

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 334 OF 2018
WITH
NOTICE OF MOTION NO. 965 OF 2018**

Patel Yasmeen Mohd Arif ...Petitioner
Versus
The Kokan Mercantile Coop Bank Ltd & Ors ...Respondents

**WITH
COMM ARBITRATION PETITION NO. 335 OF 2018
WITH
NOTICE OF MOTION NO. 963 OF 2018
AND
COMM ARBITRATION PETITION NO. 336 OF 2018
WITH
NOTICE OF MOTION NO. 958 OF 2018
AND
COMM ARBITRATION PETITION NO. 338 OF 2018
WITH
NOTICE OF MOTION NO. 959 OF 2018**

**Mr Prakash Pandit, with Prachi Pandit, i/b Ratnesh Dube, for the
Petitioner in all Petitions.
Mr Atul Damle, Senior Advocate, i/b Sandeep R Waghmare, for
Respondent No. 1 in all Petitions.**

CORAM: G.S. PATEL, J
DATED: 7th March 2019

PC:-

1. The challenge in this group of Arbitration Petitions under Section 34 of the Arbitration and Conciliation Act 1996 is to a common Award dated 15th February 2017 in four separate references. Kokan Mercantile Cooperative Bank Limited was the Claimant in all four. The Respondents are all connected and have common business interests.
2. The operative portion of the Award makes an order in favour of the Bank separately for each reference, ordering, for each reference, that the answering Respondents are liable to pay “future interest at 15% per annum from the date of the Award”.
3. Mr Pandit for the Petitioners is absolutely correct in saying that no issue of a liability for interest pendente lite, pending the arbitration, was ever framed by the learned Arbitrator. There is no Award for interest pendente lite.
4. The grievance, therefore, as I understand it, is not against the Award itself but the manner in which the Bank has chosen to execute it. Here perhaps the Petitioners are victims of their own sincerity or good intentions. For, it seems that they deposited a quite substantial amount of Rs 12,77,53,496.45 with the Bank during the pendency of the arbitral proceedings. As of 8th February 2014 the claim of the Bank was Rs. 12,58,77,977.95. This means that the

Petitioners deposited with the Bank an amount of roughly Rs. 19 or 20 lakhs in excess of the Bank's combined claim as of February 2014.

5. Though the Bank has admittedly got no award for interest pendente lite, it claims to be entitled to charge interest, even for the period when the arbitration was pending at the regular contractual rate that it was applying to these loan facilities. This is the basis of the Bank's attempt to appropriate the excess payment towards interest for the period of the pendency of the arbitration. The Bank cannot contend that the Award itself grants the Bank interest pendente lite. Clearly, it does not. That is not Mr Damle's suggestion for the Bank. He only submits that the contractual rate pendente lite was not disallowed.

6. This is not a reason to interfere with the arbitral award or to set it aside. Indeed it would be very difficult to do so, because it effectively means that an entirely new issue of interest pendente lite would have to be now framed in the Section 34 petition and the entire matter referred to a fresh arbitration at least on that limited aspect. The Bank claims that there is still an amount in excess of Rs. 3 crores yet to be recovered from these Petitioners. There is no doubt that the bank will need to take appropriate steps in execution. It will always be open to these Petitioners to contend in any opposition to any such execution application that the Bank is not entitled to interest for the period the arbitration proceedings were pending, and is liable to give due credit for the excess between the amount deposited and amount claimed as of February 2014. That contention is expressly kept open to the Petitioners. It may be raised

at any stage and in any proceedings whether in opposition to the steps that the Bank takes in execution or in independent proceedings. The Petitioners' contentions that they are entitled to an adjustment of the excess amount deposited and, further, that this amount cannot be adjusted against interest pendente lite are not concluded against the Petitioners by the arbitral Awards in question.

7. There may be other grounds pleaded against the Award but these are not pressed.

8. With these observations, and subject to these findings, the Arbitration Petitions are dismissed. There will be no order as to costs.

9. The Notices of Motion are infructuous and are disposed of as such. There will be no order as to costs.

(G. S. PATEL, J)