

Orders on memos of calculation

The Decree holder has filed the present execution petition claiming the amount of Rs.1,21,38,836/- due from the judgment debtor on the strength of the Arbitral Award passed in his favour on 10.08.2021. Thereafter, the decree holder has filed a memo of calculation stating that he has received the amount of Rs.9,65,76,264/-. He now has sought for the balance amount of Rs.54,19,497/- due as on 09.04.2026.

The JDRs have also filed a memo of calculation stating that only an amount of Rs.34,88,434/- is still due from them as on 30.07.2022.

Heard both sides on the said memos of calculation.

The decree holder and judgment debtor do not dispute the fact that the SLAO had awarded the compensation of Rs.1,10,70,474/-, which was enhanced by the Arbitrator to Rs.5,22,04,932/-. Further both the sides admit that the interest on the said amount at 9% from the date of award is payable. That as on 31.10.2021, the total interest of Rs.4,43,71,332/- was payable, is also not disputed by both parties.

It is also not in dispute by the both the sides, that the JDRs have made payment of Rs.9,65,76,264/- through the bank account on 04.08.2022. Now according to the decree holder, the interest for delayed payment is payable at 15% from 01.08.2022 on-wards. Whereas, the JDRs have disputed being liable to pay the said rate of interest.

The learned counsel for the decree holder has argued that since there is a delay in payment of the balance amount, the decree holder is entitled for interest @ 15% on the amount due. Accordingly he has claimed the interest for the period from 01.08.2022 to 09.04.2026 as Rs.19,31,063/-.

In support of his arguments, the learned counsel has placed reliance on the judgments of the

Hon'ble Supreme Court of India reported in (2001) 7 SCC 2011 in the case of **Sunder Vs Union of India**, (2015) 2 SCC 189 in the case of **Hyder Consulting (UK) Limited Vs Governor, State of Orissa**, (2023) 2 SCC 602 in the case of **Morgan Securities and Credits Private Limited Vs Videocon Industries Limited**, (2024) 3 SCC 623 in the case of **S.V. Samudram Vs State of Karnataka and another** and (2019) 9 SCC 304 in the case of **Union of India and others Vs Tarsem Singh and others**.

It is the submission of the learned counsel for the decree holder that as per the provisions of Section 34 of the Arbitration and Conciliation Act, the award amount will include any interest payable by the JDRs and therefore, the future interest has to be calculated on this amount. He further submits that as per the judgment of the Hon'ble Supreme Court, for any delayed payment, the JDRs are liable to pay interest at 15% on the amount still due. The amount already received shall be first adjusted towards principal amount payable. Therefore, it cannot be said that the interest is being calculated on the interest still payable. Therefore, he has submitted to accept the memo of calculation furnished by the decree holder and direct the JDRs to make a payment.

The learned counsel for the JDRs has argued that already the amount being received by the decree holder and only Rs.34,88,434/- is due. Since the case pertains to acquisition by National Highways, the provisions of National Highways Act alone are applicable. The general provisions of Arbitration and Conciliation Act and also the Land Acquisition Act are not applicable in view of the specific rules contained therein. It was her further submission that the Arbitrator has passed the specific order that the decree holder is entitled for interest at 9% p.a. under the provisions of Section 3H(5) of the NH Act. Therefore, the judgments relied on by the decree holder are not applicable to the case on hand for awarding interest at 15% on the amount due. It was her further submission that no interest can be calculated on the interest still due. Therefore, she submits that the memo of calculation submitted by the JDRs has to be accepted and the JDRs are ready to deposit the said amount immediately.

As already above stated, the present execution arises out of the acquisition proceedings initiated by the National Highways Authority. The decree holder not being satisfied with the amount awarded by the SLAO had referred the case to the

Arbitrator, who has passed the award on 10.08.2021. Thereafter the decree holder admits having received the amount of Rs.9,65,76,264/- from the JDRs on 04.08.2022. As per the award passed by the Arbitrator, the decree holder is entitled for enhanced amount with interest at 9% p.a. as per the provisions of Section 3H(5) of N.H. Act.

The decree holder in his revised memo of calculation submitted on 09.04.2026 has calculated the interest for the period from 01.11.2021 to 30.07.2022 at the rate of 9%. Whereas, for the period from 01.08.2022 to 09.04.2026, he has calculated the interest at 15% on the said amount due i.e., Rs.34,88,434/-. No doubt, in the judgments referred to by the learned counsel for the decree holder, the Hon'ble Supreme Court has observed that 'sum' as referred to under Section 34 of the Arbitration and Conciliation Act can include pre award interest. However, in the judgment of Hyder Consulting (UK) Limited, the Hon'ble Supreme Court has observed that only if the Arbitrator specified that the award amount shall include interest awarded, than the sum as referred to under Section 34 of NH Act will be the principal plus interest awarded. However, in the case on hand, on perusing the award passed by the

Arbitrator, there is no such mention that the award amount shall include the pre award interest also. Therefore, the contention of the decree holder that he is entitled to calculate the future interest on the enhanced amount plus the interest payable for the period before passing the award, cannot be accepted.

The second ground raised by the decree holder is that since there has been delay in making the payment, he is entitled for 15% interest from 01.08.2022. However, all the judgments, which have been relied by the learned counsel for the decree holder are in respect of the general awards passed by the Arbitrator and the cases covered under Land acquisition Act. However, since in the present case, the case pertains to National Highways, the special enactment namely National Highways Act has to be applied.

According to the provisions of Section 3J of National Highways Act, the provision of Land Acquisition Act shall not apply to the acquisition under the said Act. So also when there is a specific order by the Arbitrator that the decree holder is entitled for interest on the enhanced amount at 9% from the date of taking possession till the award amount is satisfied, the claim for enhanced interest at 15% for delayed payment

cannot be granted. Therefore, the contention of the decree holder that he is entitled for interest at 15% from 01.08.2022 till the balance is cleared, is not tenable.

The submission of the learned counsel for the JDR that no interest is payable on the interest still due, cannot be accepted. Because it is settled law that in any case governing recovery of money, when part payment is made, it shall be first adjusted towards interest due. Therefore, when the JDRs have made payment on 04.08.2022, the said amount is first adjusted towards the interest payable and then the balance remaining towards the principal amount. Therefore, the amount of Rs.34,88,434/-, which was due on that date shall be the principal amount due, on which, the JDRs are liable to pay interest at 9% p.a. till payment is made. Therefore, as on today, the JDRs are liable to pay the said amount with 9% which is Rs.12,13,685.76ps.

Therefore, the JDRs are hereby directed to make a payment without further delay.

Call on for payment by 20-07-2026.

(Saraswathi Devi)
II Addl. City Civil & Sessions Judge,
& Spl. Judge, City Civil Court,

Bengaluru.