

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR  
ON THE 5<sup>th</sup> NOVEMBER, 2024**

**Arbitration Appeal No.23/2021**

***M/S. UMA SHANKAR MISHRA***

***Versus***

**UNION OF INDIA**

**ARBITRATION APPEAL NO.24/2021**

***M/S UMA SHANKAR MISHRA***

***Versus***

**UNION OF INDIA**

**Arbitration Appeal No.3/2022**

**UNION OF INDIA**

***Versus***

***M/S UMA SHANKAR MISHRA***

***&***

**Arbitration Appeal No.25/2022**

**UNION OF INDIA**

***Versus***

***M/S UMA SHANKAR MISHRA***

**Appearance:**

*Shri Rishi Tiwari, learned counsel for the appellant in (AA.No.23/2021 and AA.No.24/2021).*

*Shri Ashutosh Sharma, learned counsel for the respondent in (AA.No.23/2021 and AA.No.24/2021) and appellant in (AA.No.3/2022 and AA.No.25/2022).*

*Shri Nilesh Agrawal for respondents in (AA.No.3/2022 and AA.No.25/2022).*

***Reserved on : 04/09/2024***  
***Pronounced on : 05/11/2024***

**ORDER**

1. This order shall also govern the disposal of Arbitration Appeal A.A.No.23/2021, A.A. No.24/2021, both filed by the *M/S UMA SHANKAR MISHRA*, as also the A.A. No.3/2022 and A.A.No.25/2022 (filed by the Union of India) as in all these cases identical issue is involved. For the sake of convenience, the facts as narrated in Arbitration Appeal No.23/2021 are being taken into consideration.

2. This arbitration appeal under Section 37(1) (b) of the Arbitration and Conciliation Act 1996 (hereinafter to be referred to as Act of 1996) has been filed assailing the order dated 16.3.2021, passed in MJC.A.V.No.1/2018 by the learned second Additional District Judge, Dr. Ambedkar Nagar, District Indore.

3. In brief facts of the case are that a work order was issued to the appellant on 28.11.2008, for the construction of provision of 50 Foreign Officers Accommodation at Army War College, Mhow. According to the appellant, the work was completed, and thereafter the bills were also raised, however, the payment of which was not made in time which led to a dispute between the parties, and the matter was referred to the arbitrator, before whom, various claims were submitted. The Arbitrator, vide its award dated 5.9.2018 (page no.129), decided the claims directing the respondent to

pay the interest on the delayed payments wherein as many as five claims were decided.

4. The aforesaid award was challenged by the Union of India before the second Additional District Judge, Dr. Ambedkar Nagar, District Indore under Section 34 of the Act of 1996 in which the final order was passed on 16.3.2021, allowing the appeal partially, and it was held that the learned Arbitrator has erred in awarding the interest despite the fact that the claimants did not even claim the same. Thus, the interest in respect of claim no.1,4 and 5, has been set aside and the claim no.3 is totally rejected.

5. Counsel for the appellant has assailed the aforesaid order on the ground that the appellant had specifically claimed the interest in the claim petition before the arbitrator and has drawn attention of this Court to the averments made in respect of the claims. It is also submitted that so far as claim no.4 is concerned, it is true that no interest was sought, and thus, it is submitted that the impugned order can be sustained only in respect of claim no.4 (cost of reference). However, the other claims in respect of interest have erroneously been rejected by the District Court.

6. Shri Ashutosh Sharma, learned counsel for the respondent has opposed the prayer, and it is submitted that no case for interference is made out. It is also submitted that

the respondent has also preferred the A.A No.3/2022 and A.A.No.25/2022 on the ground that the claims were barred by limitation which ground, though was not raised before the arbitrator was specifically raised in the proceedings under Section 34 of the Act of 1996 by way of amendment, and thus, it is submitted that since the ground of limitation in filing the claim has not been considered by the District Court, the matter may be remanded back. It is also submitted that otherwise also the interest has been awarded by the arbitrator not from the date of submission of bills but from the date of completion of work which is also erroneous. Thus, it is submitted that the entire order is liable to be rejected and the matter deserves to be remanded back.

7. In reply, counsel for the claimant has relied upon a decision rendered by the Division Bench of Bombay High Court in the case of **Vimal G. Jain Vs. Vertex Financial Services Pvt. Ltd reported as 2007 (3)Mh.L.J** in which it has been held that bar of limitation cannot be raised in proceeding under Section 34 of the Act of 1996, or in an appeal arising therefrom, and if the point regarding bar of limitation is not raised before the arbitrator the same cannot be raised under Section 34 of the Act of 1996. Thus, it is submitted that admittedly, the respondent has raised the ground of limitation not before the arbitrator but only in the

application filed under section 34 of the Act of 1996 which cannot be allowed.

8. So far as the cause of action to grant interest is concerned, it is submitted that the learned arbitrator has rightly discussed all the aspects of the matter and has come to a conclusion that the appellants are entitled to claim interest from date of completion of work as admittedly certain deviations were made in the work order by the respondent, and thus they could not complete the subsequent work on time and hence the bills were raised subsequently. Thus, it is submitted that so far as the appeal filed by the respondent/Union of India, no inference is called for.

9. Learned counsel for the respondent has placed reliance on certain decisions rendered by the Supreme Court in the case of **Pathapati Subba Reddy (died) by Lrs. And Ors Vs. The Special Deputy Collector (LA) in Special Leave Petition (Civil) No.31248 of 2018**, in the case of **M/S Lion Engineering Consultants Vs. State of M.P. reported as AIR 2018 SC 1895**, **M/S J.S.Construction Pvt. Ltd. Vs Chief Engineer, Drainage, Cuttack and another reported as AIR 2015 Orissa 73**, **State of Manipur and others Vs. Th. Haridas Singh and another reported as AIR 2016 Manipur 23**, **Borosil Glass Works Limited Vs. Tata Motors Ltd in Arbitration Petition No.1005 of 2009**

**dated 20.1.2015, M/S Unibros Vs. All India Radio reported as 2023 in SC 931 and in the case of Commissioner of Income Tax Cochin Vs. M/s Travancore Cochin Udyoga Mandal reported as AIR 2017 SC 4584.**

10. Heard learned counsel for the parties and perused the record.

11. So far as the objection raised by the respondent U.O.I., that the claim itself was barred by limitation, and ought to have been rejected is concerned, on perusal of the reply filed by the respondent before the Arbitrator, it is found that the respondent has not taken any ground of delay, and in such circumstances, the respondent would be precluded from raising this issues for the first time in the application filed under Section 34 of the Act of 1996, and although the respondent did amend the application filed under Section 34 of 1996 and also added ground of delay in filing the claim by the claimants, it was inconsequential and even if the learned district judge has not reflected upon the same, it would also not make any difference on the merits of the matter. The views expressed by this court are also supported by the decision rendered by the Bombay High court, rendered by Chandrachud J. (as his lordship then was) in the case of Vimal G. Jain (supra) wherein it is held as under:-

“8. The Section 4 of the said Act provides that:

4. Waiver of right to object: A party who knows that

(a) any provision of this Part from which the parties may derogate, or  
(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without Page 0784 stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

Further, the [Section 16\(2\)](#) of the said Act clearly provides that a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because he has appointed, or participated in the appointment of, an arbitrator. Conjoint reading of the above provisions of law would disclose that a party to the arbitration proceedings seeking to raise the point of bar of limitation for initiating the arbitration proceedings should raise the issue at the earliest opportunity and in any case not later than the submission of the statement of defence, otherwise it would be deemed to have been waived. The law in that regard is well-settled by the decision of the Apex Court in [Narayan Prasad Lohia v. Nikunj Kumar Lohia and Ors.](#) wherein it has been clearly held that unless the objection in terms of [Section 16\(2\)](#) is raised within the time prescribed under the said Section, it would be deemed to have been waived in terms of [Section 4](#) of the said Act. In the case in hand, undisputedly, the point regarding the bar of limitation was never raised before the learned arbitrator. Being so, it should be deemed to have been waived.

