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Arb.O.P.(Com. Div.) No.221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.221 of 2023

1. General Manager, Southern Railway,
Park Town, Chennai - 600 003.

2. Principal Chief Engineer, Southern Railway,
Park Town, Chennai - 600 003.

3. Senior Divisional Engineer,
Chennai Division, Southern Railway,
Park Town, Chennai - 600 003.

... Petitioners

Vs.

V. Subbarami Reddy, Jayampu 524 131,
Nellore District, Andhra Pradesh.

... Respondent

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award dated 21.09.2016 passed by the sole arbitrator, in so far as it relates to issue Nos.1, 2, 4 and 7 with costs.

For Petitioners : Mr. V. Haribabu

For Respondent : Mr. V. Sivakumar



ORDER

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2. The petitioners were the respondents in the arbitration and the respondent was the claimant. The respondent was appointed as a contractor by the petitioners. Based on the contract, the respondent performed his obligations under the contract. On account of the delayed payment alleged to have been made by the petitioners, the respondent initiated arbitration against the petitioners. The arbitrator acted upon the reference and has passed the impugned arbitral award dated 21.09.2016, directing the petitioners to pay the respondent a sum of Rs.8,22,934/- together with interest at the rate of 12% per annum for the period commencing from 17.09.2012 till the date of payment of the entire amount and a sum of Rs.7,67,131/- together with future interest at the rate of 12% per annum for the period commencing from 13.02.2013 till the date of payment of the entire amount and a sum of Rs.2,64,673/- together with future interest at the rate of 12% per annum for the period commencing from 02.11.2012 till the

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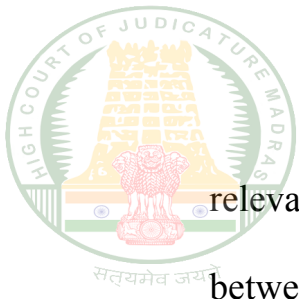


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date of payment of the entire amount. The petitioners were directed to pay the aforesaid amounts within a period of three months from 21.09.2016, being the date of the award to the respondent.

3. Aggrieved by the impugned arbitral award, the respondents in the arbitration, the employer, has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996, raising the ground that eventhough the contract, which was the subject matter of dispute between the petitioners and the respondent prohibits payment of interest, both pre-litigation interest and pendente lite interest, the arbitrator under the impugned arbitral award by total non application of mind has gone beyond the scope of the contract by awarding pre litigation and pendente lite interest to the respondent. In so far as the payment of post award interest awarded by the arbitrator is concerned, the petitioners have not raised any dispute. The same is also confirmed by the learned counsel appearing for the petitioners during the course of his submissions.

4. In support of the petitioners' contention before this Court, the learned counsel for the petitioners drew the attention of this Court to the

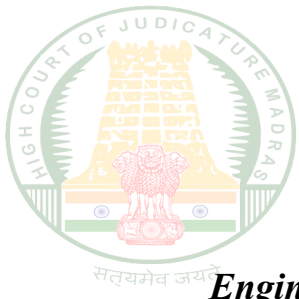


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relevant clauses in the contract, which was the subject matter of dispute between the parties and would point out that the clause specifically prohibits payment of interest by the petitioners to the respondent in respect of pre-litigation and pendente lite interest. He would submit that eventhough a specific plea was not taken by the petitioners before the arbitrator that the contract prohibits payment of pre-litigation interest and pendente lite interest, this Court can even now entertain such a plea under Section 34 of the Arbitration and Conciliation Act, 1996. According to him, since the arbitrator has gone beyond the scope of the contract, by awarding pre-litigation interest as well as pendente lite interest to the respondent under the impugned arbitral award, it would amount to patent illegality.

