Renusagar Power Co. Ltd v. General Electric Co.; Supp. (1) SCC 644 opining that the award of interest on interest was not opposed to public policy of India but could be awarded only if authorized by a contract or statute, a view followed in Central Bank of India v. Ravindra; 2002 (1) SCC 367. The

Old Act did not have any provisions dealing with power of arbitral tribunal to award interest and Section 29 provided for only post decretal interest, vesting said power with the Court. Thus, the power of arbitral tribunal to award interest was held to be governed by the provisions of the Interest Act, 1978 and the law enunciated by the Courts. However, the New Act contains a specific provision dealing with power of an arbitral tribunal to award interest in Section 31(7), which provision made no reference to payment of compound interest or payment of interest on interest. Clause (a) and (b) of Section 31(7) of the New Act makes the distinction between pre-award period and post-award period respectively. The pre-award interest is to be awarded as is specified in the contract or in the absence of the same, as per the discretion of the arbitral tribunal while in respect of the post award interest, the same is at the discretion of the arbitral tribunal. If such discretion is not exercised then it has to be mandatorily 18% per annum. Thus compounding of interest in the pre-award period if it is so provided in the contract is permissible.

Saraswati Construction Co. V. Delhi Development Authority; 112 (2004) DLT 736

15. The views of the learned Single Judge of this Court in this case were based on a judgment in Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A.'s case (supra). However, it was held that not only the amount of a claim upheld by the arbitrator or the Court but the pre-suit and *pendente lite* interest awarded in favour of the decree holder crystallized into the decretal amount and thus future interest became payable on the entire amount comprising of claim as well as pre-suit and *pendente lite* interest. However, this view has been over-ruled by a Division Bench of this Court in Pt. Munshi Ram and Associates v. DDA

(2011) 163 PLR 20, which has been discussed subsequently in this judgment.

Blue Star Ltd. V. India Tourism Devp. Corp., Ex. Case No. 194/2002, Decided on 3/9/2002

16. In this case, interest was held payable both on the principal amount and on the interest component of the award.

Madnani Construction Corporation v. Union of India; 2009 (14) SCALE 399

17. In this case, the issue was whether the arbitrator to whom reference was made by the parties had jurisdiction and authority to award interest *pendente lite*. The principle of Section 34 of CPC i.e. a person deprived of the use of money to which he is legitimately entitled having a right to being compensated for such deprivation for both the pre reference period as well as the period when the dispute is pending before an arbitrator, was held applicable even in case of an arbitrator, by the learned Single Judge, regardless of whether it is called interest, compensation or damages. The Supreme Court placed reliance on its earlier view in Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa v. N.C.Budharaj (D) by LRs; (1999) 9 SCC 514 where the majority view was expressed after taking into consideration the Constitution Bench judgment of the Supreme Court in Secretary, Irrigation Department, Government of Orissa and others v G.C.Roy; (1992) 1 SCC 508. It was held that as long as there is nothing in the arbitration agreement to exclude the jurisdiction of the arbitrator to entertain a claim for interest on the amounts due under the contract, or any prohibition to claim interest on the amounts due and become payable under the contract, the jurisdiction of the arbitrator to consider and award interest in respect of

all periods subject only to Section 29 of the Arbitration Act, 1940 and that too the powers of the court thereunder, has to be upheld.

U.P. Cooperative Federation Ltd. V. Three Circles, (2009) 10 SCC 374

18. The Supreme Court relied upon its earlier judgment in McDermott International Inc. v. Burn Standard Co. Ltd, and Ors; 2006 (11) SCC 181 to observe that interest on interest is payable. However, McDermott International Inc.’s case (supra) has no reference to award of compound interest or interest from the date of award on the interest that had accrued due up to the date of the award. The said judgment only dealt with rate of interest and jurisdiction was exercised under Article 142 of the Constitution to set right the anomalies regarding the rate of interest. The Judgment in UP Cooperative Federation Ltd. V. Three Circles’s case (supra) actually extracted a portion of the judgment of McDermott International Inc.’s case (supra) as it was neither a finding or conclusion of the Supreme Court nor the ratio decided of the case, instead they were only the submissions of the counsel. This position has been explained in State of Haryana v. S.L. Arora’s case (supra).

THE APPELLANT RELIED UPON FOLLOWING JUDICIAL PRONOUNCEMENTS

State of Rajasthan v. Nav Bharat Construction; (2005) 11 SCC 197

19. The controversy about the issue of payment of compound interest has been noticed under the Old Act and the rival submissions as to whether interest on interest ought to be granted. However, there appears to be no conclusion on this aspect as the Supreme Court opined that Section 29 of the Old Act empowered the Court to order payment of interest at such

rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree. Central Bank of India v. Ravindra's case (supra) was held to have no direct application to the rate of future interest payable on the principal sum awarded by the arbitrator in the proceedings under the Old Act. The interest fixed was not held to be unreasonable under Article 136 of the Constitution of India.

