

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT SRINAGAR**

Reserved on: 27.05.2024  
Pronounced on:31.05.2024

**CM(M) No.102/2023  
CM No.2991/2023**

**MANZOOR AHMAD GUNNA& ORS.... PETITIONER(S)**

*Through: - Mr. Danish Majeed, Ms. Ahra Syed and Mr. Bhat Shafi,  
Advocates*

Vs.

**UT OF J&K AND ANR. ...RESPONDENT(S)**

*Through: - Mr. Ilyas Nazir Laway, GA..*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1) The petitioners have challenged order dated 05.12.2022 read with order dated 04.02.2023 passed by learned Principal District Judge, Srinagar, whereby execution petition filed for execution of arbitral award that had been made rule of the court, has been disposed of as having been satisfied.

2) The facts emanating from the record reveal that certain disputes arose between the predecessor-in-interest of the petitioners and the respondents with regard to a contract for construction of 2.4 km of National Highway by-pass starting from Athwajan, Srinagar. These disputes

led to the appointment of Arbitrator who ultimately made

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his award dated 13.11.1998 and filed the same before the learned District Judge, Srinagar. The award was made 'rule of the court' by the learned District Judge, Srinagar, in terms of judgment dated 28.02.2014 in a modified form. While the Arbitrator had awarded interest *pendente lite* and future @18% per annum, the learned District Judge slashed down the rate of interest to 9% per annum and also disallowed some of the claims in respect of which the learned Arbitrator had awarded compensation in favour of the petitioners. The learned District Judge vide his judgment dated 28.02.2014 awarded a total amount of Rs.71,91,785/ along with interest @9% per annum.

3) The aforesaid judgment passed by the learned District Judge, Srinagar, was assailed by the petitioners as well as by the respondents before this Court by way of two appeals bearing CFA No.15/2014 and 37/2017. Both these appeals came to be decided by this Court in terms of judgment dated 07.12.2019. The appeal filed by the respondent-State was dismissed whereas the appeal filed by the petitioners was allowed by enhancing the rate of interest from 6% to 9% per annum.

4) The judgment passed by this Court came to be challenged by the respondents before the Supreme Court

vide SLP Nos.15989-15990/2020. The appeals came to be dismissed by the Supreme Court in terms of order dated 26.03.2021 with liberty to the respondents herein to advance their submissions before the executing court on the issue whether the interest is to be construed as compound interest or simple interest.

5) In the aforesaid circumstances, the question whether the interest that has been awarded by the Arbitrator, as modified by the High Court in appeal, is to be treated as simple interest or compound interest, came up for consideration before the learned Principal District Judge, Srinagar, during the course of proceedings in the execution petition filed by the petitioners. Vide impugned order dated 05.12.2022, the learned District Judge, after considering the rival submissions of the parties, came to the conclusion that the interest @9% per annum on the awarded amount has to be calculated as simple interest and not compound interest. On this basis, the learned District Judge calculated the simple interest @9% on the principal amount awarded viz. on Rs.71,91,785/ in favour of the petitioners and came to the conclusion that an amount of Rs.2,7758,492.14/ is due to the petitioners

from the respondents as on date of passing of the said order.

6) It seems that in pursuance of the aforesaid order, the respondents/judgment debtors deposited an amount of Rs.3,50,61,800/, which included the interest upto the date of deposition of the said amount, before the Executing Court and the said amount was released in favour of the petitioners/decreed holders. The Executing Court vide its impugned order dated 04.02.2023 observed that the decree has been satisfied and, accordingly, the execution petition has been disposed of.

7) The petitioners have challenged the impugned orders passed by the learned Executing Court, primarily, on the ground that the said Court has, while holding that the petitioners are entitled to simple interest @9%, relied upon the judgment of the Supreme Court in the case of **State of Haryana and others vs. S. L. Arora & Company**, (2010) 3 SCC 690, which stands overruled by the later judgments of the Supreme Court. It has been further contended that there was a commercial transaction between the petitioners and the respondents, therefore, the petitioners were entitled to grant of compound interest on all the claims that were decided in their favour by the Arbitrator,

as modified by the District Judge, Srinagar, while making award 'rule of the court'. It has also been contended that the future interest has to be calculated not on the principle amount of claims awarded by the Arbitrator but on the principle amount awarded by the Arbitrator together with the interest that has accrued thereon upto to the date of making of award.

8) I have heard learned counsel for the parties and perused the record of the case including the record of the Executing Court.

9) Although in the petition, the petitioners have pleaded that they are entitled to compound interest on the claims awarded in their favour, yet during the course of arguments, learned counsel appearing for the petitioners has confined his argument to entitlement of the petitioners to interest @9% upon the principal sum awarded in their favour together with interest that has accrued thereon upto the date of passing of the award. In this regard, the learned counsel has heavily relied upon the judgments of the Supreme Court in the cases of **Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa**, (2015) 2 SCC 189, **UHL Power Company Ltd. vs. State of Himachal Pradesh**, (2022) 4 SCC 11, and **Munshi**

**Ram & Associates vs. Union of India** (Civil Appeal No.14658 of 2015 decided on 22.09.2020).

10) In view of above, the question that is required to be determined in this case is whether future interest is to be calculated on the claims awarded in favour of the petitioners together with the *pendente lite* interest awarded thereon. Before proceeding to answer this question, it is necessary to make it clear that the arbitration proceedings, which are subject matter of the present petition, have been conducted in accordance with the provisions of the Jammu and Kashmir Arbitration Act, 1945, which is in *pari materia* with Arbitration Act, 1940 (hereinafter referred to as “the Act of 1940”). It is also worth noting that neither the provisions of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 nor the Arbitration and Conciliation Act, 1996, are applicable to the present case.

11) So far as the award of interest for the pre-reference period and for the period during which the arbitration proceedings were pending is concerned, there is no provision in the Act of 1940 to govern this aspect of the matter. However, Section 29 of the said Act deals with award of interest from the date of the decree i.e. when the

award is made 'rule of the court'. The said interest is payable on the principal sum as adjudged by the award and confirmed by the decree. The interest for the pre-reference period as well as the *pendente lite* interest, as already noted, is not provided for under the Act of 1940.

12) The Supreme Court in the case of **Hindustan Construction Co. Ltd. vs. State of Jammu & Kashmir**, (1992) 4 SCC 217, after relying upon Constitution Bench judgement in the case of **Secretary, Irrigation Department, Government of Orissa & Ors. vs. G. C. Roy**, (1992) 1 SCC 508, dealt with the issue regarding award of interest *pendente lite* and award of interest from the date of award to the date of passing of the decree in the following manner:

*"5. The question of interest can be easily disposed of as it is covered by recent decisions of this Court. It is sufficient to refer to the latest decision of a five Judge bench of this Court in Secretary, Irrigation Department, Govt. of Orissa v. G.C. Roy [(1992) 1 SCC 508 : JT (1991) 6 SC 349] . Though the said decision deals with the power of the arbitrator to award interest pendente lite, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Code of Civil Procedure provides both for awarding of interest pendente lite as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as*

*such may not apply. In this connection, the decision in Union of India v. Bungo Steel Furniture (P) Ltd. [(1967) 1 SCR 324, 329 : AIR 1967 SC 1032] may be seen as also the decision in Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) P. Ltd. [(1989) 1 SCC 532 : (1989) 1 SCR 318] which upholds the said power though on a somewhat different reasoning. We, therefore, think that the award on Item No. 8 should have been upheld.*

13) From the foregoing analysis of law on the subject, it is manifest that the Supreme Court has made it clear that under the Act of 1940, an Arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. It is also clear that the issue regarding award of interest for the period prior to an Arbitrator entering upon the reference and the award of interest *pendente lite* are to be dealt with on the principles of Section 34 of the Civil Procedure Code, though the said provision may not apply to the arbitration proceedings. This means that the question whether amount of interest accruing on the principal amount calculated by the Arbitrator would become a part of the awarded sum for the purpose of calculating future interest has to be considered in the light of principles laid down in Section 34 of the CPC, which reads as under:

**34. Interest.**— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems



*reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:*

*Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*

*Explanation I.—In this sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).*

*Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.*

*(2) Where such a decree is silent with respect to the payment of further interest on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.*

14) From a perusal of the aforesaid provision, it is clear that pre-suit interest, *pendente lite* interest and future interest has to be awarded on the principal sum adjudged, meaning thereby that under Section 34 of the CPC, the interest can be awarded only on the principal sum and it does not provide for payment of **interest on interest**.