9. Even otherwise, the point of limitation is a mixed question of law and fact. In fact, the law in this regard also is well-settled and the same was reiterated by the Apex Court in the decision sought to be relied upon on behalf of the appellant himself. In [Ramesh Desai's](#) case (supra), it was clearly observed by the Apex

Court that "A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact.". Once it is clear that the point of limitation was not raised before the learned Arbitrator, apart from the fact that it is deemed to have been waived, the question of entertaining such point in proceedings under [Section 34](#) of the said Act or in an appeal arising from the order passed therein, cannot arise. Hence no fault can be found with the impugned order in that regard. “

12. Thus, the respondent’s contention raised in the appeal (AA.No.3/2022 and AA.No.25/2022) that the claim was barred by limitation has no legs to stand, and the same is hereby rejected.

13. Even otherwise, it is also found that the Arbitrator has taken note of the delay caused by the complainant in filing the claims and it is held that since the respondent had also made certain deviation in the work order, hence, the appellants could not prepare the bills on time and the Arbitrator has also held that in the present case the work was complete as under:-

“5.1 The learned Arbitrator that the subject work was completed on 19 Aug 2011 as brought out in para 4.2 and as per condition 65 of IAFW 2294 (General Conditions of the contract) the claimant was required to submit the final Bill on IAFW2262 in duplicate within three months of physical completion of the work to the entire satisfaction of the Engineer in Charge in the instant case a



number of deviations were ordered but their finalisation could not be done within the contract period. A list of Dos ordered by the Respondent is enclosed as Exh-C-1 for the kind perusal of the learned Arbitrator and it would be transpired that certain Dos could be finalised as late as Mar 2013 ,i.e,nearly 1 ½ years after the completion of work. Thus, the completion and progressing of final bill of the final was inordinately delayed as elaborately brought out in para 4.2 of ‘Brief History’ of the case and reasons for dispute”.

14. So far as the decision relied upon by the respondent is concerned, the same is distinguishable on facts and are of no avail to the respondent/appellant in Appeal No.3/2022 and AA.No.25/2022.

15. So far as the finding recorded by the District Court under Section 34 of the Act of 1996 is concerned; whereby the appellants have been deprived of the interest on the ground that it was not claimed by them, the same reads as under :- **(page 38 )**

“21 इस प्रकार विद्वान एकल मध्यस्थ द्वारा उक्त अवधि एवं उक्त दावों के संबंध में भी ब्याज का भुगतान किए जाने का आदेश पारित किया गया है जिसकी मांगी अनावेदक द्वारा नहीं की थी। ऐसी स्थिति में दावा क्र.2 के लिए 25 सितम्बर 2011 से 10 प्रतिशत प्रतिवर्ष की दर से ब्याज दिलवाये जाने का तथा दावा क्र. 1,4,5 के संबंध में ब्याज दिलवाए जाने के संबंध में जो आदेश पारित किया गया है वह स्थिर रखे जाने योग्य नहीं है। अतः दावा क्र.3 के संबंध में पारित अर्वाह निरस्त करते हुए आवेदक की आपत्ति आंशिक रूप से स्वीकार की जाती है।

22. अनावेदक ब्याज के रूप में आवेदक से मात्रा

दावा क्र.2 में अधिनिर्णित राशि के संबंध में दिनांक 23 अप्रैल 2012 से 24 अगस्त 2017 तक 10 प्रतिशत वार्षिक की दर से ब्याज प्राप्ति का अधिकारी है तथा 25 अगस्त 2017 से अधिनिर्णय दिनांक अर्थात् 5/8 सितम्बर 2018 तक दावा क्र 2 में अधिनिर्णित राशि के संबंध में 10 प्रतिशत वार्षिक की दर से ब्याज प्राप्ति का अधिकारी है तथा अवार्ड दिनांक से असल भुगतान दिनांक तक दावा क्र.2 में अधिनिर्णित राशि पर 9 प्रतिशत वार्षिक की दर से ब्याज प्राप्ति का अधिकारी है। अतः उपरोक्त अनुसार ब्याज राशि का भुगतान आवेदक द्वारा अनावेदक को किया जावे।”

16. Apparently, the Court has come to a conclusion that the claimant had not claimed in the claim petition the relief of interest. However, on perusal of the same it is found that following averments have been made by the appellants in their claims which read as under:-