The plea of interest on interest component under the Award was raised which was objected to by reference to Section 29 of the Old Act. The Supreme Court did not grant the prayer for interest on interest on the aggregate amount.

Central Bank of India v. Ravindra and Ors. (2002) 1 SCC 367

20. The observations of the Supreme Court qua the powers exercisable under Section 34 of CPC have been relied upon to contend that the expression “principal sum adjudged” would be the sum actually loaned plus the amount of interest on periodical rests which according to the contract between the parties or established banking practice stood capitalized. The *pendente lite* future interest would be payable on the principal sum adjudged on the date of the suit.
21. The distinction between a suit filed by the Bank and a suit filed by the other creditors qua application of Section 34 of CPC was held to be valid and thus the requirement of compound interest either specifically provided in the contract or should be in vogue in the field of banking business. Since the present contract did not contain any such clause, nor was there any prevalent practice, it was pleaded that compound interest would not be payable.

State of Haryana v. S.L. Arora; (2010) 3 SCC 690

22. This case has been discussed while dealing with judgments referred to by the respondent. The reference to interest is a reference to simple interest payable on the principal amount unless there is a contract to the contrary or a statute provides so. It has been held that there is no discretion in the court or tribunal to award compound interest or interest on interest. Section 29 of the Old Act provides for post-decretal interest on the principal sum and thus it was pleaded that the power of arbitral tribunal to award interest was governed by the provisions of the Interest Act, 1978. Section 31(7) of the New Act made no reference to payment of compound interest and thus it was held that the said provision only provided for payment of simple interest.

Executive Engineer, Rural Engineering Division, Dhenkanal v. Biswanath Agarwalla; AIR 1982 ORISSA 263

23. There are observations to the effect that the claimant should get interest only on the principal amount as permissible under Section 29 of the Old Act and not interest on interest.

CONCLUSION

24. We have noticed these catena of judgments cited by both the sides. However, the question which confronts us has not been directly dealt with in any of these judgments. The nearest which one can get to is the discussion on the issue of compound interest in State of Haryana v. S.L. Arora's case (supra) whereby under the New Act which is law for the proposition that Section 31(7) of the New Act admits of only simple

interest and compound interest is not to be granted unless it is specifically provided so in the contract or a statute. The question would, thus, arise whether the same principle on parity has to be applied under the Old Act and what should be the construction of the provision of Section 29 of the Old Act.

25. We may point out at this stage that it has been brought to our notice that in SLP(C) No.29407/2010 M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, Through Chief Engineer, a Bench of the Supreme Court vide order dated 13.03.2012 has referred the view taken by the Supreme Court in State of Haryana v. S.L. Arora's case (supra) to a larger Bench. However, till date no opinion has been rendered in this and thus State of Haryana v. S.L. Arora's case (supra) holds good.

26. We would like to take notice of certain other pronouncements which are possibly nearer to the matter in issue. In **Shri Jai Prakash Narain Singh v. NBCC; Execution Petition No.26/2007, decided on 18.05.2009**, this very view has been examined i.e. the post decretal interest under the Old Act. The learned Single Judge (Rajiv Sahai Endlaw, J.) opined that a meaningful construction has to be made of the expression "principal sum as adjudged" in Section 29 of the Old Act. If there was no distinction between 'principal' and 'interest' then there was no need to use the expression 'principal' in Section 29 of the Old Act. Thus, since Section 29 of the Old Act is the only provision conferring power on the Court to award interest post-decree, and such interest has to be calculated on the principal sum adjudged, it must carry with it a negative import that it shall not be permissible for the Court to award interest on any sum other than the principal sum adjudged by the award. In that context, it was observed that in Oil and Natural Gas Commission

v. M.C. Clelland Engineers S.A.’s cas (supra), the Supreme Court was in seizin of the dispute and made observations only to the extent of empowering the Court to award post-decretal interest. The other part of Section 29 empowering court to award interest only on the principal amount adjudged in the award had not been discussed.

