
(1999) 04 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : FAO (Ord) No"s. 55 and 61 of 1994

R.K. Sood

APPELLANT

Vs

Dr. Y.S. Parmar University of Horticulture and Forestry

RESPONDENT

Date of Decision : 13-04-1999

Acts Referred:

Arbitration Act, 1940 — Section 29, 30, 33
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2000) 1 ShimLC 127

Hon'ble Judges : D. Raju, C.J.; Lokeshwar Singh Pant, J

Bench : Division Bench

Advocate : J.S. Bhogal, in FAO Ord Nos. 55 of 1994, for the Appellant; D.C. Jishtu, FAO (Ord) Nos. 61 of 1994, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Pant, J.—The above appeals are preferred by R.K. Sood against the judgment and decree dated December 2, 1993 of the learned Single Judge passed in Civil Suit Nos. 44 of 1992 and 45 of 1992 whereby the learned Single Judge set aside the award of the Arbitrator directing the payment of certain monies to the Appellants herein. Both these appeals have been taken up and heard together as they arise out of the common judgment and decree passed by the learned Single Judge and are being disposed of by this common judgment.

2. The Appellant is a contractor carrying out the work of construction. The Respondent-University awarded to the Appellant vide award dated 31st May, 1988 the work of construction of strengthening of Fruit Research Station Mashobra under NARD (SH-Construction of Technical Support and ADMN residence building portion). The tender was executed by the Appellant on 15th January, 1988. The construction of work was agreed to be completed within nine months from the 15th day after the date of the written order to commence the work in terms of the agreement entered into between the parties on 15th

January, 1988. The award letter was issued on 31st May, 1988 and the work, as such, was to be completed on or before 14th March, 1989. The site of work had been handed over to the Appellant immediately after the award of the work. The Appellant started the excavation of foundation at the site in October, 1988 and after execution a meagre quantity of 54.24 cu.m. he stopped the work. Thereafter, the time for completion of the work elapsed and the Respondent-University invoked the provisions of clause 3 of the agreement and rescinded the contract by way of notice dated 27th December, 1989. These facts were involved in Civil Suit No. 44 of 1992.

3. In Civil Suit No. 45 of 1992 the factual position was concedingly almost the same, including the date of award and the date of completion of the work and even the date of rescinding the contract by the Respondent-University. The only difference was that in this case the work of construction of strengthening of Regional Fruit Research Station Mashobra (SH-Construction of Assistant Scientists residence building portion) under NARP was awarded to the Appellant vide award letter issued on 31st May, 1988 by the Respondent-University on acceptance of the tender executed by the Appellant dated 15th January, 1988.

4. Dispute arose between the parties on the basis of the terms of the agreement and the matter was referred to the Arbitrator where the Appellant submitted his detailed claims which were disputed by the Respondent-University but the Arbitrator after hearing the parties accepted part of the claims of the Appellant, as referred to in the award. The details of the amount awarded by the Arbitrator is as under:

Civil	Suit	No.	44	of	1992
-----					Sr.
Particulars	Amount	Amount	Remarks	No. of claim demanded	awarded
-----					1 2 3 4
5	-----				1. On
a/c of earth work	Rs. 2,712/-	Rs. 1,627/-	2. On a/c of refund of	Amount not	Rs.
13,850/-	FDR was for security mentioned upto date	Rs. 11,500/	interest acc-		
and on re-	ruded till act-	wal face ual	payment value	Rs. 13,850	3. On a/c of
raising	Rs. 3,000/-	Nil	infrastructure at site	4. On a/c of anticipated	Rs. 77,820
Rs. 77,820	profit(r) 15% of the awarded cost	5. On a/c of compensa-		Rs.	
5,000	Nil	tion of exp. for cartage of material	-----	brought to the site	
Total		Rs.			93,297/-
-----					Award
in Favour of the Respondent					1. On a/c of compensation
					Rs. 45,957/-
					Nil under
					clause 2 of the agreement
					2. On a/c of recovery of
					Rs. 15,002/-
					Nil balance
					amount of security deposit under clause 3(a) of the agreement
					3. On a/c of
					recovery of
					Rs. 2,44,087/-
					Nil extra cost of the work due to escalation in cost
					index

					Total
					Nil

Civil	Suit	No.	45	of	1992		
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Particulars	Amount	Amount	Remarks	No. of claim	demanded	Sr. awarded
						1 2 3 4
5						1. On a/c of refund of Amount not Rs. 12,500+ FDR was for earnest money mentioned upto date inte- Rs. 10,500 rest accrued & on rene- till its actual wal face payment value Rs. 12,500/ 2. On a/c of raising Rs. 3,000/- Nil infrastructure at site 3. On a/c of expenses Rs. 5,000/- Nil incurred in carting away the material brought to site 4. On a/c of loss of anti- Rs. 72,520/- Rs. 72,520/- cipated profit at 15% ----- of the tendered costs Total Rs. 85,020/-

in	Favour	of	the	Award Respondent
				1. On a/c of compensation Rs. 41,620/- Nil under clause 2 of the agreement 2. On a/c of recovery of Rs. 15,810/- Nil balance amount of security deposit under clause 3(a) of the agreement 3. On a/c of recovery of Rs. 2,07,429/- Nil extra cost of the work due to escalation in cost index ----- Total Nil

5. The awards made by the Arbitrator were non-speaking and he filed both the awards in the High Court and the Respondent-University has preferred objections under Sections 30 and 33 of the Indian Arbitration Act assailing both the Awards dated 10th March, 1992, almost on the similar grounds. It has been alleged by the Respondent-University that the Arbitrator mis-conducted himself in not applying his mind in pursuance of the terms of the agreement and also mis-read and mis-appreciated the documents produced by the Respondent-University especially when, admittedly, the Appellant did not complete the work within the stipulated time. It was also pleaded that on account of the Appellant's failure not complying with the various terms of the agreement the Respondent-University tried to afford time to the Appellant to complete the work but as the Appellant had violated the terms of the agreement and was not prepared to complete the work, the Respondent-University had no alternative but to rescind the contract. It has also been alleged that the Arbitrator legally misconducted himself in awarding Rs. 72,820/- in Suit No. 44 and Rs. 72,520/- in Suit No. 45 in favour of the Appellant on account of anticipated profit at the rate of 15% of the awarded cost of the construction work. According to the averments of the Respondent-University, the awards have suffered on account of an error apparent on record and, therefore, on that ground and on the basis that the Arbitrator had misconducted himself and the proceedings, the awards were liable to be set aside.

6. In both the suits the Appellant submitted the replies and contested the objection petition on merit denying the averments made by the Respondent-University.

7. Identical issues were framed in both the suits on the basis of the pleadings of the parties which are as under:

1. Whether there is an error apparent on the record to set aside the award? OPO.
2. Whether the Arbitrator has misconducted himself and the proceedings, as alleged? OPO.
3. Relief.

8. The parties in support of their respective case have led evidence by way of affidavits. The learned Single Judge has returned finding on issue No. 1 in favour of the Appellant and against the Respondent-University holding that nothing could be pointed out regarding the error apparent on the face of the award. On Issue No. 2 finding was returned by the learned Single Judge holding that the Arbitrator has not only mis-conducted himself but also misconducted the proceedings with regard to awarding Rs. 72,820/- in Suit No. 44 of 1992 and Rs. 72,520/- in Suit No. 45 of 1992 on account of anticipated profit at the rate of 15% in favour of the Appellant and against the Respondent-University.

9. Feeling aggrieved against the judgments and decree of the learned Single Judge, the Appellant preferred these two separate appeals, We have heard learned Counsel on both sides and scrutinised the material on record. Mr. J.S. Bhogal, learned Counsel for the Appellant contended that the learned Single Judge had failed to appreciate the legal position that the Court would not sit as a Court of Appeal over the findings of the Arbitrator and would not re-appreciate and re-appraise the evidence so as to arrive at a different finding than that arrived at by the Arbitrator. According to the learned Counsel the approach of the learned Single Judge in setting aside the award was erroneous in law since it was a non-speaking award, the learned Single Judge should not have interfered with a non-speaking award as the ground for setting aside the same is extremely limited. In support of his submissions he has relied upon Hindustan Tea Co. Vs. K. Sashikant Co. and Another, , Puri Construction Pvt. Ltd. Vs. Union of India (UOI), , Sudarsan Trading Co. Vs. Government of Kerala and Another, , M/s. Hind Builders Vs. Union of India, , State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, and State of U.P. Vs. M/s. Ram Nath International Const. Pvt. Ltd.,

10. The second contention of the learned Counsel for the Appellant was that the learned Single Judge has erred in not awarding interest on the awarded amount from the date of the award till the date of actual payment and this being a commercial transaction the Appellant was entitled to interest on the wrongfully with holding of the amounts at the current commercial rate of 18% per annum. In support of this contention he placed reliance on Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, , Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, , State of Orissa Vs. B.N. Agarwalla, etc., , Dwarka Das v. State of Madhya Pradesh 1999 SO.L. 95 and M/s. Jagdish Rai and Brothers Vs. Union of India,

11. Per contra Mr. D.C. Jishtu sought to support the reasons and conclusions of the learned Single Judge and contended that the Appellant had violated the terms of the contract and failed to complete the work within the stipulated period. He next contended that the excavating quantity of the work to be done at the spot was 102.57 cu.m. but the Appellant actually excavated the quantity of 54.24 cu. m. and that too after starting the work on 11th October, 1988 and thereafter left the work. He submitted that for the excavation work the construction of the road was not agreed to be provided before starting the work nor the Appellant on 21st October, 1988 when he left the work unexecuted or thereafter at any point of time reminded the Respondent-University to construct motorable road. In the last he contended that the judgment of the Full Bench of Kerala High Court in Government of Kerala and Anr. v. V.P. Jolly AIR 1992 Kerala 187 relied upon by the learned Single Judge squarely covers the facts of the present case and the judgment of the learned Single Judge based upon sound reasoning deserves to be up-held. He then contended that the Appellant has not started at all the work subject matter of Civil Suit No. 45/92 and, therefore, the amount of Rs. 72,520/- on account of anticipated profit at the rate of 15% of the awarded cost was wrongly awarded by the Arbitrator and the learned Single Judge has rightly set aside the award on that ground as well.

12. We have given our thoughtful consideration to the respective contentions of the learned Counsel for the parties and examined the material on record. It is settled position of law that under the provisions of Section 30 of the Arbitration Act, 1940 that even the award is reasoned one, the reasons adopted by the Arbitrator are not assailable before the Court it having no power to scan such reasons as a Court of appeal. If there are some reasons, the quantum of which is not justifiable for the finding reached, they are not available to be varied by the Court merely for the reason that on the available materials a different conclusion could have been reached. The scope of interference by the Court is rigorously limited only to cases where the reasons are perverse or suffer from error apparent on the face of the award. It has been held by the Supreme Court in Food Corporation of India Vs. M/s. Veshno Rice Millers, that it is difficult to give an exhaustive definition as to what may amount to a "misconduct" on the part of the Arbitrator. It is not "misconduct" on the part of an Arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence. It was also observed that the Court cannot sit in appeal over the views of the Arbitrator by re-examining and re-assessing the materials. The apex Court has noted the observations of the Court in Puri Construction Pvt. Ltd. Vs. Union of India (UOI), . The similar views were taken by the apex Court in Sudarsan Trading Co. Vs. Government of Kerala and Another, , M/s. Hind Builders Vs. Union of India, , Hindustan Tea Co. Vs. K. Sashikant Co. and Another, In State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, the apex Court held that the award of the Arbitrator cannot be set aside merely on the ground of misreading, misconstruction and misappreciation of the materials on record nor it can be set aside merely because on court's own

assessment, an alternative view is possible. Again in *State of U.P. Vs. M/s. Ram Nath International Const. Pvt. Ltd.*, the apex Court held that the Court cannot re-appreciate the evidence to examine the correctness of the conclusions of the Arbitrator.

13. In non speaking award as in the present case, the apex Court has said in *Sudarsan Trading Co. Vs. Government of Kerala and Another*, that it is not open, to the Court to probe the mental process of the Arbitrator and speculate, where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusion. In absence of any reason, for making the award, it is not open to the Court to interfere with the award. Further more, in any event, reasonableness of the reasons given by the Arbitrator, cannot be challenged.

Appraisement of evidence by the Arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded with the power of appraisement of the evidence. The Arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the Arbitrator. It was further observed that once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the Arbitrator and on which Court cannot substitute its own decision. If on a view taken of a contract, the decision of the Arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the Court. Therefore, the High Court has no jurisdiction to examine the different items awarded clause by clause by the Arbitrator and to hold that under the contract these were not sustainable in the facts found by the Arbitrator. In *Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another*, the apex Court while dealing with non-speaking award held that Arbitrator is not obliged to give reasons for his decision and even if giving of reason is held to be obligatory, it is not obligatory for Arbitrator to give detailed judgment. The Hon'ble Judge proceeded to hold that reasonableness as such of an award unless the award is per se preposterous or absurd is not a matter for the Court to consider. Appraisement of evidence by the Arbitrator is ordinarily not a matter for the Court. It is difficult to give an exact definition of the word "reasonable". Reasons varies in its conclusions according to the idiosyncrasy of the individual and the times and the circumstances in which he thinks. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know.

14. In the present case the Arbitrator has awarded an amount of Rs. 75,820/- on account of anticipated profit at the rate of 15% of the awarded cost in Civil Suit No. 44 of 1992 and Rs. 72,520/- in Civil Suit No. 45 of 1992 in favour of the Appellant and against the Respondent-University. The learned Single Judge while setting aside the awards of the Arbitrator held that the Appellant stopped the excavation of work when the road was not constructed by the Respondent-

University and in other case he did not start the work at all and this aspect of the matter had to be enquired into in order to find out as to which party had violated the conditions of the agreement. It was further held that the Arbitrator without enquiring into this aspect of the matter traversed beyond the obvious term of the contract which definitely amounted to technical or legal misconduct on the part of the Arbitrator. This reasoning given by the learned Single Judge while setting aside the awards is not sustainable in the teeth of the number of judgments referred to herein-above and the learned Single Judge has re-assessed and re-appreciated the evidence on record of the Arbitrator. The ratio of the judgment of Full Bench of Kerala High Court in Government of Kerala and Another Vs. V.P. Jolly, has not been applied by the learned Single Judge in its right perspective in the facts of the present case. The learned Chief Justice of the Kerala High Court was obliged to hold in the first paragraph of the judgment that the reference to Full Bench was largely covered by the recent judgment of the Supreme Court in Associated Engineering Co. Vs. Government of Andhra Pradesh and another, The apex Court in paragraph-26 has held as under:

The Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it.

Further in paragraph-29 it is observed as under:

If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award.

15. In the above cited judgments it is clear that the Court, however, is not entitled to examine the record and then hold that the decision of the Arbitrator, on merit, is incorrect. The Court has no jurisdiction to deal judicially with the merits of the case determined by the Arbitrator as if it is sitting in appeal on the verdict of the Arbitrator.

16. In the instant case, the Arbitrator has awarded an amount of Rs. 72,820/- and Rs. 72,520/- on account of anticipated profit @ 15% of the awarded cost to the Appellant. This claim was permissible under law to the Appellant and not prohibited claim under the terms of contract. The Appellant after negotiation held on 9th February, 1988 agreed to start the work under contract on the revised rates for the items mentioned in his letter placed on the file of the Arbitrator. A stipulation is incorporated in the said letter regarding providing truckable approach road to the site of the work by the University. The Executive Engineer (Construction) of the Respondent-University accepted the item rate tender dated 15.1.88 and subsequent negotiation letter dated 9.2.1988 by extending validity period of the contract agreement and the other terms and conditions of the contract agreement were left unchanged. The construction work was agreed to be completed within nine months from 15th January, 1988 but the award letter was issued only on 31st May, 1988 and the work, as such, was to be completed on or before 14th March, 1989. The Appellant started the excavation of foundation at the site on October 11, 1988 and after executing quantity of 54.24 cu.m stopped the work as truckable road was not provided by the Respondent-University as agreed upon at the site of the construction and thereafter the time for completion of the work elapsed and Respondent-University invoked the provisions of clause 3 of the agreement and rescinded the contract by way of notice dated 27th December, 1989. The learned Single Judge held that the contractor never asked the Respondent-University to comply with the term of the agreement for providing a motorable road and the Arbitrator without enquiring into this aspect of the matter traversed beyond the obvious term of the contract which definitely amounted to technical or legal misconduct on the part of the Arbitrator and thereby the awards were set aside for the payment of the amounts determined on account of anticipated profit @ 15% of the awarded cost. This sole reasoning of the learned Single Judge will amount to scrutinizing the verdict of the Arbitrator on merits which is not legally permissible. In the facts of the present case, even if it is assumed that on the materials on record of the Arbitrator, a different view could have been taken and the Arbitrator has failed to consider the documents and materials on record in their proper perspective, the awards were not liable to be set aside in the light of the law laid down by the apex Court in the judgments referred to herein-above. Error apparent on the face of the record does not mean that on closer scrutiny of the import of documents and materials on record, the finding made by the Arbitrator may be held to be erroneous. Judicial decisions over the decades have indicated that an error of law or fact committed by an Arbitrator by itself does not constitute "misconduct" warranting interference with the award. It does not appear to us that the findings made by the Arbitrators in the present case were without any basis and such findings were so patently unjust or perverse that no reasonable man could have arrived at such findings. Hence, on the score of alleged misreading, misconstruction, mis-appreciation of the materials on record or failure to consider some of the materials in their proper perspective, the impugned awards are not liable to be set aside. It appears that the learned

Single Judge has interfered with the finding of the Arbitrator based upon the observation made by the Full Bench of Kerala High Court in Government of Kerala and Another Vs. V.P. Jolly, In our view the ratio of that judgment was not applicable to the facts of the present case. The judgments and decree of the learned Single Judge in both the above said suits deserve and are accordingly set aside for the above stated reasons.

17. The next question arises for our determination is whether the Appellant is entitled for interest as claimed for on the awarded amounts from the date of the award till the date of payment.

18. In Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, a Constitution Bench of the apex Court in para-45 said as under:

A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the Arbitrator as it is for the period prior to the Arbitrator entering upon the reference. This is the principle of Section 34, CPC and there is no reason or principle to hold otherwise in the case of Arbitrator. An Arbitrator is an alternative form for resolution of disputes arising between the parties. If so he must have the power to decide all the disputes or differences arising between the parties. If the Arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the Court for that purpose, even though he may have obtained satisfaction in respect of other claims from the Arbitrator. This would lead to multiplicity of proceedings. An Arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law.... Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the Arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes-or refer the dispute as to interest as such-to the Arbitrator, he shall have the power to award interest. This does not mean that in every case the Arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.

In the State of Orissa Vs. B.N. Agarwalla, etc., the Hon''ble Judges held as under:

From the date of passing of the award, future interest can be awarded by the Arbitrator. The correct procedure which should be adopted by the Arbitrator is to award future interest till the date of decree or the date of payment, whichever is earlier. The effect of this would be that if the award is voluntarily accepted, which

may not result in a decree being passed, then payment of interest would be made from the date of award till the date of payment. Where, however, the award is filed in the Court and a decree is passed in terms thereof, then it is for the Court to determine u/s 29 of the Arbitration Act as to whether interest should be ordered to be paid and if so at what rate. u/s 29 of the Arbitration Act, the Court can, even where the Arbitrator has awarded interest from the date of the award till the date of payment, disallow interest from the date of the decree or determine a different rate at which the interest is to be paid or confirm the grant of interest as awarded in the award. When the Court does not modify the award with regard to grant of interest from the date of the award upto the date of payment, the effect would be as if the Court itself has granted interest from the date of the decree till the date of payment at the rate which was determined by the Arbitrator. The future interest would be regarded as having been ordered to be paid u/s 29 of the Arbitration Act when the Court does not modify the award in this respect.

19. In *State of U.P. Vs. Harish Chandra and Others*, three Judges Bench of the apex Court relying upon the earlier Constitution Bench judgment in *Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy*, said that the claim for interest even for the pre-reference period was also within the power and authority of the Arbitrator after the interest Act, 1978 came into force. It was also held that it could not be effectively urged by the learned Senior Counsel for the Appellant-State that the Arbitrator had no power to grant such pre-reference period interest. In a recent judgment of the apex Court in *M/s. Jagdish Rai and Brothers Vs. Union of India*, the Court while dealing with the provisions of Section 29 of the Arbitration Act, 1940 and Section 34 of the CPC held in paras 2 and 3 as under:

2. There are four stages of grant of interest. Firstly, from the stage of accrual of cause of action till filing of the arbitration proceedings; secondly, during pendency of the proceedings before arbitrator; thirdly, future interest arising between date of award and date of the decree; and fourthly, interest arising from date of decree till realisation of award.

3. The claim for interest not having been made before the Court in which proceedings for making the award the rule of the court were pending would certainly dis-entitle the Appellant for making such a claim during first three stages of pre-arbitration and post-arbitration that is between award and filing of application inasmuch as several considerations will have to be examined before award of interest and at what rate. Therefore, when the award had not been challenged for not granting interest, the award could not be upset to that extent. The view taken by the High Court appears to be correct to that extent. However, that is not the end of the matter. The High Court ought to have further examined whether the Appellant was entitled to any interest after the decree was made in terms of the award. The Court have taken the view that award of interest u/s 34, CPC is a matter of procedure and ought to be granted in all cases when there is a

decree for money unless there are strong reasons to decline the same. In the present case, the Appellant had made a claim for interest before the arbitrator but the same had been denied and no reasons are forthcoming thereto. Whatever, that may be, at any rate after the Sub-Judge made an award the rule of the Court the decree ought to contain a provision for making payment of interest. If such payment had not been made, appropriate correction of the decree could be ordered to be made when an application had been made before the High Court.

20. The Hon''ble Judges awarded the interest @ 12% per annum from the date when the award was made the decree of the Court of Sub-Judge till realisation.

21. In the present case, it appears that the Appellant has not claimed interest before the Arbitrator as we find no material on record nor interest was claimed by the Appellant during the pendency of the award. We have held the Appellant entitled to the amounts of Rs. 77,820/- and Rs. 72,520/- awarded by the Arbitrator on account of anticipated profit @ 15% of the awarded cost in both the suits, the awards to that extent are upheld and these are made rule of the Court, we are of the considered view that the Appellant is also entitled to interest @ 6% per annum from the date of the awards i.e. 10th March, 1992 till the date of realisation on the awarded amounts.

22. In the result, for the above-said reasons, we allow both these appeals and set aside the judgments and decree of the learned Single Judge dated December 2, 1993 passed in Civil Suit Nos. 44 and 45 of 1992 and make the awards rule of the Court. However, in the facts and circumstances of the case, there shall be no order as to costs.