**(2019) 01 CAL CK 0100**

**In the Calcutta High Court**

**Case No :** C. Appeal From Order (Fma) No. 1941 Of 2018 With Can No. 4315 Of 2017

State Of West Bengal & Ors. APPELLANT

Vs

Devendra Bijay Ghosh RESPONDENT

**Date of Decision :** 24-01-2019

**Acts Referred:**
Arbitration And Conciliation Act, 1996 — Section 31, 34

**Citation :** (2019) 01 CAL CK 0100

**Hon'ble Judges :** Sanjib Banerjee, J;Suvra Ghosh, J

**Bench :** Division Bench

**Advocate :** Dhruba Ghosh, Arijit Basu, Asoke Basu, Samrat Sen, Arindam Mandal

**Final Decision :** Disposed Off

## Judgement

The appeal arises out of an order passed under Section 34 of the Arbitration and Conciliation Act, 1996. Though substantial amounts were awarded under several heads of claim and they passed muster before the court of the first instance, the State has restricted its objection to the award of the sums under claim nos.4.2 and 4.3. In respect of both heads, damages have been awarded by the arbitrator and the State feels that the quantum awarded in either case is exorbitant.

The arbitral award is of October 12, 2011. The order impugned in this case was passed on November 23, 2016.

The work was over - it is irrelevant whether it was closed or completed - several years prior to the arbitral award being passed and the contractor seeks a closure.

The matter was adjourned for the State to internally assess the extent of damages it would be willing to pay in respect of the claims covered by heads 4.2 and 4.3 of the award.

The State has done one better. The State has not only indicated how much it would be willing to pay under such heads, but has also obtained the consent of the contractor in such regard.

The parties have agreed that the principal amounts to be covered by claims 4.2 and 4.3 would be Rs.12,12,321/- and Rs.6,64,632/-, respectively.

The only other question that is raised by the State is as to the quantum of interest.

The arbitrator provided for interest at the rate of 12% per annum till the date of the award and at 18% per annum thereafter.

The State says that though Section 31 of the Act of 1996 permits interest upto 18% being provided for, it may be appreciated that the State had genuine misgivings regarding some of the heads of claim and the amounts awarded and the State has neither deliberately delayed the matter nor has the State attempted to stall the inevitable by urging frivolous grounds.

The delay that may have been occasioned in the challenge to the arbitral award remaining pending in court may not be completely attributable to the State. Oftentimes, as in this court, it is by reason of the sheer number of pending matters that the court cannot find time to dispose of a matter within a reasonable time of its institution. It is in such circumstances that this matter may have been delayed, both before the court of the first instance and in course of the present appeal.

To subject the State to interest at the rate of 18% per annum, may neither be justified nor fair. At any rate, the money may not have earned such exorbitant interest for the respondent, if it were deposited in court or otherwise. The interest awarded till the date of the award, however, cannot be touched.

The respondent has, quite graciously, agreed to accept interest for the post-award period at the rate of 12% per annum, provided the entire payment in terms of the arbitral award as modified by orders of court is discharged by March 31, 2019.

Accordingly, the rate of post-award of interest is reduced from 18% per annum simple to 12% per annum simple, subject to the entire payment being discharged by the end of March, 2019. If, however, the entire payment is not made over in terms of the award as modified to the respondent herein by March 31, 2019, the rate of interest will stand reduced from 18% per annum to 15% per annum till the award debt is completely cleared off.

It is submitted on behalf of the award-holder that the agreement between the parties as to the quantum to be paid under the award here is without prejudice to the rights and contentions of the respondent herein in its other pending references.

In view of such submission, it is made clear that the consent by the respondent herein to accept the amounts under claims 4.2 and 4.3 will not oblige the respondent herein to make any similar concession in any other pending arbitral reference or like proceedings between the same parties.

It is submitted on behalf of the respondent that the arbitrator's fees may not have been paid in full by the State. The State has assured the court that the arbitrator's fees in accordance with the original schedule has been paid and the dispute may be only in respect of the increased quantum which was sought to be charged with retrospective effect. The State has, none-the-less, said that the reasonable dues of the arbitrator, if not discharged already, will be discharged by the State without undue delay.

FMA 1941 of 2018 and CAN 4315 of 2017 are disposed of.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.