27. The Division Bench in Pt. Munshi Ram & Asso. P.Ltd. v. DDA’s case (supra) was faced with opinions of two learned Single Judges of the Delhi High Court, one being by Rajiv Sahai Endlaw, J. in the judgment of Shri Jai Prakash Narain Singh v. NBCC’s case (supra) and a reference made by Manmohan, J. in Munshi Ram & Asso. P.Ltd.(M/S Pt.) v. Delhi Development Authority; 2009 X AD (Delhi) 174. One of us, Sanjay Kishan Kaul, J., was a member of the Division Bench and rendered the opinion on behalf of the Bench. We reproduce the observations as under:

11. Section 34 of the said Code deals with interest to be paid on the principal sum adjudged from date of suit to date of decree and from date of decree to date of payment. The judgment in Central Bank of India v. Ravindra and Ors.’s case (supra) referred to how the principal sum had to be adjudged where there was a contract providing for compound interest and thereafter the pendente lite and future interest to be calculated thereon. Section 3 of the Interest Act deals with the period from the date when the debt is payable to date of institution of the proceedings. Neither Section 34 of the said Code nor Section 3 of the Interest Act use the expression ‘compound interest’ but both refer to the concept of interest which has to be understood as simple interest in view of the judgment in State of Haryana & Ors. v. S.L.Arora & Company’s case(supra).

12. We find that the legal position is quite clear in view of this judgment that unless there is a contract providing for compound interest or a statute there can be no question of payment of compound interest. We may note that in the facts of the present case, it is undisputed that the contract does not provide for compound interest. It really also cannot be disputed that neither Section 29 of the old Act (which deals with post-decree interest) nor the judicial pronouncements which assisted in holding that the arbitral tribunal has the authority to grant interest for other three periods in view of the provisions of Section 34 of the said Code r/w Section 41 of the old Act and Section 3 of the Interest Act give any authority for charging such compound interest. The position thus is no different under the old Act in this behalf.

13. Rajiv S. Endlaw, J., a learned Judge of this Court, in Jai Prakash Narain Singh v. NBCC Ltd.; 2009 (9) AD Delhi 23 has examined this issue. It has been noticed that Section 29 of the old Act is concerned with interest from date of decree only and does not apply to the previous periods. Compound interest was not granted in the said case.

14. Another learned judge of this Court Manmohan, J. in Munshi Ram & Asso. P.Ltd.(M/S Pt.) v. Delhi Development Authority; 2009 X AD(Delhi) 174, in execution proceedings, again held that there was no compound interest to be granted nor was it admissible unless there was a provision in the contract for the said purpose. The judgment has noted the pronouncement in Central Bank of India v. Ravindra and Ors.'s case (supra) to the effect that 1956 amendment to Section 34 of the said Code was intended to deprive the Court of its power to award interest on interest i.e. compound interest and relied upon para 45 of the judgment in Central Bank of India v. Ravindra and Ors.'s case (supra). The said para 45 is once again reproduced as under:

“45. The 1956 amendment serves a twofold purpose. Firstly, it prevents award of interest on the amount of interest so adjudged on the date of suit. Secondly, it brings the last clause of Section 34, by narrowing down its ambit, in conformity with the scope of the first clause insofar as the expression “the principal sum adjudged” occurring in the first part of Section 34 is concerned which has been left untouched by amendment. The meaning to be assigned to this expression in the first part remains the same as it was even before the amendment. However, in the third part of Section 34 the words used were “on the aggregate sum so adjudged”. The judicial opinion prevalent then was (to wit, see *Prabirendra Mohan v. Berhampore Bank Ltd.*⁵¹ AIR at p. 295) that “aggregate sum” contemplated the aggregate of (i) the principal sum adjudged, (ii) the interest from the date of the suit to the date of decree, and (iii) the pre-suit interest. Future interest was capable of being awarded also on the amount of pre-suit interest — adjudged as such, that is, away from such interest as was adjudged as principal sum having amalgamated into it by virtue of capitalisation. The amendment is intended to deprive the court of its pre-amendment power to award interest on interest i.e. interest on interest adjudged as such. The amendment cannot be read as intending, expressly or by necessary implication, to deprive the court of its power to award future interest on the amount of the principal sum adjudged, the sense in which the expression was understood, also judicially expounded even before 1955; the expression having been left untouched by the 1956 amendment.”

15. We may note that the same learned Judge has in fact made the reference in the present case.

16. We are of the view that these two judgments correctly lay down the proposition of law that no compound interest or interest on interest is admissible under the old Act unless there is specific provision in the contract and even there the court is not denuded of the authority not to grant such interest which is in conflict with or in violation of the public policy of India.

17. We are thus of the considered view that the contra view taken in Kali Charan Sharma(since deceased) v. New Okhla Industrial Development Authority; 149 (2008) DLT 244 and M/s Saraswati Construction Co. v. DDA; 112 (2004) DLT 736 does not correctly reflect the legal position.

18. Learned counsel for the decree holder relied upon the observations in ONGC v. M.C.Clelland Engineers S.A.; (1999) 4 SCC 327 = AIR 1999 SC 1614. There is undisputedly a passing reference in the said judgment to the power of the arbitrators to grant compound interest. However, the same is really an order passed in the facts of the case and in view of what has been discussed above and the authoritative pronouncement of Supreme Court in the subsequent judgment in State of Haryana & Ors. v. S.L.Arora & Company's case(supra), there can be little doubt about the general principle.

