

jsn

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

**CHAMBER SUMMONS NO. 451 OF 2019
IN
EXECUTION APPLICATION NO.874 OF 2019
WITH
CHAMBER SUMMONS NO. 452 OF 2019
IN
EXECUTION APPLICATION NO.875 OF 2019
WITH
CHAMBER SUMMONS NO. 455 OF 2019
IN
EXECUTION APPLICATION NO.1544 OF 2018
WITH
CHAMBER SUMMONS NO. 787 OF 2019
IN
EXECUTION APPLICATION NO.1154 OF 2018
WITH
CHAMBER SUMMONS NO. 780 OF 2019
IN
EXECUTION APPLICATION NO.1547 OF 2018
WITH
CHAMBER SUMMONS NO.789 OF 2019
IN
EXECUTION APPLICATION NO.1556 OF 2018
WITH
CHAMBER SUMMONS NO.790 OF 2019
IN
EXECUTION APPLICATION NO.876 OF 2018
WITH
CHAMBER SUMMONS NO.791 OF 2019
IN
EXECUTION APPLICATION NO.877 OF 2018
WITH
CHAMBER SUMMONS NO.793 OF 2019
IN
EXECUTION APPLICATION NO.1153 OF 2018
WITH
CHAMBER SUMMONS NO.796 OF 2019
IN**

**EXECUTION APPLICATION NO.1548 OF 2018
WITH
CHAMBER SUMMONS NO.797 OF 2019
IN
EXECUTION APPLICATION NO.1546 OF 2018
WITH
CHAMBER SUMMONS NO.799 OF 2019
IN
EXECUTION APPLICATION NO.878 OF 2018**

Maharashtra State Electricity Distribution Company Ltd. Anr. ... Applicants / Judgment Debtor (Ori. Respondent)

In the matter between

Maharashtra Conductor Association (SSI) & Anr. ... Judgment Creditors (Ori. Claimant)

V/s.

Maharashtra State Distribution Co. Ltd. & Anr. ... Respondents

Mr. Kiran Gandhi I/b Little & Co. for the Applicant.
Mr. Sudhir Veditel with Mr. Vinay Bhorge I/b M/s.Utangale & Co.
for the Judgment Creditors / Original Claimant.
Mr. Abhijeet A. Joshi, for Respondents.

CORAM: R. I. CHAGLA, J.
DATE: 15TH JULY, 2019.

PC:-

1. These Chamber Summonses have been taken out by Applicant / Judgment Debtor to stay the execution proceedings filed by Judgment Creditors (original Claimants). The learned Counsel for the Applicant refers to the order dated 14th October, 2016 passed by the Appellate Court in the Appeal filed under 37 of the Arbitration and Conciliation Act, 1996 from the judgment of the

Single Judge of this Court which had rejected challenge of the Judgment Debtor under Section 34 of the Arbitration and Conciliation Act, 1966. He has relied upon paragraph 10 of the Appellate Court order, wherein the Appellate Court had observed that the learned Judge has set aside the award of interest @ 10% per annum from 26th April, 2001. The Appellate Court held that they were not in agreement with the view taken by the Arbitrator, in so far as non grant of interest as per Section 4 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 ("the Act") merely because of filing of Petition by Respondent Association therein. It has been held by the Appellate Court that interest rate should have been as per the provisions of law. It is further observed that the learned Judge has not granted and / or passed order in this regard. Accordingly, it was left to the parties to ascertain the prime lending rate charged by the State Bank of India, at the relevant time. It was further clarified that rate cannot be less than the Section 4 requirement of the Act. Accordingly, the judgment of the Appellate Court was carried in Appeal to the Supreme Court by the judgment debtor and which Appeal came to be dismissed by the Supreme Court by order dated 16th April, 2018 on ground of delay by keeping the question of law open.

