
(2004) 05 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : FAOs 675, 676, 677, 734, 735 and 1033 of 1990

The State of Punjab and Another

APPELLANT

Vs

Harish Chandra (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2004) 2 ARBLR 203 : (2004) 3 RCR(Civil) 267

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Ashok Aggarwal, AAG and Rajiv Takkar, DAG, for the Appellant; P.C. Markanda (Sr.), D.P. Sharma and Naresh Markanda, for the Respondent

Judgement

Viney Mittal, J.—"Interminable, time consuming, complex and expensive Court procedure impelled jurists to search for an alternative forum less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940 ("Act" for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Courts been clothed with "legalese" of unforeseeable complexity."

2. Thus observed the Apex Court in *Guru Nanak Foundation Vs. Rattan Singh and Sons*, . The present appeals are classical illustration of the aforesaid situation.

3. This order shall dispose of the six appeals, three appeals being FAOs No. 677, 675 and 676 of 1990 filed by the State of Punjab and others and other three being FAOs No. 734, 735 and 1033 of 1990 have been filed by M/s. Harish Chandra (India) Pvt. Limited. The challenge in all these appeals is to the judgments dated May 23, 1990. For the sake of convenience, the facts are taken

out from FAO 677 of 1990 and the cross appeal thereto being FAO No. 734 of 1990.

4. M/s. Harish Chandra (India) Pvt. Limited (hereinafter referred to as the "contractors") entered into an agreement dated May 9, 1984 with the State of Punjab through the Executive Engineer, Lohand Construction Division, SYL Canal Project, Ropar for the construction of SYL Canal from RD 3,000 to 5,000 kilometres. Subsequently some disputes arose between the parties with regard to certain payments claimed by the contractors from the State Government. There was an Arbitration Clause 63 in the agreement. In pursuance of the aforesaid clauses, the Chief Engineer, Construction, SYL Canal Project, Punjab, Chandigarh, appointed one Shri Kartar Singh, retired Chief Engineer as the sole Arbitrator for the settlement of the claim of the contractors vide order dated December 30, 1987. Subsequently, the State of Punjab moved Civil Court for revocation of the appointment of the aforesaid Arbitrator. Vide order dated April 29, 1988, the Senior Sub Judge accepted the prayer made by the State of Punjab and with the consent of the parties appointed Shri H.C. Chhatwal, Superintending Engineer of the Irrigation Department as a sole Arbitrator.

5. The contractors had preferred a claim petition before the original Arbitrator Shri Kartar Singh. However, subsequently the proceedings were taken by the new Arbitrator, Shri H.C. Chhatwal. The State of Punjab through the Executive Engineer filed a reply (Jawab-Dawa) to the said claim petition. The various claims raised by the claimants were contested. During the course of the Arbitration proceedings, the Arbitrator visited the spot on October 24, 1988. The documentary evidence was also produced by both the parties. The parties also filed affidavits in support of the respective pleas. They also orally argued the matter before the Arbitrator on December 7, 1988.

6. After taking into consideration the entire material available on the record and on the basis of the spot inspection conducted by him the Arbitrator rendered his Award dated January 20, 1989. In the aforesaid Award, the Claims A, C-I, E, F, G, H, I, J, K, M (Part-I), Q, S [Parts (a) and (c)] and T, raised by the contractors were accepted. However, the Arbitrator rejected the claims B, C, D, L, M [Parts (II) and (III)] N, O, P, R, S [Parts (b) and (d)] and general. In fact, while deciding the Claim T in favour of the contractors, the claimant-contractors were awarded interest on the amount against each items at the rate of 15% with effect from January 1, 1988 upto the date of Award and 12% from the date of the Award till realisation of the payment. The aforesaid Award was submitted to the Court of Senior Sub Judge, Ropar (hereinafter referred to as the "Civil Judge") on January, 23, 1989. The learned Civil Judge issued a notice of the filing of the Award to the parties. The contractors appeared before the learned Civil Judge and submitted an application for making the Award a rule of the Court. The notice of the aforesaid application was issued to the State of Punjab and its Officers. The State of Punjab appeared on February 21, 1989 and filed a reply to the application filed by the contractors opposing the prayer for making the Award

rule of the Court. On that very day, the State of Punjab (hereinafter referred to as the "objectors") also submitted its objection petition raising objections under Sections 30 and 33 of the Arbitration Act for setting aside the Award. The objectors claimed that the Arbitrator had misconducted himself and the proceedings and, therefore, the Arbitration Award was liable to be set aside. It was claimed by the objectors that the Arbitrator had travelled beyond the agreement between the parties and had also acted beyond the terms of the reference and, therefore, had acted without jurisdiction. It was alleged that the reasoning given by the Arbitrator was not as per the agreement between the parties. The Arbitrator had inspected the site on October 24, 1988 but had not prepared any inspection note nor had made any reference to the facts discovered at the time of that inspection. According to the objectors, this was a misconduct. It was also alleged that the principles of natural justice and provisions of law had been violated by the Arbitrator. The Arbitrator had also ignored the material documents placed by the objectors and as such the conclusions arrived at by the Arbitrator were not sustainable beside being mutually inconsistent. A grievance was also made that the Arbitrator had not afforded the objectors proper opportunity for producing their evidence. The objectors also raised specific objections to the various claims allowed by the Arbitrator.

7. The contractors filed a reply to the aforesaid objection petition. All the pleas raised by the objectors were specifically contested. It was claimed that the Arbitrator had duly followed the entire procedure and had afforded fullest opportunity to the parties to support their respective pleas. It was maintained by the contractors that the Arbitrator had duly appreciated the claims and the reply filed, respectively, by the parties and had given good reasons in support of the Award and the Arbitrator was not required to write a judgment like a Civil Court.

8. The contractors further maintained that the Arbitrator had not misconducted himself or the proceedings, in any manner. The contractors specifically supported the Award passed by the Arbitrator and reiterated the claim made by them before the Arbitrator.

9. On pleadings of the parties, the learned Civil Judge framed the following issues :

(1) Whether the impugned Award is liable to be set aside on the grounds stated in the objection petition ? OPR

(2) Whether the Arbitrator has no jurisdiction to Award interest ? If so, its effect ? OPR

(3) Relief.

10. During the course of proceedings before the learned Civil Judge, originally the parties intended to lead evidence through affidavits but on insistence by the learned counsel for the objectors, the Civil Judge directed that the oral evidence be recorded. Subsequently, the objectors filed an application for taking the

evidence of the parties by way of affidavits. The contractors also consented. Accordingly, the evidence of the parties was taken by the learned Civil Judge by way of affidavits. The contractors tendered into evidence affidavits Exhibits A-1, A-2 and A-3 in support of their pleas. The objectors tendered into evidence affidavits Exhibits R-1 and R-2 sworn by Shri B.S. Dhanju, Executive Engineer.

