



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 ARBITRATION APPEAL NO. 33 OF 2021

Union of India, Central Railways
Through the General Manager,
Mumbai C.S.T. officer in-charge
Deputy Chief Engineer.

... APPELLANT

VERSUS

M/s. Forward Agencies
Proprietor, Anil Kakkad
R/o Gulmohar Colony,
Bhopal, (M.P.)

... RESPONDENT

-
- Mr. A. D. Soman, Advocate a/w. Mr. D. V. Soman, Advocate for Appellant
 - Mr. P. S. Gaikwad, Advocate for Respondents
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CORAM : ROHIT W. JOSHI, J.
DATE : JULY 04, 2025

ORAL JUDGMENT:

1. The respondent in the present appeal was awarded a contract for the work of Ankai - Transportation for material for B.G. Track for assembly and laying of B.G. Track phase – II. The respondent accepted the said work vide letter dated 13.04.1993. The work commenced from 18.05.1993. The respondent issued a letter dated 24.05.1994 requesting to close the work on ‘as is where is basis’ and requested to release the security deposit. It is undisputed that the respondent has issued a

'No Claim Certificate' on 23.09.1994. After issuance of 'No Claim Certificate' on 23.09.1994, the appellant issued letter dated 01.12.1995, calling upon the respondent to restart the work. It appears that some works were executed by the respondent pursuant to this letter. The final bill was prepared after works were executed by the respondent on 13.08.1997. It is the case of the appellant that the respondent did not turn up for the joint measurements for preparing final bill and therefore, the final bill was prepared based on measurements carried out by the concerned officials of the appellant.

2. In this backdrop, the respondent vide notice dated 24.07.2002 raised a claim for a sum of Rs. 5,06,091/- and called upon the appellant to appoint an arbitrator. The appellant replied to the notice vide reply dated 13.11.2002, contending that the respondent had never raised any objection to the final bill and that the respondent had also issued a 'No Claim Certificate' on 23.09.1994. The respondent thereafter filed application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**the A & C Act**") for appointment of Arbitrator being Arbitration Application No. 3 of 2003, wherein vide order dated 17.10.2003 one Mr. G. B. Manekar was appointed as an arbitrator. The learned arbitrator passed award dated 05.06.2004 directing the appellant to pay a sum of Rs. 9,01,758.60/- to the respondent. The break-up thereof is as under :

A. *The Appellant submits that after the lapse of 7 years from stoppage of work by the respondent the notice of claim and for appointment of arbitrator was given on 24.07.2002.*

B. *The appellant submits that the arbitrator has not appreciated the evidence produced by the appellant in a proper preceptive.*

C. *The arbitrator has not consider that the present appellant had already paid 1,38,603.72/- to the present respondent and the respondent failed to return the material given to him for execution of the work, hence after necessary deduction the respondent is only entitled for Rs 24826.00.*

D. *The appellant submits that the respondent should have complied with the condition of General condition of contract and special condition of contract the respondent had wrongly invoked the Arbitral clause.*

3. The learned counsel for the appellant contends that the work was deferred and in fact the respondent himself had issued a letter requesting to stop the work on 'as is where is basis'. Since the work could not be completed for the reasons attributable to the respondent liability of compensating the alleged loss for the unexecuted quantity of work could not be fastened on the appellant. As regards component of interest, the contention is that clause 16(3) of the General Conditions of Contract (GCC) specifically bars grant of interest and therefore, pre-reference of interest *pendente lite* could not have been awarded.

4. The learned advocate for the appellant has relied upon following judgments of the Hon'ble Supreme Court and this Court interpreting clause 16(3).

