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

WRIT PETITION NO. 8237 OF 2023

(Smt. Seema w/o Amit Gupta (d/o Anantrai Bhutani) and ors. **..Vs..** Mrs. Krishna Kumari wd/o Ruplal Bhutani and ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. V. Manohar, Senior Advocate assisted by Mr. P. P. Kothari, Advocate for the petitioners
Mr. R. L. Khapre, Senior Advocate assisted by Mr. R. T. Anthony, Advocate for respondent nos. 1 to 10, 12 and 13

CORAM : ANIL L. PANSARE J.

Date of reserving the order : 21-08-2024
Date of pronouncing the order : 26-08-2024

The petitioners – judgment debtors are aggrieved by the order dated 17-8-2023 passed below Exhibit 1 in R.D. No. 487/2006 as also the order dated 9-11-2023 passed below Exhibit 160 in R.D. No. 487/2006 by the executing Court holding that the petitioners are liable to pay interest at the rate of 9% per annum (p.a.) on the amount of Rs. 50,22,486/- from 22-3-1993 (the date of arbitral award).

2. According to the petitioners, the interest at the rate of 9% p.a. on the aforesaid amount is payable with effect from the date of decree dated 13-4-2006 and not with effect from 22-3-1993, the date of arbitral award.

3. Having heard both sides and having gone through the record, it appears that the Arbitral Tribunal awarded a sum of Rs. 15,88,416/- as principle amount and interest at the rate of 9% p. a. thereon from the date of award until the decree is passed by rule of the Court. The

Tribunal has further awarded a sum of Rs. 34,31,070/- towards interest as damages pending arbitral proceedings viz. from 1969 to 1992.

4. Accordingly, the Tribunal has passed an award in favour of the respondents herein for sum of Rs. 50,22,486/- plus simple interest at the rate of 9% p.a. on the principle amount of Rs. 15,88,416/- from the date of award till the date of decree or actual payment, whichever is earlier. The award was then filed before the Civil Court, namely, 2nd Joint Civil Judge Senior Division, Nagpur. The Court proceeded to pass decree in following terms.

> *"1. Suit is decreed with costs.*
> *2. Award dated 22-3-1993 is made a rule of Court.*
> *3. The defendant Nos. 1 to 9 and 11 do pay jointly and severally a sum of Rs. 50,22,486/- to the plaintiffs with calculated interest for Rs. 15,88,416/- as per award at the rate of 9% pa.*
> *4. The defendant Nos. 1 to 9 and 11 do pay jointly and severally future interest at the rate of 9% p.a. on the principal amount of Rs. 50,22,486/- till its complete realisation.*
> *5. The defendant Nos. 1 to 9 and 11 do pay the cost of arbitration proceeding of Rs. 3000/- to the plaintiffs.*
> *6. The defendant Nos. 1 to 9 and 11 do bear their own costs and also bear the cost of plaintiffs.*
> *7. Decree be drawn up accordingly."*

5. As could be seen, the Civil Court has accepted the award dated 22-3-1993 and accordingly made a rule of Court. The operative clause no. 3 is in terms of the award

passed by the Arbitral Tribunal. The controversy arises out of the term ‘future interest’ used in operative clause no. 4.

6. The executing Court has vide order dated 17-8-2023 noted that the decree does not specify that the interest at the rate of 9% p.a. on amount of Rs. 50,22,486/- is payable from the date of decree and, therefore, the future interest will have to be calculated from the date of award i.e. 22-3-1993. According to the executing Court any other interpretation is contrary to the spirit of the decree.

7. The petitioners preferred application for review of the aforesaid order. The request made by the petitioners to not calculate interest at the rate of 9% p.a. on the amount of Rs. 50,22,486/- from the date of award was rejected vide order dated 9-11-2023.

8. The petitioners have challenged both the orders.

9. Mr. Sunil Manohar, learned Senior Counsel submits that the future interest as awarded by the Civil Court in terms of clause 4 of the decree will have to be calculated from the date of decree and not from the date of award. He has invited my attention to Section 29 of the Arbitration Act, 1940 (hereinafter referred to as ‘the Act of 1940’) which reads thus :

> *“**29. Interest on awards** :- Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as*

adjudged by the award and confirmed by the decree."