11. The learned Civil Judge vide his judgment dated May, 23, 1990 dealt with the various objections filed by the objectors. The objections with regard to Claim G relating to the payment of escalation charges were accepted. The objections of the objectors with regard to the Award of pendente lite interest for the period May 17, 1988 to January, 20, 1989 under Claim "T" were also accepted. All the other objections raised by the objectors were rejected. Consequently, the Award dated January, 23, 1989 with regard to the other claims was ordered to be made rule of the Court. Accordingly, a decree was passed in favour of the contractors and against the objectors allowing interest on the claims at the rate of 15% per annum from January 1, 1988 to May 16, 1988 and at the rate of 12% per annum from the date of Award till the date of decree. It was further held that since the transaction between the parties was a commercial transaction, therefore, the contractors were also entitled to the future interest at the rate of 12% on the awarded amount from the date of decree till realisation.

12. The objectors-State of Punjab and its Superintending Engineer have challenged the aforesaid judgment of the learned Civil Judge through FAO No. 677 of 1990. The contractors have filed cross appeal being FAO No. 734 of 1990. Whereas the appellants have challenged the judgment of the learned Civil Judge making the Award rule of the Court, as aforesaid, the contractors have challenged the judgment of the learned Civil Judge with regard to the setting aside the Award relating to Claim G and rejecting the pendente lite interest.

13. Before commencing their arguments in the present appeals, Shri Aggarwal, the learned Additional Advocate General and Shri P.C. Markanda, the learned senior counsel appearing for the contractors have commonly conceded that the arguments shall be addressed by them in FAO No. 677 of 1990 and in the cross appeal thereto being FAO No. 734 of 1990 and the decision of the Court in the aforesaid two appeals shall govern remaining four appeals as identical questions of facts and law are involved in the said appeals as well. On that understanding, the learned counsel for the parties have addressed the arguments in FAO No. 677 and FAO 734 of 1990 only.

14. I have heard Shri Ashok Aggarwal, the learned Additional Advocate General, Punjab and Shri P.C. Markanda, Senior Advocate, appearing for the contractors at a considerable length and with their assistance have also gone through the record of the case.

15. Before taking up the various contentions raised by the learned counsel for the parties on the merits of the controversy, it would be more appropriate to examine scope of objections under Sections 30 and 33 of the Arbitration Act,

1940 (hereinafter referred to as the "Act"). There are only two provisions contained in the Act, namely, Sections 16 and 30 under which an Award can be remitted or set aside. Since the present controversy pertains to the objections filed by the objectors u/s 30 of the Act only, therefore, it would be more appropriate to notice the provisions of Section 30 of the Act as follows :

"30. Grounds for setting aside Award--An Award shall not be set aside except on one or more of the following grounds, namely :

(a) that an Arbitrator or umpire has misconducted himself or the proceedings;

(b) that an Award has been made after the issue of an order by the Court superseding the Arbitration or after Arbitration proceedings have become invalid u/s 35 ;

(c) that an Award has been improperly procured or is otherwise invalid."

16. Russell on the law of Arbitration (Eighteenth Edition) at page 367, has noticed the legal position as follows :

"Where an Arbitrator makes a mistake either in law or in fact in determining the matters referred, but such mistake does not appear on the face of the Award, the Award is good notwithstanding the mistake, and will not be remitted or set aside.

The general rule is that, as the parties choose their own Arbitrator to be the Judge in the dispute between them, they cannot, when the Award is good on its face, object to his decision, either upon the law or the facts. In this respect the Courts do not recognise any distinction between the Awards of legal and of lay Arbitrators.

An error of law on the face of the Award means... that you can find in the Award or a document actually incorporated thereto, as, for instance, a note appended by the Arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the Award and which you can then say is erroneous. Unless upon the face of the Award we can distinctly collect what the Arbitrator intended to decide, and that we can see that he has decided wrongly, the Court will not interfere.

It would seem that though it may be a reasonable inference that the Arbitrator has made a finding which is erroneous in law the Court cannot interfere unless the finding is stated in the Award.

Where an Award is good on the face, it will be presumed, in the absence of evidence to the contrary, that everything has been rightly and regularly performed."

17. It has been held in Hindustan Tea Co. Vs. K. Sashikant Co. and Another, as follows :

"The Award is reasoned one. The objections which have been raised against the Award are such that they cannot indeed be taken into consideration within the

limited ambit of challenge admissible under the scheme of the Arbitration Act. Under the law, the Arbitrator is made the final arbiter of the dispute between the parties. The Award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts. Strong reliance was placed by the appellant's learned counsel on an old Madras decision in *Yogatnbal Boyee Ammani Ammal v. Naina Mallai Mannayar*, ILR (1909) Mad. 15. In our view, on the facts of this case challenge to the Award is not permissible by taking the stand that the Arbitrator acted contrary to the provisions of Section 70 of the Contract Act. In these premises the objection filed to the Award has to be rejected....."

18. In *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, the Apex Court has held as follows :

"4. In this case, there was no violation of any principles of natural justice. It is not a case where the Arbitrator has refused cogent and material factors to be taken into consideration. The Award cannot be said to be vitiated by non-reception of material or non-consideration of the relevant aspects of the matter. Appraisal of evidence by the Arbitrator is ordinarily never a matter which the Court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisal of the evidence. In the instant case, there was no evidence of violation of any principle of natural justice. The Arbitrator in our opinion is the sole Judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a Judge of the evidence before the Arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the Arbitrator but that by itself is no ground in our view for setting aside the Award of an Arbitrator.

5. It is familiar learning but requires emphasis that Section 1 of the Evidence Act, 1872 in its rigour is not intended to apply to proceedings before an Arbitrator. P.B. Mukharji, J. as the learned Chief Justice then was expressed the above view in *Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd.*, and we are of the opinion that this represents the correct statement of law on this aspect. Lord Goddard, C.J. in *Mediterranean & Eastern Export Co. Ltd. v. Fortress Fabrics Ltd.* (1948) 2 All ER 186, observed at pp. 188/189 of the report as follows :

"A man in the trade who is selected for his experience would be likely to know and indeed to be expected to know the fluctuations of the market and would have plenty of means of informing himself or refreshing his memory on any point on which he might find it necessary so to do. In this case according to the affidavit of sellers they did take the point before the Arbitrator that the Southern African market has slumped. Whether the buyers contested that statement does not appear but an experienced Arbitrator would know or have the means of knowing whether that was so or not and to what extent and I see no reason why in principle he should be required to have evidence on this point any more than

on any other question relating to a particular trade. It must be taken I think that in fixing the amount that he has, he has acted on this own knowledge and experience. The day has long gone by when the Courts looked with jealousy on the jurisdiction of the Arbitrators. The modern tendency is in my opinion more especially in commercial Arbitrations, to endeavour to uphold Awards of the skilled persons that the parties themselves have selected to decide the questions at issue between them. If an Arbitrator has acted within the terms of his submission and has not violated any rules of what is so often called natural justice the Courts should be slow indeed to set aside his Award."

