

ITEM NO.41

COURT NO.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7849/2012

(From the judgement and order dated 09/01/2012 in FAO No.11/2012
of The HIGH COURT OF DELHI AT N. DELHI)

J.K.INDUSTRIES LTD.(NOW J.K.TYRE & IN.L)

Petitioner(s)

VERSUS

D.S.STRATAGEM TRADE A.G.

Respondent(s)

(With prayer for interim relief)

Date: 30/03/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Ramesh Singh, Adv.
Mr. A.T. Patra, Adv.
Ms. Aradhana Patra, Adv. for
M/S. O.P. Khaitan & Co.

For Respondent(s) Mr. Ramji Srinivasan, Sr. Adv.
Mr. Rajeev Kumar, Adv.
Mr. Vivek Paul Oriel, Adv. for
M/S Rajinder Narain & Co.

UPON hearing counsel the Court made the following
O R D E R

We have heard Mr. Ramesh Singh, learned counsel for
the petitioner, and Mr. Ramji Srinivasan, learned senior
counsel for the respondent.

Two fold submission was canvassed by the learned
counsel for the petitioner - (1) the award of interest on
penal interest (USD 377624) is impermissible as it cannot be
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capitalised and no further interest on the penal interest
can be claimed. Such award of interest on penal interest is
opposed to public policy in India. Reliance is placed on a
Five Judge Bench decision of this Court in Central Bank of
India Vs. Ravindra and Others, (2002) 1 SCC 367, and (2)

cost in the sum of 141500 USD towards ICC costs including Arbitrator's fees and 96999.63 USD towards the claimant's Attorney fees is opposed to the public policy as cost follows the event and the entire claim of the respondent has not been accepted in the arbitral award.

Adverting to the second contention first, we find that there is no merit in the contention of the learned counsel concerning award of cost. In the award, it is noted that the claim of Attorney fee in USD 107777.37 was never challenged by the petitioner. From the discussion in the impugned order also, we do not find that contention advanced before us was raised before the Division Bench. The second submission of the learned counsel is, therefore, rejected.

As regards the first contention, learned senior counsel for the respondent Mr. Ramji Srinivasan, on instructions of the advocate on record for the respondent, submits that the respondent has no objection if the portion of the award which directs due interest on USD 377624 (penal interest) after December 31, 1997 is deleted.

In view of the statement of the learned senior Petitioner(s) for Special Leave to Appeal (Civil) No(s).7849/2012

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counsel for the respondent, we hold that the petitioner shall not be liable to pay any interest on USD 377624 (penal interest) after December 31, 1997. It is made clear that the petitioner is liable to pay due interest on a sum of USD 848750 after December 31, 1997 as awarded in the award dated May 15, 1998.

With the above modification, special leave petition is dismissed and the petitioner is liable to pay the amount as per the award excluding the amount of interest on USD 377624 after December 31, 1997.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master