

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION (M) No.05/2020 IN
ARBITRATION APPEAL NO.5/2008

Nirmal Kishanlal Sureka
Vs.
Alankar Real Estate(Pvt.) Ltd. and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.C.Mehadia, Advocate for appellant/non-applicant.
Shri Sahil Dewani, Advocate for respondent /applicant nos. 1 and 2.

CORAM :- A.S.CHANDURKAR, J.
DATED :- September 24, 2021.

By this application the applicants who were respondent nos. 1 and 2 in Arbitration Appeal No.5/2008 seek recall/modification of the judgment dated 30.09.2019 that was passed in Arbitration Appeal No.5/2008.

According to the applicants, it is sought to be urged that when the arbitration appeal preferred by the non-applicant herein was pending before the District Court, in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 the amount of Rs.Five lakhs as deposited had not been withdrawn by the present applicants. Despite such deposit that amount would continue to carry interest and therefore the directions issued vide paragraph 15(i) of the judgment deserves to be recalled by directing the payment of interest all throughout. It is also urged that the applicants are entitled for interest @24% per annum on the delayed payments as per the relevant clause in the agreement between the parties. Reliance is sought to be placed on the decision *PS.L.Ramanathan Chettiar and Others Vs. O.R.M.PR.M. Ramanathan Chettiar AIR 1968 SC 1047* .

On this basis the modifications of the said judgment is prayed for.

By filing the reply the non-applicant has opposed the prayers made in the application.

On hearing the learned counsel for the parties and on perusing the judgment dated 30.09.2019, it is found that the contentions as raised based on deposit of Rs.Five lakhs in the District Court and that the said amount should notwithstanding such deposit carry interest was not urged on behalf of the applicants when the arbitration appeal was heard. Similarly in view of the fact that the Arbitrator in the award itself had granted interest @18% per annum instead of 24% per annum which direction was not challenged by the applicants as noted in paragraph 8 of the judgment, there is no reason to interfere with the same.

For the aforesaid reasons, there is no case made out to invoke review jurisdiction. The miscellaneous civil application is accordingly rejected.

JUDGE

Andurkar..