



**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.08 of 2026

Sri Ashes Deb, Son of Late Amalendu Deb, Resident of Village-Dhaleswar, Nutanpally Road No.2, P.O.-Dhaleswar, P.S.-East Agartala, District-West Tripura, Pin-799007.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Secretary, Public Works Department (R & B), Government of Tripura, Agartala, having his Office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura, Pin-799006.

2. The Executive Engineer, LTV Division, PWD (R & B), Manu, Dhalai, Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Jishan Samed, Advocate.

For Respondent(s) : Mr. Promod Sahu, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

Date of hearing & judgment : **19.05.2026.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

Heard both sides.

2. This Revision is filed by the petitioner challenging the order dt.24.11.2025 by the District Commercial Court, West Tripura, Agartala in Ex(M) No.30 of 2021 filed under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI Rule 10 of CPC, 1908 for enforcement of arbitral award dt.29.01.2021 of the Sole Arbitrator in Arbitration Case No.9(SCD) 2019.

3. There was a contract agreement between the petitioner and the respondents bearing No.24/CE/SE-V/EE/LTV/PWD/M/2009-10 in relation to work of "Setting up of General Degree College at Lt. Valley, Chailengta,



Tripura, Dhalai under ACA/Construction of Academic Building (Ground Floor only), Administrative Building (Ground Floor only), Type-III Qtr. (Four unit), Twin Double Storied & 50 Seated Hostel-Phase-I/SH: Building portion including internal water supply and sanitary installation."

4. Disputes arose between the parties and the petitioner invoked the Arbitration Clause in the agreement between the parties. After contest, the Arbitrator pronounced his award on 29.01.2021 (Annexure-1). In paras-26 and 27 of the Arbitral Award, the Arbitrator held as under:

"26. In view of the discussion made above, the petitioner is entitled to get Rs.29,33,141/- + Rs.60,93,104/- + Rs.4,70,000/- + Rs.2,00,000/-, total Rs.96,96,245/- out of which, an amount of Rs.5,81,500/-, as decided under Issue No.7, shall be set off and the amount therefore stands at Rs.96,96,245/- (-) Rs.5,81,500/- =Rs.91,14,745/-, and on this amount, the petitioner is entitled to get interest @ 9% per annum from 04.12.2018.

27. The payment of awarded amount of Rs.91,14,745/- with 9% interest should be made within 90 days from the date of award along with cost part as awarded under Issue No.6, i.e. Rs.1,91,743/-. In case of failure to make payment within 90 days, entire amount shall carry interest @ 12% per annum from 04.12.2018."

5. After the award was pronounced, the respondents wrote a letter on 01.06.2021 to the petitioner asking the petitioner to attend their office for collection of the awarded amount *after deduction of the cost of materials utilized by the petitioner which had been issued to the petitioner by the department.*

6. Petitioner responded to the said letter on 15.06.2021 vide Annexure-3. In the said letter, he referred to the fact that the respondents had



not paid any money during the period of 90 days from the date of the award, i.e. before 29.04.2021 and so the petitioner contended that he is entitled to interest @ 12% per annum on the awarded sum w.e.f. 04.12.2018. After adding the period of interest, he stated that he is entitled to Rs.1,20,98,434/- comprising of Rs.93,06,488/- (Principal) + Rs.27,91,946/- (Interest).

7. Thereafter, the petitioner said that the cost of materials supplied to him by the department i.e., Rs.18,93,958/- can be deducted from the sum of Rs.1,20,98,434/- and the respondents should, therefore, pay Rs.1,02,04,476/-.

8. In his letter, he also stated that this is issued without prejudice to his rights to challenge the Arbitral Award dt.29.01.2021 on other grounds/claims where he had not succeeded before the learned Arbitrator.

9. There was no response to this letter from the respondents to the petitioner.

10. Petitioner, therefore, filed Execution Petition No.30 of 2021 under Section 36 of the Act as mentioned above. He claimed in the Execution Petition Rs.1,23,30,459/-.

11. The respondents filed a counter affidavit thereto raising the contention that the petitioner had filed an application under Section 34 of the Act for setting aside the same award. They also raised a contention that the place where the Execution Petition should be filed would be the Court at Dhalai District, and not in Agartala, West Tripura. They, therefore, prayed for the dismissal of the Execution Petition.

12. There was an amendment to this counter affidavit wherein an additional plea was taken by the respondents that there were overpayments made to the petitioner. They also raised certain contentions on the merits of



the case which they could not have done in the Execution Petition because there is no scope for going into those aspects at the execution stage.

13. Both parties filed calculation memos before the trial Court. Calculation memo filed by the petitioner before the Court below is Annexure-8. In the said calculation memo, the petitioner first calculated the principal amount and added interest amount @ 12% from the date of the award till the date of the Execution Petition, i.e. 05.07.2023 and claimed Rs.1,44,25,056/-; and from that amount, he deducted the cost of utilized materials of Rs.18,93,958/- and arrived at Rs.1,25,31,098/-, and after adjusting some amounts which have been paid subsequently, ultimately claimed Rs.31,29,379/-.

14. When the matter was ultimately taken up by the Executing Court, the respondents filed a calculation memo admitting that the total awarded amount is Rs.93,06,488/-, but deducting the cost of utilized departmental materials of Rs.18,93,958/- which they claimed that the petitioner had agreed in his letter dt.15.06.2021; and after setting off the amount paid, arrived at the balance of Rs.74,12,530/- as payable to the petitioner.

15. The Executing Court then considered Clause 98(a) of the agreement and the contents of the letter dt.15.06.2021 sent by the petitioner to the respondents and accepted the stand of the respondents, i.e. that there ought to be a deduction from the principal amount of Rs. 93,06,488/- of the cost of works of Rs.18,93,958/-, and only thereafter, interest @ 12% is to be added.

16. It then dismissed the Execution Petition by the impugned judgment stating that the petitioner's calculation sheet failed to deduct the admitted liability and, therefore, an inflated claim was made. It noted that the



respondents deducted the cost of the materials prior to the computation of interest consistent with the contract, terms and equity and the payment made by the respondents fully satisfied the award.

17. Challenging the same, this Revision is filed.

18. Mr. Somik Deb, learned Senior counsel appearing for the petitioner, seeks to contend that before the arbitrator, the respondents had not raised any contention that there should be a set off of the cost of the materials supplied to the petitioner by the respondents, which had been used by the petitioner in the execution of the contract.

He further contends that after the award is passed, the respondents had proposed vide letter (Annexure-2) to deduct the cost of materials which had been utilized *without indicating how the deduction is to be made*, i.e. whether it should be made from the principal amount or whether it should be made from the principal amount *after* adding the interest awarded by the Arbitrator to the petitioner.

Counsel for the petitioner further contends that the petitioner had made a counter offer in his letter dt.15.06.2021 (Annexure-3) to the respondents that first the principal and the interest @ 12% for delay in making payment beyond 90 days from the date of award should be computed, that they should then be added, and then only the cost of materials can be deducted.

Counsel contends that this counter offer of the petitioner was never accepted by the respondents and, therefore, there is no question of making any deduction of the cost of materials supplied to the petitioner by the department worth Rs.18,93,958/- because the agreement of the petitioner for



such a deduction was conditional on the deduction being made *after* adding the interest, and *not before* adding the interest.

He contends that the respondents in the counter affidavit/ objection filed in the Execution Petition have also not taken the plea of adjustment of the cost of materials, and without even raising such an objection, it was not open to them to have contended that the deduction should be made from the principal first and then only interest should be added and that the Executing Court ought not to have accepted the contention of the respondents.

19. Counsel for the respondents does not dispute the fact that before the learned Arbitrator, the contention regarding adjustment of cost of materials supplied to the petitioner by the department, which were utilized by the petitioner, was never raised. Therefore, it was not open to the respondents to seek to deduct the same *post* award in the execution proceedings.

20. Counsel for the respondents also does not dispute the fact that in the written objection filed in the Execution Petition also there was no pleading raised by the respondents that they were entitled to deduct the cost of the materials supplied to the petitioner by the department standing at Rs. Rs.18,93,958/- at all.

21. He also does not dispute that while the respondents had proposed vide letter dt.01.06.2021 (Annexure-2) to simply deduct the cost of materials utilized *without indicating whether the said deduction should be from the principal or principal after adding the interest.*

22. Admittedly no reply was sent to the petitioner's response dt.15.06.2021 (Annexure-3) by the respondents, wherein the petitioner offered



that the deduction should be done, if at all, after adding the principal and the interest @ 12%.

23. In my opinion, the offer of the respondents to the petitioner in Annexure-2 dt.01.06.2021 was responded by a counter offer from the petitioner vide Annexure-3 dt.15.06.2021. There is absolutely no evidence to show that the respondents had accepted the petitioner's counter offer contained in Annexure-3 dt.15.06.2021 at any subsequent point of time. So it cannot be said that the petitioner had agreed to deduct the cost of the materials supplied to the petitioner by the department standing at Rs.18,93,958/- and that such deduction can be done *before* adding the interest.

24. So there could not have been a deduction at all from the awarded amount of the cost of materials supplied to the petitioner by the department of Rs.18,93,958/- when such a contention was not raised by the respondents before the Arbitrator.

25. More so, because the executing Court cannot go behind the award. (see *S.P. Misra and others v. Mohd. Laiquddin Khan and another*¹ and *Radhey Shyam Gupta v. Punjab National Bank and another*².)

26. The Executing Court, therefore, had no business to go behind the Arbitral Award and rely on the counter offer made by the petitioner in his letter dt.15.06.2021 (Annexure-3) and proceed to adjust the cost of materials also while computing the amount to be paid to the petitioner by the respondents before adding the interest@12%.

27. It is also settled law that where payments are made by the judgment debtors to the decree holder, the payments made ought to be

¹ (2019) 10 SCC 329

² (2009) 1 SCC 376



adjusted first towards interest, next to the costs and last to the principal as held by the Supreme Court in the case of *Gurpreet Singh v. Union of India*³ and in the case of *V. Kala Bharathi and others v. Oriental Insurance Company Limited, Branch Chitoor*⁴. The legal position contained in the above decisions is also not disputed by the counsel for the respondents.

28. Since the Court below has thus erred in taking into account the amount of Rs.18,93,958/-, which is the cost of materials supplied to the petitioner by the respondents erroneously which it could not have done, this Revision is allowed; the judgment dt.24.11.2025 of the Executing Court in EX(M) No.30 of 2021 is set aside and the matter is remitted back to the said Court to compute the amount, if any, payable to the petitioner, strictly in accordance with the above decisions of the Supreme Court without setting off the cost of materials supplied to the petitioner by the department of Rs.18,93,958/- . This exercise shall be completed within 2(two) months from today.

29. Revision is allowed in view of above terms.

Pending application(s), if any, stands disposed of.

(M.S. RAMACHANDRA RAO, CJ)

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³ (2006) 8 SCC 457

⁴ (2014) 5 SCC 577