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**(2011) 05 P&H CK 0011**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : FAO No. 735 of 2009**

State of Haryana and others

APPELLANT

Vs

M/s Ajit Construction Company, Karnal

RESPONDENT

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**Date of Decision :** 17-05-2011

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 31.7, 34, 39

**Citation :** (2012) 166 PLR 132

**Hon'ble Judges :** M.M.S. Bedi, J

**Bench :** Single Bench

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## Judgement

M.M.S. Bedi, J.—Aggrieved by the order passed by the Additional District Judge, Karnal, dismissing the objections of the appellants- State u/s 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act"), seeking to set aside the award dated 31.01.2006, passed by the arbitrator in agreement No. 26 of 1999-2000, the appellants-State has filed this appeal. Brief facts, relevant for adjudication of the present appeal, are that respondent No. 1 had been allotted work of supply of mixed material pursuant to agreement No. 26 of 1999-2000 of 45 lacs. Respondent No. 1, was further directed to execute the enhanced scope of work for Rs. 6,39,953/-, on account of complaints regarding quantity and quality of material supplied to the site of work. The estimate of work was not sanctioned and no enhancement was approved resulting in the reference to the Arbitrator. The arbitration proceedings were finalized and award was announced on 31.01.2006. The arbitrator, inter alia, had allowed pendent elite interest @ 18 per cent per annum on the pending amount of the Bill. Out of 7 claims raised by respondent No. 1, the arbitrator awarded two claims and the two counter claims made by the appellants objector were rejected.

2. In an objection petition u/s 34 of the Act, it was argued that the arbitrator has misused his powers and discretion in allowing the pendent elite interest as per provisions of Section 31.7 (a & b) of the Act, and had acted against the public policy. The enhancement of the work from Rs. 45 lacs to Rs. 6,39,953/- without

any agreement without depositing the earnest money was beyond the scope of arbitrator's jurisdiction. The arbitrator dealt with a dispute which was neither contemplated nor fell within the terms of the submissions to the arbitrator and that the arbitrator acted beyond clause 25A of the original agreement violating Section 34 (ii) & (iv) of the Act, the Additional District Judge, dismissed the objections filed by the appellants.

3. The State Government has challenged the award of the arbitrator contending that the claims of the appellants and the objections of the appellants should have been allowed. Besides this, it has been contended that it was not within the competence of the arbitrator to award interest pendent elite @ 18 per cent per annum.

4. I have heard the counsel for the appellants and gone through the award as well as the order passed by the Additional District Judge, u/s 34 of the Act.

5. Whether this Court could sit as a Court of appeal and disturb the findings given by the arbitrator regarding the claims raised before him came up for consideration before Hon''ble the Apex Court in *B.V. Radha Krishna v. Sponge Iron India Ltd.*,<sup>1</sup> 1997 (2) RCR (Civil), 316 (SC), and *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.*,<sup>2</sup> 2007 (1) RCR (Civil) 47, wherein it has been held that the High Court cannot sit as a Court of appeal while exercising the powers u/s 39 of the Act and disturb the finding of fact. In case *Rajasthan State Road Transport Corporation (Supra)*, Hon''ble the Supreme Court observed that the award, of interest @ 12 per cent per annum would be excessive in a case where the matter remained pending litigation for a long time. Hon''ble the Apex Court reduced the rate of interest to 6 per cent per annum.

6. No ground has been made out to show that the matter falls within the ambit of Section 34 of the Act, warranting interference in the award. So far as the interest awarded by the arbitrator is concerned, the respondent had claimed interest on delayed payment of Rs. 5,98,903/- w.e.f., 01.04.2000 to the date of declaration of award as per Section 31.7 of the Act @ 24 per cent per annum. The arbitrator observed that he was competent to award interest for reference period for the delayed payments by the appellants. Interest on Rs. 5,98,903/- @ 18 per cent per annum simple interest w.e.f., 01.04.2000 upto 24.11.2003, amounting to Rs. 3,93,348/- and of Rs. 900/- w.e.f., 01.04.2000 till 08.10.2003 amounting to Rs. 570/- was awarded. The work had been completed in this case on 25.12.1999, and Bill for work done was not paid within 3 months after completion of the formalities i.e., by the end of 31.03.2000. No doubt the interest is payable if a person is deprived of use of money which he legitimately deserves, has a right to be compensated for the deprivation, but the rate of interest should be reasonable. A long time has expired since the date of award. The grant of interest would certainly be burdensome for the appellants. Taking into consideration, the peculiar circumstances of this case and the prevalent rate of interest given by banking institutions, award of interest @ 7 per cent per annum from the date of award i.e., 01.04.2000, till realization of the amount

would be reasonable. The award and judgment of the Court below are upheld. However, the rate of interest awarded by the arbitrator and the Court below is modified and the respondent is held entitled to interest @ 7 per cent per annum from the date of award till realization of the amount.

Disposed of.