- (a) ***Sree Kamatchi Amman Constructions Vs. Divisional Railway Manager (Works), Palghat and Others***¹
- (b) ***Union of India, through Dy. Chief Engineer Vs. Vinay Agarwal***²
- (c) ***Union of India through Dy. Chief Engineer (Const), Central Railway Vs. M/s. Shyam Constructions in Appeal (Lodg.) No. 309 of 2011 in Arbitration Petition No. 404 of 2011***
- (d) ***Union of India Vs. Manraj Enterprises***³
- (e) ***Union of India Vs. Bright Power Projects (India) Private Limited***⁴

5. Perusal of this judgment indicates that it is held that in view of Section 31(7)(a) of the A & C Act. A contractor of Railways will not be entitled to receive pre-reference or *pendente lite* interest. However, post-award interest can be granted. As against this, the learned advocate for the respondent – contractor places reliance on judgment of the Hon’ble Supreme Court in the matter of ***Raveechee and Co. Vs. Union of India (UOI)***⁵ to contend that considering the very same clause, the Hon’ble Supreme Court has held that an arbitrator has inherent power to award interest *pendente lite*. The learned advocate for the appellant counters by pointing out that the judgment in the matter of ***Raveechee and Co. (supra)***, relied upon by the respondent, does not deal with Section

1 (2010) 8 SCC 767
 2 2015 SCC Online Bom 2030
 3 (2022) 2 SCC 331
 4 (2015) 9 SCC 695
 5 (2018) 7 SCC 664

31(7)(a) of the Act, as it arises out of dispute under the erstwhile Arbitration Act, 1940.

6. I have considered Clause 16(3) of the GCC and the judgments cited across the bar. The issue is conclusively settled in favour of the appellant by the judgment of Hon'ble Supreme Court in the matter of ***Manraj Enterprises (supra)***, wherein the Hon'ble Supreme Court has dealt with the judgment in the matter of ***Raveechee and Co. (supra)***, relied upon by the respondent and has held that the ratio of the said judgment cannot be applied to arbitration under the A & C Act. The Hon'ble Supreme Court, referring to Section 31(7)(a), has held that the bargain between the parties, which is enumerated in the agreement, assumes primacy under the A & C Act.

7. In view of the aforesaid, in the considered opinion of this Court, the learned arbitrator has committed a serious error in awarding interest of Rs. 3,46,521.17/- towards pre-reference and *pendente lite* interest. The award deserves to be quashed to this extent.

8. The second component of compensation on which the appellant has raised an objection pertains to loss of profit on the unexecuted quantity of work. The learned arbitrator has held that the total contract value was Rs. 15,16,907.32/- out of which the respondent - contractor

has executed work to the extent of Rs. 4,85,124.89/-. The learned arbitrator has held that the respondent - contractor is entitled to 10% amount towards the loss of profit on the unexecuted quantity of work. However, since the respondent - claimant had claimed Rs. 96,691/- only under this Act the said amount is awarded. Perusal of the award will demonstrate that the learned arbitrator has held that the contract was terminated by the appellant unlawfully. However, there is no reason mentioned for arriving at such conclusion. The learned arbitrator has also not considered the letter dated 24.05.1994 issued by the contractor making a request to stop the work on 'as is where is basis'. It will also be pertinent to mention that even after issuance of letter dated 24.05.1994 issued by the respondent - contractor calling upon the appellant to stop the work as also the 'No Claim Certificate' dated 23.09.1994, the appellant had issued letter dated 01.12.1995 calling upon the respondent to execute the balance work. There is no material on record to explain the reason why the respondent did not complete the work thereafter. The findings recorded by the learned arbitral tribunal are not based on any material and therefore, the foundation of such finding is only based on conjectures. The findings and observations by the learned arbitrator with respect to termination of contract, to say the least are perverse.

9. In that view of the matter, it must be held that the respondent failed to prove that the contract was unlawfully terminated by the appellant. The respondent will not be entitled to claim any amount towards loss of profit for the unexecuted quantity of work. The award based on conjectures and perverse findings cannot be sustained even having regard to limited scope of interference under Sections 34 and 37 of the A & C Act.

10. In view of the above, the appeal is partly **allowed**. The claim for interest and loss of profit, the award passed by the Arbitral Tribunal amounting to Rs. 3,46,521.17/- and Rs. 96,691/- respectively, is quashed and set aside.

11. Parties to bear their own costs. Amount deposited by appellant with this Court be returned to the appellant along with accrued interest.

12. Pending civil applications, if any, stand **disposed of**.

[ROHIT W. JOSHI, J.]