When we apply the same principle to award of the Arbitrator made under the Act of 1940, it becomes clear

that there is no scope for award of interest on the *pendente lite* interest. The position becomes clear when we read Section 29 of the Act of 1940 which provides for post decree interest. The said provision reads as under:

**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.

15) In the foregoing provision also, the expression “the principal sum as adjudged by the award and confirmed by the decree” is used. The words “principal sum” are of great significance which represents the actual claim awarded in favour of a decree holder minus the interest.

16) The position under the Arbitration and Conciliation Act, 1996, is quite different. In the said Act, there is a specific provision in the form of Section 31(7) which governs the award of interest by the Arbitrator. Section 31(7) reads as under:

**31. Form and contents of arbitral award.**

- (1) xxx xxx    xxx    xxx    xxx    xxx    xxx
- (2) xxx xxx    xxx    xxx    xxx    xxx    xxx
- (3) xxx xxx    xxx    xxx    xxx    xxx    xxx
- (4) xxx xxx    xxx    xxx    xxx    xxx    xxx
- (5) xxx xxx    xxx    xxx    xxx    xxx    xxx
- (6) xxx xxx    xxx    xxx    xxx    xxx    xxx

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the

*whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*

*(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*

*Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).*

From a perusal of the aforesaid provision, it is clear that sub-clause (a) quoted above, deals with pre-award interest and sub-clause (b) deals with post award interest. It has been specifically provided in sub-clause (a), that the arbitral tribunal would include in the sum for which the award is made, interest at such rate as it deems reasonable. Sub-clause (b) also refers to the sum directed to be paid by the arbitral award in terms of sub-clause (a). Thus, there is a statutory provision in the Act of 1996 which provides for inclusion of interest component in the arbitral award whereas there is no such provision in the Act of 1940. The award of interest for the pre-reference and post-reference under the Act of 1940 is to be governed by the principles contained in Section 34 of the CPC.

17) The issue with regard to inclusion of interest component in the arbitral award under the Act of 1940 came up for discussion before a Division Bench of Delhi

High Court in the case of **Indian Oil Corporation Ltd. vs. G. S. Jain & Associates** (EFA(OS) No.17 and 18/2010 decided on 07.09.2012). The Court, after discussing the judicial precedents on the issue, observed as under:

*“9. We may add that there is force in the contention of the learned counsel for the appellant that the golden rule of interpretation of statute must be followed and where the wordings of the statute are clear, plain and unambiguous, the courts are bound to give effect to the meaning irrespective of the consequences. In Section 29 of the Old Act, it is after a comma that a complete line comes, to be paid on the principal sum as adjudged by the award and confirmed by the decree. This expression has to be read as a whole. The reference to confirmed by the decree' is, thus, in the context of a possible variation in the principal sum which may arise on account of modification of the award. The word 'principal' cannot be irrelevant and has to be understood as per the common parlance. The 'principal' is thus distinct from any other amount which would include interest. Similarly, costs would be a third category. The provisions of Section 29 of the Old Act thus provide for post decretal interest by the court only on the principal sum. If one may say, this is also in consonance with the general view of the legislature as is apparent from the provisions of Section 34 of the CPC and as to why the amendment was brought into force in Section 34 pursuant to the recommendations of the Law Commission of India in its 55<sup>th</sup> Report of 1973. The effect of the amendment carried out in 1956 was explained i.e. prior to the amendment of 1956, the Section left the rate of interest even for the post decree stage to discretion of the Court, but after the amendment, it provided for a maximum rate of interest. Moreover, the rate of interest was previously permissible on the aggregate sum and not merely on the principal as was the position under the unamended Section. The Minister of Legal Affairs was quoted in the report giving an explanation for the amendment of 1956 explaining the objective to be that interest ought not to be allowed on an amount of interest itself i.e. to prevent compound interest. Thus, where the expression 'principal' is used and continues to be used, it cannot be said that the legislature was ignorant of the*

