

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**EXECUTION APPLICATION (L) NO. 9741 OF 2020**

Wise Realtors and Developers Pvt.Ltd. .. Applicant/Decree Holder  
v/s.

Sagarmal Chunilal (since deceased)  
and Gopal Sagarmal Verma .. Respondent/Judg.Debtor

**WITH**

**EXECUTION APPLICATION (L) NO. 9742 OF 2020**

Bhagwandas Gupta and Anr. .. Applicant/Decree Holder  
v/s.

Sagarmal Chunilal (since deceased)  
and Gopal Sagarmal Verma .. Respondent/Judg.Debtor

**WITH**

**EXECUTION APPLICATION (L) NO. 9750 OF 2020**

Ramawtar Sharma and Pushpa Sharma .. Applicant/Decree Holder  
v/s.

Sagarmal Chunilal (since deceased)  
and Gopal Sagarmal Verma .. Respondent/Judg.Debtor

**WITH**

**EXECUTION APPLICATION (L) NO. 9752 OF 2020**

Santosh B Gupta and Anr. .. Applicant/Decree Holder  
v/s.

Sagarmal Chunilal (since deceased)  
and Gopal Sagarmal Verma .. Respondent/Judg.Debtor

**WITH**  
**EXECUTION APPLICATION (L) NO. 9760 OF 2020**

Gaurav B. Gupta and Anr. .. Applicant/Decree Holder  
v/s.  
Sagarmal Chunilal (since deceased)  
and Gopal Sagarmal Verma .. Respondent/Judg.Debtor

Mr. Ajay Panicker i/b Ajay Law Associates for the Applicant/Decree Holder in all the applications.

None for the Defendants.

**CORAM : A. K. MENON, J.**

**DATED : 6TH DECEMBER, 2021.**

**P.C. :**

1. These are applications listed on board upon circulation being sought by praecipe in view of office objections raised by the Registry. The applicants are seeking interest on costs awarded by the Arbitral Tribunal. The Registry has declined to register the Execution Application in view of the claim for interest on cost awarded.
2. At the request of learned Mr. Panicker these matters are listed today. Mr. Panicker submits that the costs awarded are in a sum of Rs.6,32,957/-. Mr. Panicker appearing in support of the application states that by virtue of Section 31(7) of the Arbitration and Conciliation

Act, the applicant who is the successful party in the arbitration, is entitled to interest including on the amount of cost. He has invited my attention to Section 31(7)(a) and (b) and submitted that although the law permits him to claim interest of 18% p.a., he has claimed interest on 7% p.a. and there is no impediment in the applicant claiming interest on costs awarded. The learned Counsel therefore, submits that the office objections be dispensed with as far as the claim of interest on costs is concerned. He has relied on the provisions of the award in relation to interest and pointed out that the tribunal did award cost and on account of non payment, he is now required to execute the award and in the process of execution, he is entitled for interest on the amount of costs as well since the respondents have not paid the same.

3. In support of his case, Mr. Panicker has relied upon the decision of the Supreme Court in the case of *Hyder consulting(UK) Limited V/s. Governor, State of Orissa, (2015) 2 Supreme Court Cases 189*. Inviting my attention to para 7 of the judgment. Mr. Panicker states that the respondent is liable to pay interest on the amount of money that is payable under award and the amount of money including costs are required to be paid.

4. Having heard submissions of the learned Counsel for the applicant, I find that the application is misconceived in view of the fact

that the amendment to the Act with effect from 23<sup>rd</sup> October, 2015 included sub-clause 8 to Section 31 which provides cost for arbitration to be fixed by the Arbitral Tribunal in accordance to Section 31A. Section 31A is a new Section that has been incorporated under the amending Act with retrospective effect from 23<sup>rd</sup> October, 2015. Section 31A in specific terms reads thus:

***Section 31A. Regime for costs.***

*[31A. (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—*

- (a) whether costs are payable by one party to another;*
- (b) the amount of such costs; and*
- (c) when such costs are to be paid.*

*Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—*

- (i) the fees and expenses of the arbitrators, Courts and witnesses;*
- (ii) legal fees and expenses;*
- (iii) any administration fees of the institution supervising the arbitration; and*
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.*

*(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—*

- (a) the general rule is that the unsuccessful party shall be ordered*

*to pay the costs of the successful party; or*

*(b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.*

*(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—*

*(a) the conduct of all the parties;*

*(b) whether a party has succeeded partly in the case;*

*(c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and*

*(d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.*

*(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—*

*(a) a proportion of another party's costs;*

*(b) a stated amount in respect of another party's costs;*

*(c) costs from or until a certain date only;*

*(d) costs incurred before proceedings have begun;*

*(e) costs relating to particular steps taken in the proceedings;*

*(f) costs relating only to a distinct part of the proceedings; and*

***(g) interest on costs from or until a certain date.***

*(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.]*

5. The provisions relating to interest are comprehensively dealt with in Section 31A. I have pointed out to Mr. Panicker, 31A(4) which

provides the Court or Tribunal to make any order including payment of costs and interest on costs from or until a certain date. Thus Section 31A(4)(g) clearly contemplates and empowers the Arbitral Tribunal to make an order for payment of interest on costs from a specified date and until a specified date. It is not in dispute and Mr. Panicker fairly admits that the award does not contemplate any order as required by 31A(4)(g).

6. In view thereof, the objection raised by the Registry is fully justified. The praecipes for waiver of the objections are therefore, rejected. All office objections shall be complied within four weeks, failing which, the Execution Applications shall stand rejected.

**(A. K. MENON, J.)**