10. Mr. Manohar, learned Senior Counsel then referred to the judgment of the Hon'ble Supreme Court in the case of ***State of Orissa Vs. B. N. Agarwalla [(1997) 2 SCC 469]*** to submit that the scope of Section 29 of the Act of 1940 has been explained by the Supreme Court in following terms.

> *"36. According to Section 29 of the Arbitration Act, where the award is for payment of money the Court may in the decree order interest from the date of the decree to the date of payment. This Section by it's plain language expressly gives the Court the power to award interest from the date of the decree till the date of payment but would this imply that the arbitrator when making the award, has no jurisdiction to award interest from the date of the award till the date of payment.*
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> *37. When the arbitrator makes an award, it is not necessary that in every case the award has to be filed in a court and a decree, in terms thereof, is passed. It does happen that when an award is made, the party against whom it is made, may accept the award and comply with the same. It is rightly not disputed that from the date of passing of the award, future interest can be awarded by the arbitrator as held by this Court in the cases of Unique Erectors (Gujarat) (P) Ltd. and Hindustan Construction Co. Ltd. The correct procedure which should be adopted by the arbitrator is to award future interest till the date of the decree or the date of payment, whichever is earlier. The effect of this would be that if the award is voluntarily accepted, which may not result in a decree being passed, then payment of interest would be made from the date of award till the date of payment. Where, however, as*

in the present case, the award is filed in the court and a decree is passed in terms thereof, then Mr. Sanyal has rightly contended that it is for the Court to determine under Section 29 of the Arbitration Act as to whether interest should be ordered to be paid and if so at what rate.

38. Under Section 29 of the Arbitration Act, the Court can, even where the arbitrator has awarded interest from the date of the award till the date of payment, disallow interest from the date of the decree or determine a different rate at which the interest is to be paid or confirm the grant of interest as awarded in the award. When the Court does not modify the award with regard to grant of interest from the date of the award upto the date of payment, the effect would be as if the court itself has granted interest from the date of the decree till the date of payment at the rate which was determined by the arbitrator. The future interest would be regarded as having been ordered to be paid under Section 29 of the Arbitration Act when the Court does not modify the award in this respect.

39. In the instant case, the claim for interest even for the pre-reference period had arisen after the Interest Act, 1978 had came into force and, therefore the arbitrator could award interest for all the three periods. C.A. No. 9234 of 1994 is accordingly dismissed, but with no order as to costs."

11. As could be seen, the Supreme Court has in clear terms held that in terms of Section 29 of the Act of 1940, where the award is for payment of money, the Court may, in the decree, order interest from the date of the decree to the date of payment. The Supreme Court has then clarified that this Section gives the Court power to

award interest from the date of the decree till the date of payment. As regards the power of Arbitral Tribunal, the Supreme Court has held that the correct procedure to be adopted by the arbitrator is to award future interest till the date of the decree or the date of payment, whichever is earlier. This is what has been done by the Arbitral Tribunal in the present case.

12. The Supreme Court then clarified the scope of Section 29 of the Act of 1940 by quoting that the Court can, even where the arbitrator has awarded interest from the date of the award till the date of payment, disallow interest from the date of the decree or determine a different rate at which the interest is to be paid or confirm the grant of interest as awarded in the award. It is further held that when the Court does not modify the award with regard to grant of interest from the date of the award up to the date of payment, the effect would be as if the Court itself has granted interest from the date of the decree till the date of payment at the rate which was determined by the arbitrator. Lastly, it is held that the future interest would be regarded as having been ordered to be paid under Section 29 of the Act of 1940 when the Court does not modify the award in this respect. Thus, the Court has in clear terms held that the Civil Court can grant future interest from the date of decree till realisation of payment.

13. Mr. R. L. Khapre, learned Senior Counsel for the respondent nos. 1 to 10, 12 and 13, however, submits that future interest in terms of Section 34 of the Civil Procedure Code, 1908 (hereinafter referred to as "the Code") would mean the interest from the date of award till

its realisation. He has relied upon following judgments to contend that a person, who is deprived of the use of money to which he is legitimately entitled, has a right to be compensated for the deprivation. It may be awarded as interest, compensation or damages. This is the principle of Section 34 of the Code and is applicable to arbitration.

