

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 558 of 2000**

State of M.P. through Collector, Sarguja (Ambikapur)

---- Appellant/Non-Defendant**Versus**Jagdish Rai Bajrang Rai, S/o Maniram Agrawal, aged 40 years, R/o Sadar Ward,
Ambikapur, District Sarguja**---- Respondent/Plaintiff**For Appellant/State
For Respondent:Shri Arun Sao, Deputy A.G.
:Shri Gagan Tiwari, Advocate**Hon'ble the Chief Justice &
Hon'ble Shri Justice Sanjay Agrawal****Order On Board****21/11/2016****Per Deepak Gupta, C.J.**

This appeal is directed against the judgment and decree dated 29th January, 2000 whereby the learned Court below made the award of the arbitrator rule of the Court and passed a decree in terms thereof.

2. At the outset, we may mention that this case is governed by the provisions of the Arbitration Act, 1940 as it existed prior to promulgation of the Arbitration and Conciliation Act, 1996

3. Briefly stated the facts of the case are that the State of Madhya Pradesh invited tenders to take up the work of balance earth work of Bund Shyam Division Project. It is not disputed that the respondent was awarded the contract of this work. After he had completed the contract, the Contractor (respondent) claimed Rs.7,00,000/- on account of escalation charges. The matter was referred to

Arbitrator in terms of arbitration clause in the agreement. Many Arbitrators were changed, but, finally, we are concerned with the award of Shri K.N.Tiwari, Arbitrator, who by his detailed award, awarded a sum of Rs.6,73,504/- along with interest @ 9% per annum. The learned Court below has upheld the award but reduced the interest to 6% per annum.

4. The only issue raised before this Court is that there was no clause in the agreement which permitted price escalation. However, it is not disputed before us that in the notice inviting tenders and the agreement attached thereto, there was a clause relating to price escalation. It may be true, that the blank columns in the clause have not been filled in but that does not mean that the clause is not there. When a clause is printed in the contract and any of the parties does not want that clause to be part of the contract, then that clause should be scored off. In the present case, the clause was not scored off. Merely because some of the blanks were not filled in, does not mean that the escalation clause is not applicable.

5. Therefore, we are of the considered view that both the Arbitrator and District Judge were justified in holding that the price escalation clause provided in the Contract is applicable.

6. In view of above, we find no merit in this appeal, which is accordingly dismissed being devoid of merit.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge