

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**FAO-2526-2025 (O&M)  
Pronounced on: 15.05.2025**

**Smeep Kang alias Harsmeep Singh Gurucharan Singh Kang  
...Petitioner(s)**

**Versus**

**Devinder Sandhu and another  
...Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present:- Mr. Ashwani Kumar Chopra, Senior Advocate with  
Ms. Rishima Khindria, Advocate for the appellant

Mr. Kanwal Jit Singh, Senior Advocate with  
Mr. Shubham Thakur, Advocate, and  
Mr. K.S. Brar, Advocate for the respondent/caveator

**TRIBHUVAN DAHIYA, J.**

This appeal has been filed against the judgment, dated 01.02.2025, passed in Case no.ARB/1306/2019, whereby the petitioner's objection petition against the arbitral award, dated 25.07.2019, titled *Devinder Sandhu v. Smeep Kang*, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') has been dismissed.

2. An arbitration agreement, dated 16.05.2007, was entered into between the parties for producing a feature film '*Chak de fatte*'. A dispute arose and vide order dated 06.12.2013, this Court appointed Chief Justice (Retd.) N.K. Sodhi as sole Arbitrator to adjudicate the same. He rendered the award, dated 25.07.2019, accepting the claims raised by the respondent-claimant by holding as under:

In view of my aforesaid discussion, I make the following award:

- i) The respondent shall pay to the claimant a sum of Rs. 1,70,00,000/-(Rupees one crore and seventy lakhs) together with interest at the rate of 15% per annum with effect from April 1, 2009 till the date of the award.
- ii) The respondent shall also pay to the claimant a sum of Rs. 2 crores as compensation for the breach of contract.
- iii) The respondent is permanently restrained from exhibiting the Film any where in India, USA, UK and Canada.
- iv) The claimant will have his arbitration costs from the respondent which are assessed at Rs. 5 lakhs.
- v) The amounts mentioned at (i), (ii) and (iv) above shall be paid within six weeks from the date of the award failing which the amounts shall carry further interest at the rate of 15% per annum from the date of the award till the date of payment.

2.1. The petitioner (respondent before the Arbitrator) filed objection petition under Section 34 of the 1996 Act before Additional District Judge, Chandigarh, which was dismissed vide impugned judgment dated 01.02.2025. He is in appeal before this Court against the judgment.

3. Learned senior counsel representing the petitioner, Mr. Chopra, has raised the following submissions to assail the judgment. *Firstly*, it has been contended that the claim raised by the respondent-claimant was barred by limitation which is three years from the date of cause of action as prescribed under Article 137 of the Limitation Act, 1963. The agreement in question was executed on 16.05.2007, and cause of action to seek appointment of arbitrator arose to the respondent in November, 2008, when the film was released in India, as the respondent-claimant was aware of the same. Or when public notice, dated 14.11.2009, was issued warning people not to deal with anyone except the first

respondent so far as releasing or executing the film was concerned, since the film had been released without the respondent-claimant's consent and knowledge. And lastly when the petitioner responded to the email received from the respondent-claimant on 29.11.2008 and promised to send him the accounts statement. However, the application for appointment of arbitrator was filed on 25.03.2013. It was hopelessly time-barred, and the disputes raised by the respondent-claimant could not have been adjudicated by the Arbitrator. Accordingly, the award is without jurisdiction and perverse. The first respondent was in knowledge of the disputes but chose to remain silent, and thereby gave up his right to raise any claim against the petitioner.

3.1. *Secondly*, learned senior counsel has contended that learned Arbitrator failed to appreciate true nature of the agreement entered into between the parties. In this regard, he has referred to the following clauses:

**D. Compensation**

1. The Producer shall pay to the Director an amount of Rs.1,10,00,000/-(Rupees One Crore Ten Lacs only) in part payments at the relevant time as mentioned in **SCHEDULE "A"**.
2. The gross Revenue which will be generated in the production of the Film will be Rs.1,70,00,000/- (Rs. One Crore Seventy Lacs only) which will be paid to the Producer in part payments at the relevant time as mentioned in **SCHEDULE "A"**.

It is contended that a perusal of the clauses makes it apparent that the petitioner's services were engaged as Director by the respondent-claimant, who was producer of the film, for an amount of ₹1.10 crores to be paid in part payments; and an amount of ₹1.7 crore out of the gross revenue generated by the film was to be paid to the respondent in part payments. These relevant clauses establishing true nature of the agreement have been completely ignored

by learned Arbitrator in allowing the claim. Since the respondent-claimant was entitled to get the amount of ₹1.7 crore only out of the proceeds/revenue generated by the film, the liability to pay the same could not have been fastened on the petitioner. Besides, there was no material on record before learned Arbitrator establishing this much revenue was actually generated by the film. Therefore, the award is apparently in violation of clear stipulations in the agreement.

3.2. *Thirdly*, learned senior counsel has contended that the award of interest at the rate of fifteen per cent was excessive and without any justification; also, it could not have been awarded with effect from 01.04.2009, i.e., prior to passing of the award as there was no such stipulation in the agreement. *Lastly*, it has been contended that award of ₹2 crores as damages for breach of the contract and loss of revenue is also perverse, being illegal. Neither any claim for future loss of revenue was raised by the respondent-claimant, nor was any evidence brought on record to prove such a loss. Also, no method to calculate the damages which have been awarded has been referred to in the award. In support of the contentions, he has relied upon the Supreme Court judgment in *Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited*, 2024(6) SCC 357; the Bombay High Court judgment in *Gujarat State Fertilizers Company Limited v. Tata Motors Limited*, 2015(16) RCR (Civil) 298; and the Allahabad High Court judgment in *M/s Sureka International Through its Proprietor v. Union of India, Ministry of Defence and others*, 2014 SCC OnLine All 15642.

4. Learned senior counsel representing the first respondent, Mr. Kanwal Jit Singh, has referred to the detailed reasoning given by learned Arbitrator in the impugned award to contend that it is as per terms of the

agreement, as also the material brought on record, and calls for no interference by this Court. Further, all the objections raised by the petitioner were duly considered by learned Additional District Judge while passing the impugned judgment, which is well reasoned. It is also contended that limitation would not commence from the date the film was released in November, 2008, or the email dated 29.11.2008 was received by the respondent. It would only commence from the date the dispute actually arose between the parties, that was when the petitioner refused to pay the claimed amount to the respondent-claimant in May, 2010. The arbitration application was filed within three years therefrom, on 25.03.2013. Still further, he has contended that the respondent-claimant was defrauded by the petitioner. The film was released by the petitioner by projecting himself as producer which was in violation of the agreement, and all proceeds were misappropriated by him. Even after release of the film, the petitioner failed to furnish accounts and not a penny was paid to the respondent-claimant, leaving him high and dry. On account of this blatant violation of the agreement, he rendered himself liable to pay the amount of ₹1.7 crores to the respondent-claimant as per terms of the agreement irrespective of the actual revenue generated. On the award of interest by the Arbitrator, learned counsel contends that it was within the Arbitrator's jurisdiction to award interest, and the claimant had claimed the amount with eighteen per cent interest per annum. In support of the contentions, he has referred to the Supreme Court judgments in *Arif Azim Company Limited v. Aptech Limited*, (2024) 5 SCC 313; *B and T AG v. Ministry of Defence*, (2024) 5 SCC 358; and *State of Haryana and others v. S.L. Arora and Company*, (2010) 3 SCC 690.

5. Submissions made by learned counsel have been considered.

6. The instant appeal has been filed under Section 37 of the 1996 Act, and the scope of intervention by this Court under the provision has been explicitly laid down by the Supreme Court in *Punjab State Civil Supplies Corporation Limited and another v. Sanman Rice Mills and others*, 2024 SCC OnLine SC 2632. After considering precedents on the issue, the Court has held as under:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. *It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred.* The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. *It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.* Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out

in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. *Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal.* The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement. (Italics by this Court)

Accordingly, this Court is required to find out whether in passing the impugned judgment, dated 01.02.2025, learned Additional District Judge has acted within the limits prescribed under Section 34 of the 1996 Act.

7. A perusal of the impugned judgment establishes that it has been rendered after examining the arbitral award, dated 25.07.2019, to find out whether it is in compliance with the substantive provisions of law as well as terms of the contract entered into between the parties. All the arguments raised by learned counsel for the appellant before this Court were raised before learned Additional District Judge also which were duly considered in the impugned judgment.

7.1. The issue whether reference made by the respondent-claimant before the High Court, as also the claims raised before the Arbitrator, were barred by time, was considered and rejected on the following reasons:

I have considered these submissions made by learned counsel for objector-respondent but find myself unable to agree with the same. Vide email dated 16.05.2009, it was simply stated by objector-respondent regarding exhibition of the film in Cinemas and that same had suffered loss to the tune of Rs.1,97,465/-. It was admitted by objector-respondent in his cross-examination before learned Arbitrator that he had earned various amounts from selling rights of the film for satellite and television exhibition etc. Nothing has been stated about the same in email dated 16.05.2009 relied upon by respondent-objector. Therefore, it cannot be held that objector respondent had refused to make any payment vide his e-mail dated 16.05.2009 itself and claim raised by respondent-claimant was barred by limitation. Moreover, in his affidavit submitted before learned Arbitrator, it was categorically stated by respondent-claimant that even after 16.05.2009, objector-respondent kept on making promises to make the payment but he finally refused to pay the same in May, 2010. He was never cross-examined by learned counsel for respondent-objector in that regard. Rather, absolutely no question was put to him regarding limitation to file the claim before the Arbitrator. It is settled law that a fact which is not put to cross-examination is taken to have been admitted. Contrary to that, objector-respondent himself did not speak even a word regarding limitation to file the claim in his affidavit submitted before Arbitrator. Furthermore, learned Arbitrator had treated issue No. 2 regarding limitation as a preliminary issue and has given his detailed findings in that regard. As observed above, this Court is not supposed to look into reasonableness of reasons given by the Arbitrator while passing an Award in a petition under Section 34 of the Act.

7.2. On the issue, whether the claim has been accepted by the Arbitrator in violation of terms of the agreement, the following reasons have been recorded by learned Additional District Judge to conclude that it has been rightly accepted:

I have considered these submissions made by learned counsel for objector-respondent but do not find any substance in the same. There is nothing in clause D-2 of agreement between the parties from which it can be inferred that payment of Rs.1,70,00,000/- was to be made to respondent-claimant subject to fate of film at the box office. Rather, from the averments made in Clause D-2, it is clear that there was an undertaking by the objector-respondent to make payment of said amount to respondent-claimant after release of the film. It has been categorically stated in Clause D-2 that gross revenue which will be generated in the production of the film will be Rs.1,70,00,000/- which will be paid to the Producers in part payments at the relevant time. It has nowhere been stated in said clause that said payment of Rs.1,70,00,000/- would be subject to revenue of the film at the box office as claimed by objector-respondent. Furthermore, respondent-objector also failed to prove that the film had suffered losses after exhibition of the same. During his cross-examination before learned Arbitrator, objector-respondent was asked time and again to produce the account statement but he failed to produce the same and simply stated that he was not maintaining any account statement but had been providing accounts to respondent-claimant from time to time. It is hard to believe that objector-respondent did not maintain accounts regarding expenditure and income from the film and did not keep even a copy of the same while giving the same to the respondent-claimant. Here again, learned Arbitrator has given detailed reasons for awarding an amount of Rs.1,70,00,000/- in favour of respondent-claimant and this Court is not supposed to go into reasonableness of reasons given by the Arbitrator. Furthermore, learned Arbitrator was within his right to interpret clauses of agreement between the parties and this Court is not supposed to review interpretation made by learned Arbitrator while passing the impugned Award.

7.3. The objection regarding grant of interest on the awarded amount was also considered and rejected by recording following reasons in the impugned judgement:

I have considered these submissions made by learned counsel for objector-respondent but do not find any merit in the same. It has been wrongly claimed by learned counsel for objector-respondent that learned Arbitrator could not have allowed interest for the period before reference was made to him. Rather Section 31(7) of the Act specifically provides that learned Arbitrator can allow interest on the entire sum or part of it, for whole period or part of the period and between date on which cause of action arose and the date on which Award is made. In the case in hand also, learned Arbitrator has allowed interest from the date when cause of action accrued in favour of respondent-claimant till the date of passing of the Award. It has been further provided in Section 31(7) of the Act that Arbitrator can allow interest at such rate as it deems reasonable. Therefore, Arbitrator has absolute discretion while Awarding interest on the amount but said discretion should be justifiable. Keeping in view prevailing interest rates on personal and commercial loans, interest @ 15% per annum allowed by learned Arbitrator cannot be held to be on the higher side as transaction between the parties was commercial in nature.

7.4. Lastly, the issue whether the damages awarded by the Arbitrator were in violation of the substantive provisions of law was also rejected after due consideration in the following manner:

I have considered these submissions made by learned counsel for respondent-objector but do not find any force in the same. While allowing damages to the tune of Rs.2,00,00,000/-, it has been observed by learned Arbitrator that the loss suffered by claimant cannot be assessed mathematically and he has to be awarded reasonable compensation. It has been further observed by learned Arbitrator that as per settled law, in every case of breach

of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim compensation and Court can Award reasonable compensation in case of breach even if no actual damage is proved to have been suffered. Therefore, the amount of Rs.2,00,00,000/- claimed by claimant towards breach of contract is more than reasonable. Thus, it can be safely held that learned Arbitrator has given detailed reasons for Awarding damages to the tune of Rs.2,00,00,000/- in favour of the respondent-claimant and at the cost of repetition, it is again observed that this Court is not required to go into reasons given by the arbitrator while passing the Award. Even as per Section 73 of the contract Act, damages or compensation can be awarded on the basis of loss suffered by the victim which naturally arose in usual course of things from such breach. Therefore, it cannot be held that Award passed by learned Arbitrator is against substantive provisions of law.

8. In fact, the arguments raised by learned senior counsel for the appellant before this Court are germane to pointing perversities and violation of law by the Arbitrator in rendering the award. As aforementioned, the same have duly been considered and rejected by learned Additional District Judge in the impugned judgment. The award has not been found to be against the substantive provisions of law, or those of the Arbitration Act, or terms of the agreement, or the fundamental policy of law, justice or morality in any manner. The judgment is well-reasoned and calls for no interference; it does not suffer from any error of law. It is not a case that the Court has travelled beyond the scope of Section 34 in any manner in deciding the objections; rather, the jurisdiction vested in it has been exercised in accordance with law, based on sound legal principles.

9. The Supreme Court judgment in *Delhi Metro Rail Corporation Limited* case (*supra*) relied upon by learned senior counsel for the petitioner

lays down the grounds on which arbitral award can be assailed under Sections 34 and 37 of the 1996 Act. However, as mentioned hereinbefore, this Court finds no ground to interfere with the impugned judgment in exercise of powers under Section 37 of the Act. The next judgment in *Gujarat State Fertilizers Company Limited* case (*supra*) referred to by the learned senior counsel holds that simple interest can be awarded by the Arbitrator in the absence of specific provisions relating to interest in the contract at such rates as he deems fit. In the instant case, however, as per terms of the agreement petitioner is entitled to claim interest at the rate of eighteen per cent per annum on the due amount. Therefore, the judgment has no application to the facts of the case. Besides, it has been laid down in *S.L. Arora and Company* case (*supra*) that arbitral tribunal has the discretion to award interest under Section 31(7)(a) of the 1996 Act, and a party to a contract is entitled to interest for the period between the date on which cause of action arose and the date on which the award is made. The last judgment relied upon by learned senior counsel for the appellant, *M/s Sureka International Through its Proprietor* case (*supra*), is on the issue that cause of action for reference under the 1996 Act is not a recurring cause of action, and the limitation of three years to seek appointment of Arbitrator under Section 11 of the Act will commence on the date right to apply accrues. It also lays down that repeated reminders do not extend the limitation. The facts in the instant case, however, are different, as the reference has been made by the respondent-claimant within three years of the cause of action having arisen, that is, refusal by the petitioner to honour the terms of the agreement. Besides, it has been laid down by the Supreme Court in *Arif Azim Company Limited*, and *B and T AG* cases (*supra*), that mere failure or inaction to pay the claim does not lead to inference of an existing dispute, which is essential for appointment of

an arbitrator under the 1996 Act. It is only when the claim has been asserted and the respondent has either denied the same or failed to reply to it, cause of action would arise. As already discussed, in the instant case the dispute between the parties for the first time arose when the petitioner refused to pay the claimed amount in May, 2010, and the reference was made within three years therefrom.

10. In view of the discussion above, the appeal is sans merit and stands dismissed accordingly.

11. Pending application(s), if any, also stand(s) disposed of.

15.05.2025  
Payal

(TRIBHUVAN DAHIYA)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |