

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) No.105 OF 2007
IN
ARBITRATION PETITION NO.456 OF 2006**

M/s.Saloja & Sons ... **Appellant**
V/s.

Union of India, acting through
Divisional Railway Manager (Works) ... **Respondent**

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Ms.Shilpa Kapil, Advocate for the Appellant.

Mr.Suresh Kumar with Ms.Sangeeta Yadav, Advocate for the
Respondent.

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**CORAM : ANOOP V. MOHTA J.
G.S.KULKARNI J.**

DATED :4th JULY 2016.

ORAL JUDGEMENT :

1 Heard finally by consent of the parties.

2 Appeal is filed by the appellant against the order passed by the Single Judge dated 18/12/2006. Considering the agreement clauses between the parties specifically clauses 64.5 and 64.6 and after considering the rival contentions referring to the reasons given by the learned trial Court, the learned Single Judge has interfered with the award to the extent of setting aside the directions on interest and cost of arbitration.

3 We have noted the arguments of learned counsel for the appellant and basically that these clauses were not placed before Arbitrator and, therefore, the learned Judge ought not to have relied upon this to interfere with the order/award passed by the arbitrator in question. However, the fact of existence of these clauses is not in dispute and not specifically denied. Therefore, the condition which binds the parties ought to have been considered by the learned Arbitrator while passing the award including these clauses. The learned Judge has considered this basic aspect and noting the clauses as well as position of law, that if party specifically agrees with regard to the interest as well as costs, then it binds them for all the purposes. The clauses so referred above and relied upon by the learned Single Judge, therefore, in our view are well within the frame work of law and the record. Findings given by the learned Judge, which are as under :

“It is clear that the learned Arbitrator while awarding interest and cost has not considered these two conditions. The learned counsel appearing for respondents, relying on my judgment in arbitration petition No.427 of 2004 (Dy.Chief Engineer, Western Railway v/s M/s.R.P.Shah) dated 6th September 2005, submitted that in that judgment, it is held that because condition No.64.5 of the General Conditions of

Contract was not relied on by the petitioners, the learned Arbitrator was justified in not considering it. In the present case, in the rejoinder filed on behalf of the petitioners, General Conditions of Contract have been specifically referred to. It appears that in the case of Dy.Chief Engineer, Western Railway, referred above, even there was no reference to the General Conditions of Contract. As the General Conditions of Contract were referred to, it was for the learned Arbitrator to enquire as to which conditions of General Conditions of Contract are applicable. It is clear that the award made is contrary to the condition Nos.64.5 and 64.6 and therefore, it is liable to be dismissed. It is accordingly dismissed to that extent. Petition is disposed off.”

4 We see there is no case made out to interfere with the same.

5 The appeal is dismissed.

(G.S.KULKARNI J.)

(ANOOP V. MOHTA J.)