This in our opinion is an appropriate attitude.

6. In this case the reasons given by the Arbitrator are cogent and based on materials on record. In Stroud's Judicial Dictionary, Fourth Edition, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But, mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury or the decision of a Judge sitting as a jury usually determines what is "reasonable" in each particular case. The word "reasonable" in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. See the observations, in *Re a Solicitor*, 1945 KB 368 at p. 371 of the report.

7. After all an Arbitrator as a Judge in the words of Benjamin N. Cardozo, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life."

19. In *Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.*, it was held by the Apex Court that where reasons for giving the Award are stated in the Award and no error of law could be pointed out in those reasons and the view taken by the Arbitrator was a possible view to take and when the Arbitrator had made his mind known on the basis of which he has acted, then it would be sufficient to meet the requirements of reasoned Award and the Award would not be set aside merely because a detailed judgment had not been given. It has been held that it is one thing to say that reasons should be stated and another thing to state that a detailed judgment be given in support of an Award. Even, if it be held that it is obligatory to state the reasons, it is not obligatory to give a detailed judgment. The Arbitration procedure should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indications of the grounds should be available to find out the mind of the Arbitrator for his action.

20. In *Puri Construction Pvt. Ltd. Vs. Union of India (UOI)*, the principles laid down by the Apex Court are :

(1) When a Court is called upon to decide the objections raised by a party against an Arbitration Award, the jurisdiction of the Court is limited, as expressly

indicated in the Arbitration Act, and it has no jurisdiction to sit in appeal and examine the correctness of the Award on merits.

(2) It is not necessary to examine the merits of the Award with reference to materials produced before the Arbitrator for upholding the same. This is for the reason that the Court cannot sit in appeal over the view of the Arbitrator by re-examining and re-assessing the materials.

(3) It is necessary to bear in mind that the Arbitrator was a highly qualified engineer, fully conversant with the nature of the work and should be presumed to correctly evaluate the additional work done.

21. Still further in the case of Food Corporation of India Vs. M/s. Veshno Rice Millers, their Lordships laid down as follows :

(1) It is difficult to give an exhaustive definition as to what may amount to a misconduct on the part of the Arbitrator. It was, however, laid down that 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.

(2) Unless it is demonstrated to the Court that such reasons are erroneous as such as propositions of law or a view which the Arbitrator has taken is a view which could not possibly be sustained on any view of the matter, the challenge to the Award of an Arbitrator cannot be sustained. It was added that the Arbitrator had construed the effect of particular clause of the contract. It was observed that it cannot be said that such a construction is a construction which is not conceivable or possible. If that is the position assuming even for the sake of argument that there was some mistake in the construction, such mistake is not amenable to be corrected in respect of the Award by the Court.

22. A learned Single Judge of this Court in the case of Punjab State Through Executive Engineer, Kharar Construction Division v. M/s. Amar Nath Aggarwal Constructions (P) Ltd. 1993(3) PLR 1, after taking into consideration the scope of the provisions of Section 30 of the Act and on the basis of various pronouncement of the Apex Court, culled out the legal position as follows :

"21. To sum up, the correct legal position is as under :

(1) The Arbitrator is the final Judge of all questions, both of law and of fact. The only exceptions to this rule are cases of corruption or fraud or where the basis of the Award is a proposition of law which is erroneous.

(2) The Arbitrator is the sole Judge of quality as well as quantity of evidence. It is not open to the Court to re-examine and reappraise the evidence considered by the Arbitrator to hold that the conclusion reached by the Arbitrator is wrong.

(3) The Court cannot sit in appeal over the view of the Arbitrator by re-examining and reappraising the materials.

(4) Where two views are possible, the Court is not justified in interfering with the award by adopting its own interpretation.

(5) An Award is not invalid if by a process of reasoning it may be demonstrated that the Arbitrator has committed some mistake in arriving at his conclusion.

(6) Though it is not possible to give an exhaustive definition as to what may amount to misconduct, it is not a misconduct on the part of the 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.

(7) Assuming that there is an error of construction of the agreement by the Arbitrator, it is not amenable to correction even in a reasoned Award.

(8) Even in cases where the Arbitrator is required to give his reason, it is not obligatory to give a detailed judgment.

(9) Reasonableness of an Award is not a matter for the Court to consider unless the Award is preposterous or absurd. The amount awarded being quite high does not per se vitiate the Award.

(10) It is necessary to bear in mind that the Arbitrator was a highly qualified engineer, fully conversant with the nature of work and should be presumed to correctly evaluate the additional work done.

(11) Where additional work is done under a building contract, Section 70 of the Contract Act applies."

23. It may be relevant to notice here that the aforesaid judgment of the learned Single Judge was upheld by the Apex Court in 2001(3) ALR 142 (SC).

24. In M/s. Arosan Enterprises Ltd. Vs. Union of India and Another, the Apex Court again laid down the scope of the proceedings u/s 30 of the Act as follows :

"35. Be it noted that by reason of a long catena of cases, it is now a well settled principle of law that reappraisal of evidence by the Court is not permissible and as a matter of fact exercise of power by the Court to reappraise the evidence is unknown to a proceeding u/s 30 of the Arbitration Act. In the event of there being no reasons in the Award, question of interference of the Court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the Court unless of course there exist a total perversity in the Award or the judgment is based on a wrong proposition of law. In the event however, two views are possible on a question of law as well, the Court would not be justified in interfering with the Award.

36. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The Court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties. If the view of the Arbitrator is a possible view

the Award or the reasoning contained therein cannot be examined. In this context, reference may be made to one of the recent decision of this Court in the case of State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, wherein this Court relying upon the decision of Sudarsan Trading Co. Vs. Government of Kerala and Another, observed in paragraph 31 of the Report as below :

"A Court of competent jurisdiction has both right and duty to decide the lis presented before it for adjudication according to the best understanding of law and facts involved in the lis by the Judge presiding over the Court. Such, decision even if erroneous either in factual determination or application of law correctly, is a valid one and binding inter parties. It does not, therefore, stand to reason that the Arbitrator's Award will be per se invalid and inoperative for the simple reason that the Arbitrator has failed to appreciate the facts and has committed error in appreciating correct legal principle in basing the Award. An erroneous decision of a Court of law is open to judicial review by way of appeal or revision in accordance with the provisions of law. Similarly, an Award rendered by an Arbitrator is open to challenge within the parameters of several provisions of the Arbitration Act. Since the Arbitrator is a Judge by choice of the parties and more often than not a person with little or no legal background, the adjudication of disputes by an Arbitration by way of an Award can be challenged only within the limited scope of several provisions of the Arbitration Act and the legislature in its wisdom has limited the scope and ambit of challenge to an Award in the Arbitration Act. Over the decades, judicial decisions have indicated the parameters of such challenge consistent with the provisions of the Arbitration Act. By and large the Courts have disfavoured interference with Arbitration Award on account of error of law and fact on the score of misappreciation and misreading of the materials on record and have shown definite inclination to preserve the Award as far as possible. As reference to Arbitration of disputes in commercial and other transactions involving substantial amount has increased in recent times, the Courts were impelled to have fresh look on the ambit of challenge to an Award by the Arbitrator so that the Award does not get undesirable immunity. In recent time, error in law and fact in basing an Award has not been given the wide immunity as enjoyed earlier, by expanding the import and implication of "legal misconduct" of an Arbitrator so that Award by the Arbitrator does not perpetrate gross miscarriage of justice and the same is not reduced to mockery of a fair decision of the lis between the parties to Arbitration. Precisely for the aforesaid reasons, the erroneous application of law constituting the very basis of the Award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very rightly, as legal misconduct rendering the Award as invalid. It is necessary, however, to put a note of caution that in the anxiety to render justice to the party to Arbitration, the Court should not reappraise the evidence intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the Arbitrator is, according to the understanding of the Court, erroneous. Such exercise of power which can be

exercised by an appellate Court with power to reverse the finding of fact, is alien to the scope and ambit of challenge of an Award under the Arbitration Act. Where the error of finding of facts having a bearing on the Award is patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference with Award based on erroneous finding of fact is permissible. Similarly, if an Award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the Award could not have been made, such Award is liable to be set aside by holding that there has been a legal misconduct on the part of the Arbitrator. In ultimate analysis it is a question of delicate balancing between the permissible limit of error of law and fact and patently erroneous finding easily demonstrable from the materials on record and application of principle of law forming the basis of the Award which is patently erroneous. It may be indicated here that however, objectively the problem may be viewed, the subjective element inherent in the Judge deciding the problem, is bound to creep in and influence the decision. By long training in the art of dispassionate analysis, such subjective element is however, reduced to minimum. Keeping the aforesaid principle in mind, the challenge to the validity of the impugned Award is to be considered with reference to judicial decisions on the subject."

37. It is on the basis of this well settled proposition that the learned Single Judge came to a conclusion that the findings of the Arbitrators in regard to the extension of delivery period and failure to fix the fresh date has resulted in breach of the contract on the part of the Government and the same being purely based on appreciation of material on record by no stretch it can be termed to be an error apparent on the face of the record entitling the Court to interfere. The Arbitrators have, in fact, come to a conclusion on a closer scrutiny of the evidence in the matter and reappraisal of evidence by the Court is unknown to a proceeding u/s 30 of the Arbitration Act. Re-appreciation of evidence is not permissible and as such we are not inclined to appraise the evidence ourselves save and except what is noticed herein before pertaining to the issue as the time being the essence of the contract....."

25. In the aforesaid case, their Lordships further observed as follows :

"13. An error of law on the face of the Award means that you can find in the Award or a document actually incorporated thereto, as for instance, a note appended by the Arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the Award and which you can then say is erroneous. [See Lord Dunedin in *Champsey Bhara & Co. v. Jivraj Balloo Co.* AIR 1923 PC 66]. In *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.*, this Court adopted the proposition laid down by the Privy Council and applied it. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the Arbitrator has committed an error of law."

26. Certain observations made by the Apex Court in the case of *State of U.P. Vs.*

Allied Constructions, may also be noticed as under :

"4. Any Award made by an Arbitrator can be set aside only if one or the other term specified in Sections 30 and 33 of the Arbitration Act, 1940 is attracted. It is not a case where it can be said that the Arbitrator has misconducted the proceedings. It was within his jurisdiction to interpret Clause 47 of the agreement having regard to the fact-situation obtaining therein. It is submitted that an Award made by an Arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an Award. The Award is a speaking one. The Arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the Arbitrator to determine. Section 20 of the Arbitration Act, 1940 providing for setting aside an Award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an Award cannot be set aside. The Arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the Award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law. An error apparent on the face of the records would not imply closer scrutiny of the merits of documents and materials on records. Once it is found that the view of the Arbitrator is a plausible one, the Court will refrain itself from interfering."

27. Thus, the legal position which emerges out from the settled law with regard to the scope of interference u/s 30 of the Act is that once the parties had chosen the Arbitrator as a Judge to decide the dispute between them, then the decision of the Arbitrator is final. The Court is precluded from reappraising the evidence led before the Arbitrator and also to examine the controversy as decided by the Arbitrator through the Award. Unless and until it is shown that the reasons given by the Arbitrator are totally judicially perverse or are based upon a wrong proposition of law, the Courts would not interfere in the Award passed by the Arbitrator. Even in a situation where two views are possible and the view taken by the Arbitrator is a plausible one, the Court will refrain itself from interference.

28. This brings me to the various contentions raised by the learned counsel for the parties in the present appeals.

29. Shri Ashok Aggarwal, the learned Additional Advocate General, Punjab has raised arguments with regard to the various claims decided by the Arbitrator, separately and independently, and dealt with by the learned Civil Judge in his judgment under appeal. Accordingly, I shall also deal with the aforesaid contentions separately and independently, claim-wise.

Claim-A : Additional Expenditure Involved in the Transportation of Excavated Material

30. The aforesaid claim was preferred by the contractors and was accepted by the Arbitrator. The learned Civil Judge also rejected the objections filed by the

objectors with regard to the aforesaid claim.

31. Shri Ashok Aggarwal, the learned Additional Advocate General, Punjab has argued that the Arbitrator has completely gone wrong in allowing the claim made by the contractors in as much as there was no material before the Arbitrator to grant the extra lead where excavated earth was disposed of. Shri Aggarwal has vehemently argued that the contractors were not entitled to any payment on account of the aforesaid claim because of the non compliance of the provisions of Clause 39 of the contract agreement, in as much as, the contractors were required to submit a return by the 10th day of each month with regard to any additional work. According to the learned State counsel since no return, as required by the aforesaid clause, was submitted by the contractors, therefore, the contractors could not make any claim for extra payment subsequently.

32. It has further been argued by Shri Aggarwal that in any case the Arbitrator had completely misconducted himself in allowing the claim of the contractor by adopting the rate of Rs. 41.58 with regard to the extra lead. Shri Aggarwal maintains that neither there was evidence with regard to the extra lead for disposal of the excavated earth nor the said rate was justified.

33. On the other hand, Shri P.C. Markanda, the learned senior counsel appearing for the contractors has with equal vehemence argued that the Award given by the Arbitrator by allowing the aforesaid claim made by the contractors was fully justified and in accordance with law. According to Shri Markanda, the site had been inspected by the Arbitrator himself on October, 24, 1988. The extra lead for disposal of the excavated earth had been determined on the basis of the said inspection. Although the contractors had claimed the extra lead to the extent of 3 to 5 KM but the Arbitrator had merely determined the aforesaid extra lead to be 2,500 metres. According to Shri Markanda, the aforesaid lead was also justified on the basis of the forwarding letter dated November 13, 1984 through which the disposal plan for excavated earth was forwarded by the department to the contractors. In the aforesaid disposal plan, a lead upto 3.5 KM had been held to be permissible.

34. With regard to the objection of the Clause 39 of the agreement, Shri Markanda has contended that the aforesaid objection was never specifically ever raised by the objectors before the Arbitrator. On that basis, it is maintained that since no objection in this regard was ever raised by the objectors before the Arbitrator, therefore, subsequently, at any stage, either in the objection petition or in the present appeal, the objectors could not be heard to raise the aforesaid objection. Shri Markanda has further brought to my notice the reply filed by the objectors before the Arbitrator with regard to Claim A. In the aforesaid reply (Jawab-Dawa), the objectors had maintained that the payment for the extra lead involved in transporting the excavated earth had already been made and the claim of the contractors settled and, therefore, no further claim of the contractors was tenable. Shri Markanda has also brought to my notice the aforesaid reply wherein the objectors had themselves relied upon the disposal

plan which was forwarded to the contractors vide forwarding letter dated November 13, 1984.

35. With regard to the rates determined by the Arbitrator for extra lead, Shri Markanda, has argued that as per agreement, the contractors had quoted the rates for the items of earth work at the rate of Rs. 19.95 per cubic metre whereas the Common Schedule Rate was merely Rs. 8.91 per cubic metre. Thus, since the quoted rate was 123.90% over and above the Common Schedule Rate, therefore, for the extra item, when the Common Schedule Rate along with sanctioned premium (SP) and Zonal premium was Rs. 18.57 per cubic metre, then on that basis by giving the increase of 123.90%, the Arbitrator had rightly determined the rate at Rs. 41.58 per cubic metre. After deducting the rates for the original lead i.e. Rs. 19.95, the Arbitrator had rightly allowed the claim at the rate of Rs. 21.63.

36. I have given my due consideration to the rival contentions raised by the learned counsel for the parties. In my considered view, there is no infirmity in allowing the claim of the contractors by the Arbitrator.

37. A perusal of the Award shows that the aforesaid claim of the contractors has been allowed by the Arbitrator after taking into consideration the site inspection and the various documents. The rate with regard to the extra lead for disposal of the excavated earth has been determined by the Arbitrator keeping in view the premium of 123.90% on the original quoted rate over and above the Common Schedule Rates.

38. Another fact which can be noticed at this stage is that as per the stand of the objectors themselves, the claim of the contractors for extra work had been accepted by the department itself. Although the stand of the department was that the entire payment for the aforesaid extra work had been made to the contractors but as per the adjudication by the Arbitrator, the contractors were entitled to more payment.

39. Since the objector-department had themselves made the extra payment with regard to the claim of the extra work by the contractors and the aforesaid claim was not rejected on the basis of Clause 39, therefore, it was definitely not open to them to raise the objection of Clause 39 subsequently before the Civil Court. It is also apparent from the reply filed by the objector-appellants that no such objection was raised by them before the Arbitrator,

40. Accordingly, I have no hesitation in upholding the Award of the Arbitrator with regard to the Claim-A.

Claim C-I : Payment Due on Account of Excavation of Slush, Earth Work Extra Expenditure and Cost

41. This claim of the contractors has been objected by the objectors on the ground that the contract agreement between the parties envisaged the excavation of earth work in all kind of soils.

42. On the basis of the aforesaid objection, Shri Ashok Aggarwal, the learned Additional Advocate General, has argued that Schedule-I to the contract agreement envisaged earth work in excavation and filling in all kind of soils. On that basis, Shri Aggarwal has argued that the contractors were not entitled to claim any extra amount on that basis.

43. On the other hand Shri P.C. Markanda, the learned senior counsel has pointed out that Schedule I of the contract agreement provided for earth work in excavation and for filling in all kind of soils only in saturation conditions as existing at the site. According to Shri Markanda, since the saturation conditions did not exist at the site and the site was slushy, therefore, the contractors were entitled to claim extra on that account. Shri Markanda has argued that slush is separately provided in Chapter 6 of Common Schedule Rate. Slush is defined to be that which "will not support a man's weight, whereas Daldal is clay which will flow like molasis". On that basis, Shri Markanda maintains that Schedule I merely provides for excavation in saturation conditions and since slush is not a soil in saturated condition, therefore, it is separately provided for in the Common Schedule Rates. On that basis, Shri Markanda has maintained that the awarding of the aforesaid claim of the contractors was fully justified.

44. A perusal of the Award shows that the Arbitrator had duly noticed the conditions existing at the site during his inspection. It has been noticed that there was a slush formation and slushy conditions prevailed at the time of excavation operations. It has also been noticed that the effect of dewatering and pumping to bring about conditions close to wet work excavation is related only to soils of shingle and gravel strata and not where slushy condition existed.

45. Thus, the claim made by the contractors as accepted by the Arbitrator cannot be held to be erroneous in any manner. In any case, the said claim of the contractors having been accepted by the Arbitrator on technical considerations of the entire situation, no interference by the Court is possible. Accordingly, the objection raised by the objector with regard to the aforesaid claim is also rejected.

Claim-E : Payment of Interest on Securities

46. Although the Arbitrator has noticed that the claim made by the contractors in this regard was vague and because of the aforesaid fact no definite amount has been awarded to the contractors but the department has merely been directed to look into the details and make payment of interest charges at the rate of 12% where the delay in converting securities into interest bearing deposits has actually occurred. Since the Arbitrator has left the matter to be determined by the department itself and has merely held that where the securities of the contractors have not been converted into fixed deposits within a reasonable time and delay has occurred, then the contractors would be entitled to interest at the rate of 12% per annum, therefore, no fault can be found with the aforesaid direction issued by the Arbitrator.

Claim-F : Payment Due on Account of Work of Excavating the Side Slopes and Bed of the Canal Prior to Lining

47. Shri Ashok Aggarwal, the learned Additional Advocate General has objected to the aforesaid claim of the contractors having been granted by the Arbitrator on the ground that the aforesaid claim was covered by Schedule 3, Item No. 3 of the Contract agreement and, therefore, the contractors were not entitled to claim any extra amount. According to Shri Aggarwal since Schedule 3 provided for laying cement concrete lining upto 125 mm thick on side slopes and 100 mm thick in bed, therefore, the laying of the material underneath was covered by the aforesaid item and the contractors were not justified in making any claim in this regard. According to Shri Aggarwal, the Arbitrator had made out a new case for the contractors and as such had misconducted himself.

48. On the other hand Shri Markanda, the learned senior counsel appearing for the contractors has argued that note III of Chapter 19 of Common Schedule Rates provided that basket earthwork was to be paid extra at the rates for lip cutting. According to Shri Markanda, the aforesaid claim made by the contractors was covered by the aforesaid note III.

49. From the perusal of the Award of the Arbitrator, I find that after taking into consideration the documentary evidence, the agreement between the parties and the items of concrete lining and the schedule of tendered rates, the Arbitrator had found it as a fact that lip cutting and preparation of sub-grade are two separate items. Reliance in this regard has been placed by the Arbitrator on the C.S.R. Chapter on lining.

50. Since, the aforesaid documentary evidence had been duly considered by the Arbitrator and a definite finding in this regard had been given by him while allowing the claim of the contractors, therefore, it would not be possible for the Court to adopt any other view in this regard. The view adopted by the Arbitrator is not shown to be erroneous or implausible but rather is based upon interpretation of the Schedule Rates as well as documentary evidence.

51. Thus, the objection raised by the objector with regard to the aforesaid claim is also rejected.

Claim-H : Claims for Compensation for Damages, Losses Caused by Hindrances and Failure on the Part of the Deptt.

52. Shri Ashok Aggarwal, the learned Additional Advocate General has objected to the aforesaid claim made by the contractors by referring to the reply (jawab-dawa) filed by the objectors before the Arbitrator. It has been argued that in fact the department had never allowed the work to suffer and no delay had been caused by it, rather the progress of the contractors was slow due to inadequate material and other resources. It has further been argued at length that the contractors were given extension from time to time for completion of the work. Shri Aggarwal has further argued that the contractors have failed to lead any

evidence of any loss suffered by them in as much as no income tax return or other material has been brought on record evidencing the aforesaid loss.

53. On the other hand, Shri Markanda, the learned senior counsel appearing for the contractors has argued that the objectors had themselves stated in the reply filed by them before the Arbitrator with regard to the aforesaid claim that since there were unavoidable delays due to unfavourable and uncertain conditions prevailing in the State and also for the time wastage because of bad weather and frequent heavy rains, time of the execution of the work by the contractors was extended.

54. Shri Markanda has referred to the Hudson's Building and Engineering Contracts (Tenth Edition) page 647, wherein it has been recognised that:

"Where the cause of delay is due to breach of contract by the employer, and there is also an applicable power to extend the time, the exercise of that power will not, in the absence of the clearest possible language, deprive the contractor of his right to damages for the breach."

55. Shri Markanda further relies upon Section 73 of the Contract Act. On that basis, it is argued that once the contractor had suffered loss on account of delays in the execution of the work which was not because of any fault of the contractors, then the claim made by the contractor was rightly allowed by the Arbitrator.

56. From the perusal of the reply filed by the objectors before the Arbitrator and also from the perusal of the Award, I find that the objections raised by the objectors are not justified. Nothing has been shown that the view adopted by the Arbitrator was erroneous in any manner. The plea raised by the objectors in the reply has been duly taken into consideration by the Arbitrator. The loss of profits of the contractors has been determined at the rate of 10%.

57. Accordingly, I do not find any justification in the objections raised by the objectors to the aforesaid claim as well.

Claim-I : Payment Due on Account of Work of Excavation of Slush, its Removal, Rehandling, Providing and Laying of Composite Material

58. According to Shri Ashok Aggarwal, this claim is merely a repetition of Claim C-I and as such could not have been-awarded by the Arbitrator. It has further been argued by Shri Aggarwal that there is no material available on the record to support the claim of the contractors.

59. On the other hand, Shri P.C. Markanda, the learned senior counsel for the contractors has contended that the two claims i.e. Claim C-I and the present claim are totally distinct and independent of each other. Shri Markanda has also referred to the reply filed by the objectors before the Arbitrator wherein no such objection was ever raised. Shri Markanda has also brought to my notice the objection petition filed by the objectors before the learned Civil Judge wherein

also no such objection was raised. On that basis, Shri Markanda has argued that the aforesaid plea could not be raised by the objectors for the first time in the present appeal and in any case the aforesaid objection having never been raised by the objectors, within the period of limitation, the same could not be raised now after the period of limitation.

60. On merit of the aforesaid objection also, Shri Markanda has argued that whereas Claim C-I pertains to removal of slush upto the designed bed level, the present claim pertains to depth more than the designed level.

61. Having given my thoughtful consideration to the aforesaid rival contentions raised by the learned counsel for the parties, I find that the objectors had not raised any such plea, as is now being sought to be raised by them in the present appeal, either before the Arbitrator in their reply or before the Civil Judge in the objection petition. In view of the aforesaid fact the plea raised by the learned counsel for the objector-appellants cannot be allowed to be raised in the present appeal, at this stage.

62. Even otherwise from the perusal of the Award, I find that the Arbitrator had dealt with the aforesaid claim made by the contractors in complete technical details and on that basis had allowed the said claim. The view adopted by the Arbitrator cannot be held to be a misconduct by the Arbitrator under any circumstances.

63. Accordingly, the objection raised by the objector-appellants to this claim is also rejected.

Claim-J : Silt Brought into Excavated Canal Due to Flood in the Monsoon, Payment Due for Removal Thereof

64. Shri Ashok Aggarwal, the learned Additional Advocate General, has objected to the aforesaid claim awarded by the Arbitrator on the ground that the said claim made by the contractors was totally contrary to the factual position in as much as once the contractors had claimed that the earth had been excavated and had been removed from the dug canal, then the question of the silt getting back into the dug portion would not have arisen. According to Shri Aggarwal, the spoil banks were required to be erected by the contractors and if Claim-A made by the contractors had been upheld by the Arbitrator and the excavated earth had been disposed of by the contractors at a distance from the excavated portion, then the present claim made by the contractors was not maintainable. Shri Aggarwal has also referred to Note I of SC-4 wherein it has been provided that no extra payment for replacement or repairs on account of damages, if any, due to/during floods, natural mishaps etc. was entertainable. Shri Aggarwal has also objected to the allowing of the present claim on the same basis as Claim-A. According to Shri Aggarwal, the objections raised by the department to Claim-A were also available to the present claim of the contractors.

65. On the other hand, Shri Markanda has justified this claim made by the

contractors on the ground that silt is different and distinct than the excavated earth. According to Shri Markanda, Note-1 of SC-4 applies to permanent work executed by the contractors and has no application to the extras which may arise when the work was being executed. According to Shri Markanda, the contractors could not raise the spoil banks because, admittedly, the land for spoil banks had not been acquired.

66. A perusal of the Award rendered by the Arbitrator shows that the Arbitrator had taken into consideration the terms of the contract agreement and, thereafter, came to the conclusion that the contractors were not required to make arrangement for protecting the canal works from the ravages of floods in the natural drainages which stood disturbed because of the construction activities and other factors prevailing in area.

67. The learned Civil Judge has also noticed that the contractors had produced various letters before the Arbitrator which showed the entry of silt from time to time. On that basis, it has been rightly held by the learned Civil Judge also that the claim of the contractors could not be held to be based on no evidence.