5. In support of his contentions, the learned counsel for the petitioners drew the attention of this Court to the following authorities:

- a) A decision of the Honorable Supreme Court in the case of ***Union of India Vs. Manraj Enterprises reported in 2022 (2) SCC 331***;
- b) A decision of the Honorable Supreme Court in the case of ***MSP Infrastructure Ltd., Vs. Madhya Pradesh Road Development Corporation Ltd. reported in 2015 (13) SCC 713***;



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c) A decision of the Honorable Supreme Court in the case of ***Lion Engineering Consultants Vs. State of Madhya Pradesh and Others*** reported in 2018 (16) SCC 758;

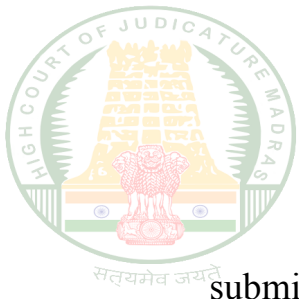
d) A decision of the Honorable Supreme Court in the case of ***State of Chhattisgarh and Another Vs. Sal Udyog Pvt. Ltd.*** reported in 2022 (2) SCC 275.

6. The aforesaid decisions were relied upon by the learned counsel for the petitioners in support of the following propositions:

a) Whenever the contract, which is the subject matter of dispute prohibits payment of interest, the arbitrator cannot award interest and if the same has been awarded, it would amount to patent illegality;

b) A legal plea can be raised at any stage, even under Section 37 of the Arbitration and Conciliation Act, 1996;

c) When the arbitrator fails to decide a matter in accordance with the terms of the contract, governing the parties, it will amount to patent illegality.



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7. On the other hand, the learned counsel for the respondent would submit that the plea taken by the petitioners, with regard to the award of pre-litigation interest and pendente lite interest by the arbitrator under the impugned arbitral award, was never raised by the petitioners before the arbitrator. He would also submit that the claim made by the petitioners, which was considered by the arbitrator is a compensation claim for the delayed payment made by the petitioners. Only while considering the said claim, the arbitrator under the impugned arbitral award has awarded pre-litigation interest and pendente lite interest. He would also submit that only as per the terms of the contract, the arbitrator has passed the impugned arbitral award. He would also submit that only based on the evidence placed on record before the arbitrator, the arbitrator has passed the impugned arbitral award and therefore, it cannot be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996.

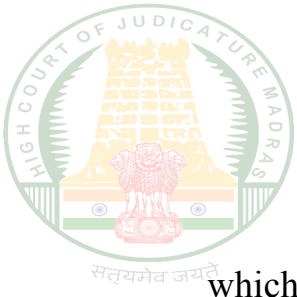
Discussion:

8. The plea, that the respondent is not entitled to claim pre-litigation interest as well as pendente lite interest, has been taken for the first time before this Court by the petitioners in this Section 34 petition. The said fact



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is also not disputed by the learned counsel for the petitioners. However, he would submit that the plea taken by the petitioners, being a legal plea, this Court can entertain such a plea even in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 eventhough the said plea has been taken for the first time. This Court has to reject the said contention of the petitioners due to the reason that the plea taken by the petitioners that the respondent is not entitled to claim interest, both prior to initiation of the arbitration proceedings as well as during the pendency of the arbitration proceedings, arises out of a clause contained in the contract, which was the subject matter of dispute between the parties. The plea raised by the petitioners with regard to payment of interest arises out of the terms of the contract and it cannot be considered as a legal plea. Legal pleas arise out of statutory prohibitions made under various legislations. For instance, the plea of limitation, res judicata and bar by any statute are few examples, which are considered as legal prohibitions. The issue raised by the petitioners in this petition is not a legal plea as it arises out of the terms of the contract, which was the subject matter of dispute between the parties.



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9. Admittedly, the petitioners rely only upon a clause in the contract, which was the subject matter of dispute between the parties, which went for arbitration. Being a contractual defence, raised by the petitioners only for the first time before this Court under Section 34 of the Arbitration and Conciliation Act, this Court cannot accept the said plea under Section 34 of the Arbitration and Conciliation Act. If the said contention is allowed to be accepted, it would amount to violation of principles of natural justice, as the respondent, without being given an opportunity in the arbitration to counter the defence raised by the petitioners in this petition will have to suffer an arbitral award, which does not grant pre-litigation interest as well as pendente lite interest. A specific claim was made by the respondent before the arbitration, claiming compensation for the delayed payment made by the petitioners and only while considering the said claim, the arbitrator under the impugned arbitral award has granted pre-litigation interest as well as pendente lite interest.

10. In fact, in the decision relied upon by the learned counsel for the petitioners in the case of *Lion Engineering Consultants Vs. State of Madhya Pradesh and Others reported in 2018 (16) SCC 758*, the



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Honorable Supreme Court has made it clear that only in a case of a legal plea, the said legal plea can be raised at any stage of the proceedings, which includes the proceeding under Section 37 of the Arbitration and Conciliation Act, 1996. In ***Lion Engineering Consultants*** case, the Honorable Supreme Court was considering the plea of jurisdiction. In the case on hand, this Court is considering the plea arising out of a term in the contract, which was the subject matter of dispute between the parties, which prohibits payment of interest, both pre-litigation as well as pendente lite litigation.

11. This Court is of the considered view that the plea raised by the petitioners regarding award of interest by the arbitrator, both pre-litigation as well as pendente lite, based on the alleged prohibition in the contract, which was the subject matter of dispute between the parties, cannot be equated to a legal plea. Therefore, the decision relied upon by the learned counsel for the petitioners in ***Lion Engineering Consultants*** case, referred to supra, has no applicability for the facts of the instant case.



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12. Similarly, the decision relied upon by the learned counsel for the petitioners in the case of ***State of Chhattisgarh and Another Vs. Sal Udyog Pvt. Ltd. reported in 2022 (2) SCC 275*** has no applicability for the reason that the aforesaid decision was not dealing with the case, where a plea was not taken before the arbitrator that as per the contract, the opposite party is not entitled for payment of interest. In the ***State of Chhattisgarh and Another Vs. Sal Udyog Pvt. Ltd.*** case, the Honorable Supreme Court held that the arbitrators should decide matters in accordance with the terms of contract governing the parties. It was not a case, where the party failed to take a plea before the arbitrator with regard to the terms of the contract, as in the instant case, where, admittedly, the petitioners failed to take a plea before the arbitrator by relying upon the relevant clause in the contract to deprive the respondent from claiming interest both pre-litigation as well as for the pendente lite period.

13. Only in cases, where a specific plea was taken in the arbitration that the respondent is not entitled to claim interest as per the terms of the contract and the arbitrator has failed to take note of the said clause, while passing the arbitral award, the said arbitral award will amount to patent



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illegality. In the case on hand, the plea has not been taken before the arbitrator, which arises out of the terms of the contract. The petitioners cannot take a new plea before this Court for the first time under Section 34 of the Arbitration and Conciliation Act, 1996, which is also not a legal plea.

14. Similarly, the decision relied upon by the learned counsel for the petitioners in *Union of India Vs. Manraj Enterprises reported in 2022 (2) SCC 331* does not apply to the facts of the incident case, as in *Union of India Vs. Manraj Enterprises* decision as well, the question of entertaining a plea for the first time under Section 34 of the Arbitration and Conciliation Act, 1996, was not the subject matter of consideration by the Honorable Supreme Court.

15. For the foregoing reasons, this Court is of the considered view that since the petitioners have raised the plea that the respondent is not entitled to claim interest as per the terms of the contract for the first time before this Court under Section 34 of the Arbitration and Conciliation Act, 1996, and that too when the petitioners' plea cannot be equated to a legal plea, the question of interference by this Court under Section 34 of the



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Arbitration and Conciliation Act, 1996 does not arise. This Court does not find any infirmity in the impugned arbitral award as it does not suffer from patent illegality.

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16. In the result, there is no merit in this petition. Accordingly, this petition is dismissed. No Costs.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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