**(2016) 07 P&H CK 0184**

**In the Punjab And Haryana At Chandigarh**

**Case No :** FAO No. 5276 of 2010 (O&M)

M/s Gujrat Tractors Sales — APPELLANT

Vs

HMT Ltd. — RESPONDENT

**Date of Decision :** 12-07-2016

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 34

**Citation :** (2016) 4 LawHerald 2896

**Hon'ble Judges :** Mr. Amit Rawal, J.

**Bench :** Single Bench

**Advocate :** Mr. P.S. Rana, Advocate, for the Appellants; Mr. Anand Chhibbar, Senior Advocate for Mr. Vaibhav Sahni, Advocate, for the Respondents

**Final Decision :** Partly Allowed

## Judgement

Mr. Amit Rawal, J.(Oral)—The appellants are aggrieved of the dismissal of the objection petition filed under Section 34 of 1996 Act seeking setting aside of the arbitration award dated 31.10.2008, whereby he has been called upon to pay a sum of Rs. 13,43,790/- along with interest at the rate of 15% per annum w.e.f. 01.04.2006.

2. Mr. P.S. Rana, learned counsel appearing on behalf of appellants submits that award is ex parte but on bare reading of the award, it suffers from fallacy, much less, against the public policy as it envisages the refund of the security of Rs. 2,00,000/- which should been appropriated by the HMT towards the principle instead on interest. Element of interest is phenomenal/exorbitant/excessive and against the settled law, as it should not have been more than 9% p.a.. Objection in this regard was filed within a period of limitation, however, the Objecting Court had taken into consideration the element of refund of Rs. 29,958/- but the said amount should have been appropriated towards principle amount and thus urges this Court for setting aside of the award and as well as order under challenge.

3. Mr. Anand Chhibbar, learned Senior Counsel assisted by Mr. Vaibhav Sahni,

learned counsel appearing on behalf of HMT submits that statement of account Ex.C30 has gone unrebutted which does not contain the element of interest and recovery of outstanding amount does not envisage the adjustment of the principle for the interest. Arbitrator is totally alien to the Contract/MOU. Objections were not falling within the parameters of Section 34 of the Act. There is very little scope of interference until and unless the objections were falling within the provision of Section 34 of the Act and thus urges this Court for affirming of the findings under challenge.

4. I have heard learned counsel for the parties and appraised the paper book and of the view that the claim of the respondent has gone unrebutted/unclinched. The statement of Account Ex.C30 does not envisage the element of interest. The Arbitrator has granted the interest, since the appellant was defaulter in making the payment. Though it had taken into consideration the adjustment of the security. The transaction does not contain the adjustment of the outstanding amount, much less, security payment qua C-Form towards principle instead on interest. It is a simple case of recovery of outstanding amount. However, I am of the view that element of interest at the rate of 15% p.a. w.e.f. 01.04.2006 is too high despite the fact that it was commercial transaction as Hon''ble Supreme Court in various judgment have been granting the interest to the tune of 9% p.a.. Accordingly, award of the arbitrator is modified to the limited extent instead of interest at the rate of 15% p.a., same is ordered to be reduced to 9% p.a.. Rest of the award is affirmed.

5. Appeal is partly allowed.

6. Amount of Rs. 5,00,000/- already deposited in pursuance of the order dated 06.12.2012, shall be adjusted.

 