



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 24.02.2026
Pronounced on : 19.05.2026
Uploaded on : 20.05.2026

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FAO 373/2008 and CM APPL. 34667/2019

MCDAppellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTARespondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 374/2008

MCDAppellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTARespondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 375/2008

MCDAppellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTARespondent



Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 376/2008

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 377/2008

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 378/2008

MCD

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.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.



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FAO 379/2008

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 380/2008

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 381/2008

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 260/2009 and CM APPL. 11794/2009



MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 264/2009 and CM APPL. 12054/2009

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

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FAO 265/2009 and CM APPL. 12101/2009

MCD

.....Appellant

Through: Mr. Tushar Sannu, SC for MCD with
Ms. Akansha Vidyarthi, Advocate.

versus

MADHU KISHAN GUPTA

.....Respondent

Through: Mr. Mritunjay Kumar Singh,
Advocate, with respondent-in-person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT



1. The present set of appeals have been filed under Section 37 of the Arbitration and Conciliation, Act, 1996 (hereinafter referred to as the “Act”), seeking to assail the respective impugned judgments passed on 02.07.2008, whereby the objections filed by the appellant/MCD under Section 34 of the Act against the respective arbitral awards dated 15.11.2007 came to be dismissed.

As parties are common and common submissions have been addressed, the present set of appeals are taken up for consideration and disposed of *vide* this common judgment.

2. The proceedings arose in the context of tenders floated by the appellant (hereinafter referred to as “MCD”) for various works, pursuant to which work orders were issued. The respondent (hereinafter referred to as the “contractor”), being the lowest bidder, was awarded the contracts. In all the contracts awarded, the contractor completed the work and raised final RA bills, against which the MCD made only part payments.

3. On the MCD not releasing the concerned amounts to the contractor despite repeated requests, the contractor raised a dispute, which was referred to the learned Sole Arbitrator. The contractor filed its respective statements of claim raising 4 claims in each case regarding:

- i. the amounts against deviated/additional work done/withheld of the final bill;
- ii. the amounts due on account of the market rate for the deviated quantity/additional work;
- iii. the interest (pre-suit, *pendente lite*, & future); and
- iv. the cost of the arbitration proceedings.

4. The MCD, on the other hand, also filed counter-claims seeking the



cost of arbitration. The learned Arbitrator allowed the contractor's claim no. 1, however, claim no. 2 was denied. Pre-award interest was awarded @ 9% per annum, whereas future interest was awarded @ 15% per annum. The contractor was also awarded the costs of arbitration @ Rs.10,000/- in each case. The counter-claims were dismissed. The total claim amounts awarded to the contractor by the learned arbitrator are as under: -

Sr. No.	FAO No.	Amount of claim
1.	FAO 373/2008	Rs.1,75,769.00/-
2.	FAO 374/2008	Rs.3,21,030.00/-
3.	FAO 375/2008	Rs.2,28,307.00/-
4.	FAO 376/2008	Rs.1,21,035.00/-
5.	FAO 377/2008	Rs.2,88,700.00/-
6.	FAO 378/2008	Rs.3,67,027.00/-
7.	FAO 379/2008	Rs.1,46,449.00/-
8.	FAO 380/2008	Rs.3,15,165.00/-
9.	FAO 381/2008	Rs.3,09,122.00/-
10.	FAO 260/2009	Rs.1,22,896.00/-
11.	FAO 264/2009	Rs.3,50,946.00/-
12.	FAO 265/2009	Rs.2,29,805.00/-

5. As stated before, the objections preferred by the MCD against the arbitral awards came to be dismissed by way of the impugned judgments.

6. In the present appeals, learned counsel for the appellant/MCD has confined the challenge to 3 grounds. First, that the claims were barred by limitation as they were filed beyond the period of 3 years. Second, that the arbitral award is a non-speaking award and patently illegal. Lastly, that since the work orders contained no provision for award of interest, the grant of pre-award and future interest is patently illegal.

7. The said contentions are opposed by the learned counsel for the respondent/contractor, who highlights that the applications filed under



Section 16 of the Act by the MCD were dismissed by the learned Arbitrator. Insofar as the aspect of limitation is concerned, it is submitted that *vide* letter dated 04.07.2001, the MCD had asked the contractor to collect payments; however, no such payment was released, and arbitration was consequently invoked on 18.08.2003, which was well within the period of limitation. On the second issue, it is stated that multiple opportunities were granted to the MCD to lead evidence; however, it failed to do so, and only then was the arbitral award passed. It is further submitted that an arbitrator is empowered to award interest under Section 31(7) of the Act, which, at the relevant time, even provided for the grant of 18% interest by default, unless the Award stated otherwise.

8. During the course of hearing, learned counsel for the respondent/contractor submitted separate short notes for all the appeals, clarifying that incorrect civil suit numbers had been mentioned in some of the filings. The said notes are taken on record.