(1) ***Secretary, Irrigation Department, Government of Orissa and others Vs. G. C. Roy [AIR 1992 SC 732]***,
(2) ***Gopalkrishna Pillai and others Vs. Meenakshi Ayal and others [AIR 1967 SC 155]***,
(3) ***Hindustan Construction Co. Ltd. Vs. State of J. and K [AIR 1992 SC 2192]***,
(4) ***M/s. Jagdish Rai and Brothers Vs. Union of India [AIR 1999 SC 1258]***,
(5) ***Raipur Development Authority Vs. M/s. Chokhamal Contractors [AIR 1990 SC 1426]*** and
(6) ***M.C. Mehta Vs. Union of India [AIR 1999 SC 2583]***

Mr. Khapre, leaned Senior Counsel then submits that grant of interest being a matter of procedure, the request to grant interest can be made even before executing Court.

14. I have gone through the aforesaid judgments. It is well settled that the arbitrator can grant interest during pendency of the proceedings and future interest arising between the date of award and date of the decree. It is further well settled that the Civil Court can modify the award and can grant future interest as well. The question, however, is whether the future interest would mean interest from the date of award until its realisation. None of the judgments referred to above deals with this issue.

The theme of the judgments is that the Tribunal and Court has power to grant interest even in absence of prayer to that effect. This principle, however, can not be stretched to draw an inference that 'future interest' granted by Civil Court will have retrospective effect.

15. In my view, the bare reading of Section 29 of the Act of 1940 makes it clear that the Civil Court can order interest from the date of decree till its realisation, that too on principal sum as adjudged by the award. In the present case, the principal sum adjudged by the award is Rs. 15,88,416/- and therefore, the Civil Court ought to have ordered interest on this sum from the date of decree. Its a different matter that the Civil Court has clubbed principal sum and the interest awarded as damages by the award and treated it as a principal sum for the purpose of future interest. The decree having been unsuccessfully challenged has attained finality and therefore, further discussion is not warranted.

16. On the point of granting interest, the Supreme Court in the case of ***State of Orissa Vs. B. N. Agarwalla*** (supra) has further clarified that Section 29 gives the Court power to award interest from the date of decree till the date of payment. There is, thus, hardly any room left to have different interpretation of future interest ordered by the Civil Court.

17. Mr. Khapre, learned Senior Counsel submits that the arbitral award dated 22-3-1993 has crystallized the claim of Rs. 34,31,070/- as damages in favour of the respondents. He submits that there is no reason why

should the respondents be deprived of interest on the said amount from the date of award till it is realised.

18. This argument will have to be considered in the light of the award passed by the Arbitral Tribunal. The Arbitral Tribunal has ascertained the principal sum of Rs. 15,88,416/-. As such, before the Arbitral Tribunal, the respondents had claimed interest as damages to the tune of Rs. 45,74,760/- (at the rate of 12% p.a.) during the pendency of proceedings i.e. from 1969 to 1992. The Tribunal has, however, awarded interest at the rate of 9% p.a. and, accordingly, ascertained the amount of interest at Rs. 34,31,070/- and awarded it as damages, which is in tune with the judgment relied upon by the respondents. In that sense, interest has been awarded on the principal sum as damages pending arbitration i.e. for the period from 1969 to 1992. The Tribunal has then awarded interest at the rate of 9% p.a. on the principal sum of Rs. 15,88,416/- from the date of passing of award until the award is made rule of the Court.

19. Thus, 9% interest was granted pending arbitral proceedings and was continued till the award is made rule of the Court. The Civil Court has upheld the award and made rule of the Court. This being award for payment of money, the Civil Court could have ordered interest, from the date of decree, on the principal sum adjudged by the award in terms of Section 29 of the Act of 1940, however, the Civil Court has granted future interest at the rate of 9% p.a. on the amount of Rs. 50,22,486/-.

20. Be that as it may, the future interest having been granted in terms of Section 29 of the Act of 1940 will have effect from the date of decree. The executing Court has not considered the effect of Section 29 of the Act of 1940 and thus committed error of law in awarding interest from the date of award.