2. It is observed that the learned Single Judge in the order dated 30th August, 2004 held that the finding in so far as the interest is concerned by the learned Arbitrator is concerned is contrary to the provisions of the Section 4 of the Act and was liable to stayed. Accordingly, the learned Counsel for the Applicant has submitted that the interest which can be claimed would be under Section 4 of the Act and that the Act of The Micro, Small and Medium Enterprises Development Act, 2006 ("the new Act"), in particular Section 32 of the new Act, which had repealed the Act would not change the position. He has submitted that it would be necessary for this Court to consider certain dates. The award was passed on 30th April, 2004 and that would be the relevant date for grant of interest. He further submits that thereafter the Arbitration Petition challenging the award was disposed of on 27th September, 2005 and ultimately the Appeal under Section 37 was disposed of on 14th October, 2016. He has submitted that the new Act came into force on 2nd October, 2006. He has accordingly submitted that the new Act would not apply insofar as the grant of interest by the award of the Arbitrator is concerned. He has also relied upon the judgment of the Supreme Court in ***Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity***

Board & Anr.¹ where the Supreme Court was considering the Act. The Supreme Court in that case held that in the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. In this case the Supreme Court had considered that the Act envisaged that the supplier has an accrued right to claim a higher rate of interest in terms of the Act and the same can only be accrued for sale agreements after the date of commencement of the Act i.e. 23rd September, 1992 and not any time prior thereto.

3. The learned Counsel for the Respondents has submitted that under Section 32 of the new Act, it is provided that notwithstanding repeal of the Act, anything done or any action taken under the Act so repealed under sub-section 1 of Section 32 shall be deemed to have been done or taken under the corresponding provisions of this Act. He has thus submitted that the interest rate had not been granted and / or passed by the learned Single Judge who had set aside the interest rate of 10% fixed by the Arbitrator. The Appellate Court had in the Appeal under Section 37 left it to the parties to ascertain the prime lending

1 (2012) 7 Supreme Court Cases 462.

rate charged by the State Bank of India at the relevant time. He has submitted that the prime lending rate charged by the bank at the relevant time would although be under the Act, upon repeal of the Act, the action taken under the repealed Act shall be deemed to have been done or taken under the corresponding provisions of the new Act. Accordingly, he has submitted that the action for which interest is claimed is deemed to have been taken under the provisions of the New Act and hence the rate of interest will be as per Section 16 of the new Act by virtue of Section 32 sub section 2 of the new Act.

4. Having considered submissions, I observe that the learned Single Judge of this Court in the Section 34 Petition had aside the award of interest @ 10% per annum from 26th April, 2001. The Appellate Court thereafter expressly held that the interest rate should have been as per the provisions of law. It is further clarified by the Appellate Court that it is left open to the parties to ascertain the prime lending rate charged by the State Bank of India, at the relevant time. It is further clarified by the Appellate Court that the rate cannot be less than the Section 4 of the said Act.

5. The relevant Section 32 (2) of the new Act reads thus:-

32 (2) Notwithstanding such repal, anything done or any action taken under the Act so repealed under sub-section (1), shall be deemed to have

been done or taken under the corresponding provisions of this Act.

From a plain reading of this provisions it is apparent that although the Act has been repealed, anything done or any action taken under Act shall be deemed to have been done or taken under the corresponding provisions of the new Act. Accordingly, Section 4 of the said Act which provided the rate of interest would in fact be applicable prior to the repeal and after the repeal of the said Act action taken under the Act for which interest is claimed is now by a deeming fiction done or taken under the provisions of new Act. The decision of the Supreme Court in ***Purbanchal Cables Conductors (P) Ltd. (Supra)*** is in the context of the Act which has no retrospective operation. The decision had not considered the new Act and / or the deeming fiction thereunder. Hence, this decision is inapplicable. Accordingly, the rate of interest would therefore, be applicable under the new Act upon its coming into force and the Judgment Creditor is entitled to claim the interest rate under the new Act which would be applicable from 2nd October, 2006. Accordingly, the submissions of the learned Counsel for the Applicant that the interest rate which can be claimed by the Judgment Creditor is the interest rate which was as per the provisions of the Act and that the repeal of the said Act would make no difference to the applicability of the interest rate

under the Act is not accepted. Hence, the issue of applicability of rate of interest is decided in favour of the Judgment Creditor and Judgment Creditor is entitled to claim interest under the new Act after its being brought into force on 2nd October, 2006 at the higher rate as has been claimed in the Execution Application. It appears that this is the only objection to the Execution Application which is being pressed.

6. The Chamber Summonses taken out for stay of execution of the award passed is rejected as the award apart from being confirmed by this Court has also not been interfered with by the Supreme Court and hence is to be executed as a decree of this Court.

7. Accordingly, the Chamber Summonses are dismissed.

(R I. CHAGLA, J.)