19. The reference really arises only in respect of the entitlement of an arbitral tribunal to award interest on interest from date of award under the old Act, but we have explained the legal position aforesaid to set at rest the controversy in respect of the grant of interest.

20. We are unequivocally of the view that the authority of an arbitrator to grant compound interest can only be under a contract as the applicable statutes, as interpreted by the Supreme Court, permitting grant of interest by an arbitrator being Section 29 of the old Act, Section 34 of the said Code r/w Section 41 of the old

Act and Section 3 of the Interest Act do not permit specifically the grant of such compound interest. The position is thus same in respect of the authority to grant compound interest under the new Act and the old Act. We also make it clear that even where there is such a provision in the contract, the authority of the Court is not taken away not to grant such compound interest if it is in conflict with or in violation of the public policy of India as observed in para 18.3 of State of Haryana & Ors. v. S.L.Arora & Company's case(supra). As for the facts of the present case are concerned, as already noticed, there is no contract for compound interest and thus compound interest cannot be awarded.

28.The issue is, thus, no more res integra in view of the judgment in Pt. Munshi Ram and Associates v. DDA's case (supra) where again there was absence of any contract for compound interest. In Chandigarh Housing Board v. JMK Associates and Anr.; AIR (2011) NOC 433 (P&H){Civil Revision No.2509 of 2010 decided on 27.05.2011}where it was observed that the power to grant interest under the Old Act by the Arbitral Tribunal was to be governed by the provisions of the Interest Act, 1978, the grant of compound interest in the absence of a contract was held to be against the principles of law and statute.

29.We may add that there is force in the contention of the learned counsel for the appellant that the golden rule of interpretation of statute must be followed and where the wordings of the statute are clear, plain and unambiguous, the courts are bound to give effect to the meaning irrespective of the consequences. In Section 29 of the Old Act, it is after a comma that a complete line comes, “to be paid on the principal sum as adjudged by the award and confirmed by the decree”. This expression has to be read as a whole. The reference to ‘confirmed by the decree’ is,

thus, in the context of a possible variation in the principal sum which may arise on account of modification of the award. The word ‘principal’ cannot be irrelevant and has to be understood as per the common parlance. The ‘principal’ is thus distinct from any other amount which would include interest. Similarly, costs would be a third category. The provisions of Section 29 of the Old Act thus provide for post decretal interest by the court only on the principal sum. If one may say, this is also in consonance with the general view of the legislature as is apparent from the provisions of Section 34 of the CPC and as to why the amendment was brought into force in Section 34 pursuant to the recommendations of the Law Commission of India in its 55th Report of 1973. The effect of the amendment carried out in 1956 was explained i.e. prior to the amendment of 1956, the Section left the rate of interest even for the post decree stage to discretion of the Court, but after the amendment, it provided for a maximum rate of interest. Moreover, the rate of interest was previously permissible on the aggregate sum and not merely on the principal as was the position under the unamended Section. The Minister of Legal Affairs was quoted in the report giving an explanation for the amendment of 1956 explaining the objective to be that interest ought not to be allowed on an amount of interest itself i.e. to prevent compound interest. Thus, where the expression ‘principal’ is used and continues to be used, it cannot be said that the legislature was ignorant of the complexity of the issue i.e. whether interest should be granted only on the principal sum or interest should be granted on the complete amount inclusive of interest i.e. the compound interest. In fact, conscious decisions have been taken to remove the concept of compound interest and exceptions which have been carved out as per the judicial

interpretation are restricted to cases where there is a specific contract or statute providing compound interest.

30. In the facts of the present case, it is certainly not pleaded that the contract provides for compound interest.

31. We are thus of the view that despite the opinion rendered by the learned Judge qua his decree dated 15.12.2006 and the impugned order interpreting that order, compound interest could not have been granted i.e. the interest could not have been granted on the part of the award which was for interest element. If the statute does not permit it then the Court would not be able to grant it in the absence of any contract or statute. We are conscious of the fact that as per the opinion of the learned Judge dated 01.08.2012, the learned Judge consciously reduced the post decretal interest to 8% per annum as against the interest rate awarded by the arbitrator of 15% per annum, but in view of the prohibition in law that intent cannot be given effect to.

32. The result of the aforesaid is that the appeals are allowed and it is held that the appellant is liable to pay interest on only the principal component of the award and not the interest component of the award.

32. The parties are left to bear their own costs.

SANJAY KISHAN KAUL, J.

SEPTEMBER 07, 2012
dm

VIPIN SANGHI, J.