21. The aspect of future interest can be viewed from another angle as well. The Civil Court has decreed the suit and made the award rule of Court. By operative clause no. 3, the Civil Court has reiterated the award stating therein that defendant Nos. 1 to 9 and 11 do pay jointly and severally a sum of Rs. 50,22,486/- to the plaintiffs with calculated interest for Rs. 15,88,416/- as per award at the rate of 9% p.a. Thus, the Civil Court has directed defendants to calculate interest of Rs. 15,88,416/- from the date of award till the decree is passed. Thereafter, by operative clause no. 4, the Civil Court has directed defendants to pay future interest at the rate of 9% p.a. on the principal amount of Rs. 50,22,486/- till its complete realisation. In that sense, the Civil Court has, after making the award absolute, has directed defendants to pay future interest which will naturally be payable from the date of decree in terms of Section 29 of the Act of 1940.

22. Mr. Khapre, learned Senior Counsel then submits that the interest could be so awarded by executing Court even if not granted by the Civil Court. He has relied upon the judgment in the case of ***Pushpawatibai (deceased) and after her legal representatives and others Vs. Ratansi and another [AIR 1967 SC 761]***. In the said

case, the decree was passed in favour of the respondents therein and respondents were held entitled to possession of the suit property and the petitioners were directed to deliver the possession of the property. The petitioners preferred first appeal before the High Court and prayed for stay to the execution of the decree. The High Court granted stay subject to the respondents furnishing adequate security for costs as well as *mesne profits* accruing from the date of the decree to the date of delivery of possession in case the appeal fails. The security was accordingly furnished and execution of decree was stayed. Ultimately, appeal came to be dismissed on merits and decree passed by the trial Court was confirmed. The respondents then filed application before the executing Court and claimed possession of the property specified in the decree as also *mesne profits* by way of refund of rent collected by the petitioners-judgment debtors. The executing Court rejected the claim of *mesne profits* on the ground that the claim was incompetent in the sense it was not part of the decree passed by the first appellate Court. According to petitioners therein, the respondents ought to have filed separate suit for *mesne profits* and could not have made prayer before the executing Court to grant *mesne profits*. The Supreme Court held that the respondents were seeking to execute the decree so far as possession was concerned and were asking for *mesne profits* under the stay order granted by the High Court. The Court then held that the execution application filed by the respondents can be treated as composite application asking, for execution both of the decree and the stay order.

23. Thus, what has been held by the Hon'ble Supreme Court is that the respondents therein were seeking execution of a decree as also stay order passed by the High Court. Thus the orders passed the High Court were sought to be executed. In that sense, one cannot really argue that in absence of decree, the executing Court has entertained or can entertain the plea/request of the decree holder to award interest which otherwise was not granted by the Civil Court. The judgment, therefore, does not support the contentions of the respondents that the prayer/request could be made before the executing Court to grant interest from the date of award till the actual realisation of the claim. The argument, even otherwise, runs contrary to the well settled principles of law that the executing Court is bound by the decree and cannot go beyond the decree and cannot add or alter the decree.

24. Mr. Khapre, learned Senior Counsel submits that the powers under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate Courts within the bounds of their authority and not for correcting mere errors. The learned Senior Counsel argued that, assuming some error has been committed by executing Court, this Court may not entertain the challenge under supervisory jurisdiction.

25. The aforesaid principle of law is well settled and equally well settled is the principle that where the error is found to be apparent and where the Court below has ignored the provisions of law while passing order, the error ought to be corrected under the supervisory jurisdiction.

26. This being case where the trial Court has utterly failed to consider the provisions under Section 29 of the Act of 1940 and further having travelled beyond the decree, the error committed will have to corrected.

27. Resultantly, the writ petition is allowed. Order dated 17-8-2023 passed below Exhibit 1 in R.D. No. 487/2006 as also the order dated 9-11-2023 passed below Exhibit 160 in R.D. No. 487/2006 by the executing Court viz. 2nd Joint Civil Judge Senior Division, Nagpur are quashed and set aside.

28. The executing Court shall proceed further to execute the decree, accordingly.

(Anil L. Pansare, J.)

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