*complexity of the issue i.e. whether interest should be granted only on the principal sum or interest should be granted on the complete amount inclusive of interest i.e. the compound interest. In fact, conscious decisions have been taken to remove the concept of compound interest and exceptions which have been carved out as per the judicial interpretation are restricted to cases where there is a specific contract or statute providing compound interest”*

18) From the foregoing analysis of law on the subject, it is clear that in a proceeding which is governed by the Act of 1940, it is not permissible to include the component of interest for the purpose of calculating the post-award interest and post-decree interest.

19) Learned counsel for the petitioners has contended that the Executing Court, while passing the impugned order, has relied upon the judgment of the Supreme Court in **S. L. Arora’s** case(supra) which has been overruled by subsequent judgments of the Supreme Court in the case of **UHL Power Company Ltd** and **Hyder Consulting (UK) Ltd**(supra). He has also contended that even the Division Bench judgment of Delhi High Court in **G. S Jain’s case** (supra) is based upon the ratio laid down by the Supreme Court in **S. L. Arora’s** case (supra) which stands overruled.

20) Factually there cannot be any dispute to the aforesaid contention raised by learned counsel for the petitioners. The learned Executing Court has referred to

and relied upon the ratio laid down by the Supreme Court in **S. L. Arora's** case and even the Division Bench of Delhi High Court has drawn support from the ratio laid down by the Supreme Court in the aforesaid case. It is also not in dispute that the judgment in **S. L. Arora's** case has been overruled by the later judgments of the Supreme Court. However, the same does not make any difference to the outcome of the instant case because the judgment in **S. L. Arora's** case as well as the judgments of the Supreme Court in the case of **UHL Power Company Ltd** and **Hyder Consulting (UK) Ltd** (supra) are based upon the interpretation of Section 31(7) of the Arbitration and Conciliation Act, 1996, which clearly allows inclusion of interest component in the arbitral award. It is in those circumstance that the ratio laid down in **S. L. Arora's** case (supra) has been overruled by the Supreme Court in its later judgments. The case in hand has to be dealt with in the light of the provisions contained in the Act of 1940 and the principles governing the grant of interest under the Act of 1996 cannot be made applicable to the instant case.

21) So far as the judgment of Delhi High Court in **G. S. Jain's** case (supra) is concerned, the same, independent

of the ratio laid down in **S. L. Arora's** case (supra), stands on the footing of interpretation of the provisions contained in Section 29 of the Act of 1940 and Section 34 of the Civil Procedure Code. Therefore, the ratio laid down by Delhi High Court in **G. S. Jain's** case (supra) would still hold good in cases which are governed by the Act of 1940.

22) From what has been discussed hereinbefore, it is clear that the petitioners are only entitled to claim interest on the principal sum awarded by the Arbitrator, as modified by the judgment of the District Judge read with the judgment of this Court. The component of *pendente lite* interest cannot form part of the principal sum and, as such, the learned Executing Court has rightly calculated the interest payable to the petitioners on the principal sum. The same stands deposited with the Executing Court whereafter it has been released in favour of the petitioners.

23) The conclusions arrived at by the learned Executing Court, in these circumstances, can neither be termed as grossly illegal nor the same can be termed as perverse so as to warrant interference by this Court in exercise of its supervisory jurisdiction.

24) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed along with connected CM.

**(Sanjay Dhar)**  
**Judge**

**Srinagar,**  
**31.05.2024**  
**“Bhat Altaf-Secy”**

*Whether the order is reportable:*      **Yes/No**