68. Accordingly, the objection raised by the objectors has rightly been rejected by the learned Civil Judge. The argument of the objector-appellants in this regard is also without any basis.

Claim-K : Payment Due for Providing Extra Width for Lip-Cutting (Compaction Allowance)

69. The claimant-contractors have been awarded an amount of Rs. 60,000 on the basis of the documentary evidence available on the record. Nothing has been shown that the said Award is erroneous in any manner.

Claim-M: Payment on Account of Excavation of Material other than Provided in the Agreement

70. Shri Aggarwal has again objected to the aforesaid claim on the basis of violation of Clause 39 of the Contract agreement. It has been maintained that since the contractors had not submitted the due returns as per the aforesaid clause, therefore, the claim was not maintainable. It has further been argued by Shri Aggarwal that SC-1 of the contract agreement provided that excavation of any kind of soils was covered under the aforesaid item and no separate claim in this regard was to be entertained. It has further been contended that no evidence of any such excavation existed at the site which justified the claim of the contractors.

71. On the other hand, Shri Markanda has relied upon the reply filed by the objectors and has maintained that SC-1 covered only excavation of soils and when the objectors had themselves admitted that the soil was not ordinary earth then it could not be suggested that the said excavation work was covered in the item of earth excavation.

72. A perusal of the Award shows that the Arbitrator had accepted the claim made by the contractors on the basis of his site inspection. The entries made in the measurement book by the department themselves showed that a conglomerate existed at the site. The said entries had been made as far back as in 1985, On that basis, the claim made by the contractors has been allowed by the Arbitrator.

73. Thus, it cannot be suggested that the claim made by the contractors had been allowed by the Arbitrator without any basis or without any material on the record. The objections raised by the objectors have rightly been overruled by the learned Civil Judge. The contentions of the learned counsel for the objector-appellants are also without any basis and as such are rejected.

Claim-Q : Payment Due on Account of Extra Expenditure Incurred in Spreading and Levelling the Disposed of Earth Work in Private Fields

74. Shri Ashok Aggarwal, the learned Additional Advocate General has contested the aforesaid claim of the contractors on the ground that the excavated earth could have been disposed of by the contractors in khads and depressions and in any case could have been used for erection of spoiled banks.

75. Shri Markanda, the learned senior counsel for the contractors, however, repels the aforesaid contention of the learned counsel for the objectors. It has been maintained by the learned counsel that no objection in this regard was taken in the reply (Jawab-dawa). The excavated earth was disposed of in private fields of the farmers. According to Shri Markanda, since admittedly no land had been acquired for construction of the spoiled banks, therefore, the contractors had no option except to dispose of the earth in the private fields. The said disposed of earth was required to be levelled.

76. A perusal of the Award shows that it bears the contention of Shri Markanda. The Arbitrator has relied upon his observations made during the site inspection and on that basis the claim made by the contractors in this regard has been allowed.

77. The aforesaid claim made by the contractors, as upheld by the Arbitrator and the rejection of the objections by the Civil Judge cannot be said to be erroneous in any manner. Nothing has been shown that the claim had been accepted by the Arbitrator without any material.

Claim-S : Payment Due for Executing Miscellaneous Items Beyond the Provision of Agreement

(a) Extra payment for carriage of cement beyond the jurisdiction of executing Division (as provided in the Agreement)

78. The aforesaid claim of the contractors has been allowed by the Arbitrator because of the fact that the contractors were required to carry cement from outside the jurisdiction of Lohand Division, For the purpose of construction, the

jurisdiction of Lohand Division extended from RD 0 to 5 only.

79. Shri Markanda has relied upon Note 2(b) of SC-5 wherein the contractors were required to carry material from within the jurisdiction of the division only. On that basis, it has been argued that since the cement was required to be carried from outside the jurisdiction of the aforesaid division, therefore, the contractors were entitled to the claim which has been rightly awarded by the Arbitrator.

80. A perusal of the Award shows that the aforesaid claim made by the contractors had been accepted by the Arbitrator on the basis of the fact that the cement had to be carried by the contractors from outside the jurisdiction of the Lohand Division. The objections raised by the objector have rightly been rejected by the learned Civil Judge.

(c) Providing weep holes in the line on the slopes

81. The contractors have been awarded an amount of Rs. 76,000 as a measure of settlement by the Arbitrator. No substantial objections have been raised by the objectors to the aforesaid claim of the contractors.

82. Although the learned counsel for the objector-appellants during the course of arguments, has argued the various objections and the aforesaid argument, have been contested by the learned counsel for the contractors and the aforesaid contentions have been noticed by me in the above portion of the judgment, while dealing with the various claims distinctly and independently, still I find that none of the objections raised by the objector-appellants are such objections which could be taken to be within the meaning and scope of Section 30 of the Act. In fact the various contentions raised by Shri Aggarwal, the learned Additional Advocate General are such objections which cannot be entertained by the Court while dealing with the objections u/s 30 of the Act. I have already noticed the law laid down by the Apex Court in various judgments wherein it has been declared that the Court is not to sit in appeal over the Award passed by the Arbitrator. It has also been held that if two views are possible and view expressed by the Arbitrator is a plausible view, then the Court cannot substitute its own view for the view expressed by the Arbitrator. It is not in dispute that Shri H.C. Chhatwal, the Arbitrator appointed to settle the dispute between the parties was a Superintending Engineer of the department and being a technical man was the best person to go into the various technical pleas raised by the respective parties. The aforesaid Arbitrator had decided the various claims raised by the contractors on the basis of the material available on the record and on the basis of his spot inspection. It is not open to either the Civil Court or this Court in appeal to sit over the judgment over the aforesaid assessment of the material made by the Arbitrator. No error apparent on the face of the record has been pointed out by Shri Aggarwal during the course of arguments. Various pleas are merely pleas with regard to interpretation, of the various rates given in the schedules to the agreement. The Court cannot loose sight of the note of caution

expressed by the Apex Court in Sudarsan Trading Co. Vs. Government of Kerala and Another, and approved in M/s. Arosan Enterprises Limited's case (supra), to the effect that in the anxiety to render justice to a party to Arbitration, the Court should not reappraise the evidence intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the Arbitrator is, according to the understanding of the Court, erroneous. Since the reappraisal and reappraisal of the evidence is not permissible, therefore, the various contentions raised by the learned counsel for the objector-appellants on the basis of the objections filed by them before the Civil Judge have been repelled by me.

FAO 734 of 1990

Claim T : Payment Due as Claim on Account of Pendentalities, Interest and Cost of Arbitration and Other Reliefs

83. The Arbitrator through his Award had awarded interest to the contractors on the amounts against items at the rate of 15% with effect from January 1, 1988 upto the date of Award and at the rate of 12% from the date of Award till realisation of payment through decree or otherwise.