**Arbitration Appeal No. 23/2021**

<b>Sr.</b>	<b>Claim</b>	<b>Page</b>	<b>Arbitral Award</b>	<b>Page</b>
1.	<b>Claim No.01-</b> Interest on delayed payment – Rs. 4,43,449.44/-	65	<b>Claim No.01-</b> On undisputed amount of bill interest for delay of 03 years and 06 months awarded – Rs 3,69,541/-	140
2.	<b>Claim No.02-</b> Payment of difference between labour escalation amount		<b>Claim No.02-</b> Allowed	
3.	<b>Claim No.03-</b> Payment of interest on the amount of Claim No.02- (a). Postilite (b). Pendilite (c). Future	72	<b>Claim No.03-</b> (a) <b>Prelite-</b> From date of completion i.e. 25.09.2011 till commencement of arbitration i.e. 24.08.2017 on claim Nos. 01, 02 and 05. (b) <b>Pendilite-</b> From commencement of arbitration i.e.	150

			25.08.217 to the date of award i.e. 05.09.2018 on claim Nos. 01, 02, 04 and 05. <b>(c) Future Interest-</b> In case payment not made within 03 months.	
4.	<b>Claim No. 04-</b> Cost of reference Rs 82,000/-	75	<b>Claim No.04-</b> Allowed	154
5.	<b>Claim No. 05-</b> Reimbursement of loss and damages along with <i>interest</i>	98	<b>Claim No. 05-</b> Claim partially allowed	167

Note:- Interest was sought by the appellant on claim Nos. 01,02 and 05. Claim No. 03 was only regarding interest on Claim No. 02. Thus, interest was not sought only on claim No. 04.

### Arbitration Appeal No. 24/2021

<b>Sr.</b>	<b>Claim</b>	<b>Page</b>	<b>Arbitral Award</b>	<b>Page</b>
1.	<b>Claim No.01- Interest</b> on delayed payment – Rs. 2,09,344/-	113	<b>Claim No.01-</b> On undisputed amount of bill interest for delay of 02 years and 09 months awarded – Rs 1,74,453/-	52
2.	<b>Claim No.02-</b> Payment of difference between labour escalation amount	116	<b>Claim No.02-</b> Allowed	62
3.	<b>Claim No.03-</b> Payment of <i>interest</i> on the amount of <i>Claim No.02-</i> (a). Postilite (b). Pendentilite (c). Future	120	<b>Claim No.03-</b> <b>(a) Prelite-</b> From date of completion i.e. 25.09.2011 till commencement of arbitration i.e. 24.08.2017 on claim Nos. 01, 02 and 05. <b>(b) Pendentilite-</b> From commencement of arbitration i.e. 25.08.217 to the date of award i.e. 05.09.2018 on claim Nos. 01, 02, 04 and 05. <b>(c) Future Interest-</b> In case payment not made within 03 months.	65
4.	<b>Claim No. 04-</b> Cost of reference Rs 82,000/-	123	<b>Claim No.04-</b> Allowed	67
5.	<b>Claim No. 05-</b> Reimbursement of loss and damages along with <i>interest</i>	155	<b>Claim No. 05-</b> Claim partially allowed	79

Note:- Interest sought by the appellant on claim Nos. 01,02 and 05. Claim No. 03, was only regarding interest on Claim No. 02. Thus, interest was not sought only on claim No. 04.

17. Thus, apparently, the interest was certainly claimed by the claimants which has also been awarded by the Arbitrator as claimed. Thus, the finding of the learned judge of the District Court that the interest was not claimed by the appellant is apparently perverse and cannot be sustained in the eyes of law.

18. So far as the appeals filed by the Union of India are concerned, it is found that the grounds raised in the appeal do not confirm to the mandate of section 34 of the Act of 1996. Although the ground of delay in filing the claim has been raised, but the same has already been taken note of by the arbitrator as already discussed above. It has also been stated by the appellants that the award passed by the Additional District Judge is against the public policy of India, however, there is nothing to suggest as to how and under what circumstances the award is against the public policy of India.

19. In such circumstances, no case for interference is made out.

20. Resultantly, the appeals (AA.No.23/2021 and AA.No.24/2021) filed by the appellant M/S Uma Shankar, are hereby **allowed**. Whereas the appeals preferred by the Union of India are (AA.No.25/2022 and AA/No.3/2022) are **hereby dismissed**.

The appeals are accordingly *disposed of*.

Sd/-

(SUBODH ABHYANKAR)

JUDGE

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