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**(2004) 05 PAT CK 0002**  
**In the Patna High Court**  
**Case No : Misc. Appeal No. 28 of 2002**

The Union of India (UOI)

APPELLANT

Vs

MESCO (Multi Engineering and Scientific Corporation)

RESPONDENT

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**Date of Decision :** 19-05-2004

**Acts Referred:**

**Citation :** (2004) 05 PAT CK 0002

**Final Decision :** Dismissed

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### Judgement

M.L. Visa, J.—This appeal preferred by Appellant against the judgment and decree dated 15.10.2001 and 17.10.2001 respectively, passed by Subordinate Judge-VII, Sasaram, in Title Suit No. 116 of 1995, with the consent of the parties, is being finally disposed of at the admission stage itself.

2. The brief facts of the matter are that M/s MESCO, the Respondent, entered into a contract with the Eastern Railway, the Appellant, for replacement of corroded troughs of bridge No. 531 (Sone Bridge) on the down line between Dehri-on-sone and Sone Nagar Station of Mugalsarai Division. A dispute arose between the parties and to resolve the dispute the matter was referred to the named Arbitrators as per the terms of the agreement. The Arbitrators gave the award. The Respondent filed the aforesaid title suit for making the award a rule of the Court along with interest pendent elite and future and filed a petition u/s 14(2) of the Indian Arbitration Act, 1940 (in short, the Act). The Appellant appeared and filed objection petition u/s 30(2) of the Act. The court below after hearing both the parties decreed the suit and declared that the award be made rule of the Court and directed to pay the awarded amount with interest at the rate of 9 percent per annum from the date of filing of the suit till the realisation.

3. Being aggrieved by the judgment and decree of the court below the Appellant has preferred this appeal on the ground that agreement between the parties was executed at Koikata and award was passed by the Arbitrators after conducting the proceedings at Asansol. The further case of Appellant is that headquarters of Appellant, Eastern Railway, is located at Koikata and so, in view of these facts

only the court at Koikata had necessary jurisdiction to entertain the suit and not the court of Subordinate Judge-VII, Sasaram which has passed the judgment and decree. The further case of Appellant is that just because in terms of agreement executed at Koikata work was done at Dehri-on-sone, the Civil Court, Sasaram does not acquire jurisdiction since the matter arises out of an arbitration proceeding. The other grievance of the Appellant is that the court below has granted 9 percent simple interest per annum from the date of filing of the suit till realisation whereas the interest can only be awarded from the date of decree and not from the date of institution of the suit and court below has wrongly interpreted the judgment of the Supreme Court in the case of Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, construing in favour of Respondent in the matter of interest.

4. Learned Counsel of Appellant has argued that the agreement between the parties was executed at Koikata and arbitration proceeding was held at Asansol. (Learned Counsel of Respondent has not disputed these facts but according to him the subject matter of the agreement is situated at Dehri-on-sone and, therefore, the award by the Arbitrators was filed in the court of Sub-Judge, Sasaram for making it a rule of the Court.

5. It is not the case of Appellant that there was any term in the agreement executed between the parties that in case of grant of award by Arbitrators resolving the dispute between the parties which may arise will have to be filed in a particular Court. According to Section 31 of the Act "subject to the provisions of the Act, an award may be filed in any court having jurisdiction in the matter to which the reference relates." The subject matter of the agreement between the parties is situated at Dehri-on-sone within the jurisdiction of Sasaram Court is not disputed. Because the court of Sub-Judge was competent to entertain a suit in respect of any dispute which forms the subject matter of reference to arbitration, the award could have very well been filed before the court of Sasaram, I find that the court of Sub-Judge, Sasaram had the jurisdiction to entertain the award in the present case and the objection of Appellant that Sub-Judge, Sasaram had no jurisdiction to entertain the award is not tenable.

6. The second objection of Appellant is that interest by Sub-Judge, Sasaram has been granted from the date of filing of the suit which is not proper and at best Sub-Judge VII, Sasaram could have granted interest from the date of decree. From the judgment of the court below I find that by award the Arbitrators had directed the Appellant to pay the amount of award within 90 days from the date of declaration of award failing which 6 per cent per annum simple interest was ordered to be paid after expiry of the period of 90 days till the date of realisation. The case of Respondent is that after award no amount has been paid to it till the filing of the suit. The court below has awarded interest 9 per cent per annum from the date of filing of the suit till realisation. In the case of Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir, the Supreme Court has held as follows:

5. The question of interest can be easily disposed of as it is covered by recent decisions of this Court. It is sufficient to refer to the latest decision of a five-Judge Bench of this Court in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, Though the said decision deals with the power of the Arbitrator to award interest pendente lite, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. This is also quite logical for, while award of interest for the period prior to a arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of the CPC provides both for awarding of interest pendente lite as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as such may not apply. In this connection, the decision in Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., may be seen as also the decision in Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, which upholds the said power though on a somewhat different reasoning. We, therefore, think that the award on item No. 8 should have been upheld.

7. In the present case, the Arbitrators had given award and interest after expiry of 90 days from the date of award till the realisation at the rate of 6 per cent per annum. The court below has awarded interest from the date of filing of the suit and not from the period after 90 days from the date of award. It has simply enhanced the rate of interest from 6 per cent to 9 percent. I, therefore, find that in view of the aforesaid decision the order of Arbitrators granting interest after 90 days since the date of realisation is valid. The order of the court below in respect of interest does not enhance the period for which interest is to be paid but on the other hand it has reduced the period because it is from the date of filing of the suit. I, therefore, find that there is no irregularity in the order of the court below granting interest from the date of filing of the suit but considering the rate of interest awarded by Arbitrators the rate of interest is reduced from 9 percent as awarded by court below to 6 per cent per annum.

8. In the result, with the modification that rate of interest in place of 9 percent as awarded by the court below will be 6 percent per annum from the date of filing of the suit till the date of realisation, this appeal stands dismissed.