9. I have heard the learned counsels for the parties and perused the record.

10. The scope of judicial interference with an arbitral award is limited to the grounds provided under the Act. Interference on the ground of patent illegality is limited to situations where the findings of the arbitrator are arbitrary, capricious, or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter (Ref: PSA Sical Terminals (P) Ltd. Vs. V.O.Chidambranar Port Trust Port Trust¹).

11. Coming to the first contention as to whether the claims were barred by

¹ MANU/SC/0485/2021 : (2021) 18 SCC 716



limitation, the issue of limitation, being a mixed question of fact and law, was decided in favour of the contractor when the application under Section 16 of the Act filed by the MCD was dismissed by the learned Arbitrator. Even otherwise, a perusal of the record would show that the contractor placed on record various communications along with his respective claims seeking payments towards the deviated work and market rates along with interest. The MCD, *vide* communications dated 08.07.1996 and 25.06.1998, informed the contractor that all the pending bill amounts with respect to all deviated items in relation to the work orders were under process by the higher authorities. On 27.01.2000, MCD informed the contractor that the same had been sanctioned by the higher authorities, and the contractor was advised to contact the office of the Assistant Engineer. The contractor has claimed that he approached the concerned officer, however, despite the payments being sanctioned, no amounts were released. The MCD, *vide* its letter dated 04.07.2001, advised the contractor to approach the office of the Assistant Engineer for the release of payments. While the MCD claims that limitation began to run from the communication dated 27.01.2000, when the contractor was first informed that the bills for deviated items had been sanctioned, the contractor claims that limitation began to run from 04.07.2001. It is the stand of the contractor that on receipt of communication dated 27.01.2000, he approached the office of the MCD, but no sanctioned amounts were released. The contractor has placed on record his communications sent after the letter dated 27.01.2000, thereby raising his grievance regarding the non-release of payments despite the amounts being sanctioned.

12. As noted above, though the contractor had filed its evidence by way



of affidavit, the MCD failed to cross-examine the contractor or lead its own evidence. Learned counsel for the appellant/MCD has placed reliance on the decisions in Adicon Infrastructure Pvt. Ltd. Vs. Delhi Development Authority² and Satya Narayan Sharma Vs. Union Bank of India³ to contend that after the submission of the final bill, if the contractor sends repeated reminders for payment, the same would not extend the period of limitation. However, in the present factual background, such reliance is misplaced. As already noted above, though the MCD had communicated the sanctioning of the amount towards deviated items *vide* letter dated 27.01.2000, the same was still not released. In this regard, the contractor sent further communications, resulting in a situation where the limitation would begin to run from 04.07.2001, when the MCD again asked the contractor to approach its officer for release of payment. When the payment was still not released, the contractor invoked arbitration within 3 years from that date. There is no cross-examination on the aforesaid aspect, and as such, the contention regarding limitation being devoid of merit, is rejected.

13. The second contention relating to the arbitral award being non-speaking is also meritless. Although the contractor filed his evidence by way of affidavit, the MCD failed to do so. While learned counsel for the appellant/MCD has contended that MCD was not given any opportunity before the learned arbitrator, the impugned judgment records that the learned arbitrator had given over twenty opportunities to the parties to file documents and to lead evidence. However, the MCD neither placed on record the diary register/measurement books lest filing its evidence by way

² 2023:DHC:001406

³ 2023:DHC:8076-DB



of affidavit. It was claimed by the MCD that all its measurement books were stolen; however, no record of any complaint made to any higher official, or any disciplinary/departmental action initiated against any officer, was placed before the learned arbitrator to substantiate the claim.

14. For the reasons noted above, this contention also merits rejection.

15. The learned arbitrator has rightly awarded the interest. Insofar as interest is concerned, this Court takes note of the decision of the Supreme Court in Indian Hume Pipe Co. Ltd. Vs. State of Rajasthan⁴, wherein it was held as under:

“9. The question with regard to grant of interest by an arbitrator for the period from the date of award to the date of payment stands settled by a judgment of this Court in Hindustan Construction Co. Ltd. v. State of J&K [(1992) 4 SCC 217]. The aforesaid question has been dealt with by this Court in para 5 of the said judgment reproduced hereinbelow: (SCC pp. 220-21)

‘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 Irrigation Deptt, Govt. of Orissa v. G.C. Roy [(1992) 1 SCC 508 : JT (1991) 6 SC 349]. 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 realization, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an 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 Code of Civil Procedure 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 v. Bungo Steel Furniture (P) Ltd. [AIR 1967 SC 1032 : (1967) 1 SCR 324] may be seen as also the decision in Gujarat Water Supply & Sewerage Board v. Unique Erectors

⁴ (2009) 10 SCC 187



(Gujarat) P. Ltd. [(1989) 1 SCC 532 : (1989) 1 SCR 318] which upholds the said power though on a somewhat different reasoning. We, therefore, think that the award on Item 8 should have been upheld.”

16. Finding no merit in the present appeals, the same are dismissed.
17. All the present appeals, along with pending application(s), are disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

MAY 19, 2025

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