84. The learned Civil Judge on the basis of the law laid down by the Hon'ble Supreme Court of Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, held that the Arbitrator had no jurisdiction to Award pendente lite award to the contractors and as such set aside the Award of the interest for the period May 17, 1988 to January 20, 1989. However, the Award of interest with regard to the period from January 1, 1988 to May 16, 1988 and January 20, 1989 till the date of decree was upheld.

85. The contractors have challenged the aforesaid judgment of the Civil Judge by filing FAO No. 734 of 1990 before this Court.

86. Shri P.C. Markanda, the learned senior counsel for the contractors has relied upon the judgment of the Supreme Court of India in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, to contend that the judgment in Abhaduta Jena's case (supra), had been held to be not good law by the Supreme Court and it had been held that where the agreement between the parties did not prohibit the grant of interest and where a party claimed interest and that dispute is referred to the Arbitrator, then the Arbitrator would have the jurisdiction to award interest pendente lite.

87. Shri Markanda, the learned senior counsel for the contractors has relied upon the following observations made by the Supreme Court of India :

"44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf :

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 to 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.

45. For the reasons aforesaid we must hold that the decision in Jena in so far as it runs counter to the above proposition, did not lay down correct law.

46. In view of the above discussion we hold that in two appeals namely Civil Appeal No. 1403 of 1986 and Civil Appeal No. 2586 of 1985 the Arbitrator acted with jurisdiction in awarding pendente lite interest and the High Court rightly upheld the Award. In the result both the appeals fail and are, accordingly, dismissed but there will be no order as to costs. Even though we have held that the decision in Jena case does not lay down good law, we would like to direct that our decision shall only be prospective in operation, which means that this decision shall not entitle any party nor shall it empower any Court to reopen proceedings which have already become final. In other words, the law declared herein shall apply only to pending proceedings."

88. On the basis of the aforesaid observations, Shri Markanda contends that since the proceedings were still pending before this Court and had not been finalised so far, therefore, the judgment in G.C. Roy's case (supra), shall be fully applicable and as such the contractors would be entitled to claim interest pendente lite during the pendency of the proceedings before the Arbitrator as well. Accordingly, Shri Markanda has argued that the judgment of the learned Civil Judge in this regard was liable to be modified to that extent.

89. In reply Shri Ashok Aggarwal, the learned Additional Advocate General has argued that the judgment in G.C. Roy's case (supra), merely operates prospectively and it had been directed by the Hon'ble Supreme Court in the aforesaid case that the aforesaid decision shall not entitle any party nor shall it empower any Court to reopen proceedings which had attained finality. On that basis, Shri Aggarwal argues that the entitlement of pendente lite interest which had been rejected by the learned Civil Judge could not be reopened by the contractors by way of the present appeal.

90. Having given my thoughtful consideration to the aforesaid rival contentions of the learned counsel for the parties. I find that the judgment of the learned Civil Judge declining the claim of the contractors for pendente lite interest was merely based upon Abhaduta Jena's case (supra). The Hon'ble Supreme Court in G.C. Roy's case (supra), has specifically held that the law laid down in Abhaduta Jena's case (supra), was not good law and it has been held that once there was no prohibition in the agreement between the parties to grant of

interest, then the Arbitrator shall have powers to Award the interest. It is also apparent that the learned Civil Judge while dealing with the objections filed by the objectors on the basis of the Abhaduta Jena's case (supra), has accepted the objections of the objectors and set aside the aforesaid grant of pendente lite interest. However, the aforesaid matter has been taken up in appeal by the contractors. In the meantime the Apex Court has overruled Abhaduta Jena's case. Since the controversy with regard to the grant of pendente lite interest by the Arbitrator has not yet attained finality and is yet the subject matter of the present appeal No. 734 of 1990, therefore, in view of the law laid down by the Apex Court in G.C. Roy's case (supra), I have no hesitation in holding that the Arbitrator had the power to grant pendente lite interest. Accordingly, the judgment of the learned Civil Judge accepting the objections raised by the objectors to the pendente lite interest is liable to be set aside to that extent.

91. Consequently, it is held that the contractors would be entitled to the pendente lite interest from May 17, 1988 to January 20, 1989 also.

Claim-G: Payment of Escalation Amount in Respect of Work "Construction of SYL Canal from RD 3.000 to RD 5.000 KMs Under Contract Agreement No. 2/EE/84-85 dated 09.05.1984"

92. Shri Markanda, the learned senior counsel for the contractors has also assailed the findings recorded by the learned Civil Judge with regard to the acceptance of objections filed by the objectors with regard to Claim-G. Claim-G made by the contractors relates to the payment of escalation amount.

93. Objections had been raised by the objectors to the Award of the aforesaid claim on the ground that the aforesaid claim of the contractors was in clear violation of the written agreement between the parties in as much as there was no written agreement between the parties with regard to the escalation charges. Although the escalation clause was originally inserted by the contractors while submitting their tender, however, the Tender Committee had not accepted the aforesaid clause and in fact, while approving the tender of the contractors, the escalation clause as demanded by the contractors was not approved. The learned Civil Judge has rightly observed that only logical interpretation of the minutes of the Tender Committee meeting, which could be made, was that the escalation clause demanded by the contractors had been rejected for all intents and purposes.

94. Accordingly, the learned Civil Judge has rightly set aside the aforesaid claim of the contractors which had been allowed by the Arbitrator and to that extent the Award of the Arbitrator had rightly been set aside.

95. Shri Markanda, the learned senior counsel has not been able to raise any meaningful argument with regard to the aforesaid claim.

96. Accordingly I have no hesitation in upholding the judgment of the learned Civil Judge with regard to upholding the objections relating to the claim-G made

by the contractors.

97. No other point has been argued by either of the parties.

98. As a result of my above discussion, the appeal bearing FAO No. 677 of 1990 is dismissed being without any merit. However, the appeal bearing FAO No. 734 of 1990 is partly accepted.

99. Before parting with this judgment, it is directed that if the objector-appellants, State of Punjab and the Superintending Engineer make the payment of the decretal amount to the contractors, within a period of four months from the date of delivery of this judgment, then they shall not be liable to pay any future interest from the date of the this judgment till the date of payment. However, in case the aforesaid payment of the decretal amount is not made by them within the aforesaid period of four months, then the future interest as awarded by the learned Civil Judge till the date of payment shall remain payable.

100. There shall be no order as to costs.

101. As a parting note, I may notice the preface to Chapter 1 of Russell on the Law of Arbitration (Eighteenth Edition) :

"Honest men dread Arbitration more than they dread law suits".

102. The learned author has prefaced Chapter 11 of the aforesaid commentary :

"The case did not reach a decision ; but went to an Arbitration."

"Many years ago, a top-hatted old gentleman used to parade outside these Law Courts carrying a placard which bore the stirring injunction "Arbitrate-don't litigate !" I wonder whether the ardour of that old gentleman would not have been dampened somewhat had he survived long enough to learn something about the present case."

How apt !!