IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2732 OF 2001

U.P. Cooperative Federation Ltd. ...Appellant

VERSUS

M/s Three Circles ...Respondent

JUDGMENT

TARUN CHATTERJEE, J.

1. On or about 14th of December, 1983, a tender was floated by the U.P. Cooperative Federation Ltd. (hereinafter referred to as "the Federation") for construction of 4000 Metric Ton cold storage at Vashi, New Mumbai. The tender document mentioned the time of completion as twelve months. M/s Three Circles - the respondent herein, submitted a tender to get the contract. In the year 1984, a contract was executed with M/s Three Circles. Clause 10[f] of the Contract Agreement reads as follows:

> "It is further agreed that all disputes or differences arising out of the provisions as contained in the preceding paragraphs, [a] to [f] of Clause 10 shall be referred to the Managing Director of Employer, whose decision shall be final, conclusive and binding and shall not be referred to arbitration or to any court of law."

Clause 11 of the contract reads as follows:

> "All disputes and differences between the parties regarding the construction or interpretation of any of the terms and conditions herein contained or conditions of contract being the integral part of this contract [except those which are subject matter of the decision of Managing Director of the Employer or/are expressly forbidden and excluded from being referred to arbitrator under any clause by the contract documents and such decision shall be final, conclusive and binding upon the parties hereto] or determination of and liability or any disputes of whatever nature whether during the course of progress or work or thereafter or after recession of the contract, shall be referred to the arbitration as provided in the condition No.51 of the Heading "scope and performance" in the Tender documents and shall be deemed to be reference within the relevant provisions of the Indian Arbitration Act, 1940, and or any statutory modification of enactment there under."

Clause 51 of the General Conditions of contract provided for

arbitration. This clause reads as follows:

> "51. The contractor will become nominal member of the Federation and will abide by the rules and regulation laid down from time to time. Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other questions, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates,

instructions, order or these conditions or otherwise concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Registrar Cooperative Societies Uttar Pradesh and if the Registrar is unable to or unwilling to act, to the sole arbitration of some other person appointed by the Managing Director, willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of Federation and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Managing Director as aforesaid at the time of such transfer vacation of office or liability to act shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Managing Director as aforesaid should act as arbitrator and if for any reason, that is not possible the matter is not to be referred to arbitration at all. Cases where the amount of the claim in dispute is Rs.25,000/- [Rupees twenty five thousand] and above, the arbitrator shall give reasons for the award. Subject as aforesaid the provisions of the Arbitration Act, 1940 or any statutory modification or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with

> the amount or amounts claimed in respect of each such dispute.
>
> The arbitrator[s] may from time to time with consent of the parties enlarge the time, for making and publishing the award.
>
> The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall

be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing of the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final, conclusive and binding on all parties to this contract."

2. The respondent was given extension of time for execution and completion of the project pursuant to Clause 13 of the General Conditions of Contract. It may be kept on record that Clause 32 clearly postulates that the extended time was also to be the essence of the contract. After the expiry of stipulated period of time, the respondent submitted certain claims to the Managing Director of the appellant in terms of Clause 10 of the Contract. A compensation of

Rs.87,000/- was awarded to the respondent. In this connection, it may be stated that the respondent had also suspended work for some time.

3. The respondent thereafter filed a suit being Arbitration Suit No.3212 of 1986 before the High Court of Bombay under Section 20 of the Arbitration Act, 1940 [in short "the Act"] praying for appointment of an Arbitrator. By an order dated 7th of January, 1988, the High Court appointed one Shri N.N. Shrikhande as the sole Arbitrator to decide the disputes raised by the parties. Subsequently, the appellant filed a notice of motion praying for setting aside the order of appointment dated 7th of January, 1988 and also prayed for stay of the arbitration proceedings. The said notice of motion was, however, dismissed by the High Court. The appellant filed an appeal which was also dismissed on the ground of delay.

4. The appellant, feeling aggrieved, filed a special leave petition being SLP [C] No.11703 of 1988 in which this Court granted leave,

which came to be registered as Civil Appeal No.3585 of 1988. By an order dated 4th of October, 1988, this Court had set aside the order

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dated 7th of January, 1988 and remanded the matter to the High Court for nominating another Arbitrator. Again by an order dated 2nd of November, 1988, the High Court appointed one Shri S.N. Mishra as the sole Arbitrator. On 1st of March, 1989 the learned Arbitrator entered upon the reference. On 2nd of March, 1989, statement of claim was filed by the respondent. Various claims were made, inter alia, for escalation, purchase of additional material and transport charges. Reply to show cause notice was filed on 16th of March, 1989 by the appellant and rejoinder to the same was also filed by the respondent. The learned Arbitrator thereafter by a reasoned award dated 20th of October, 1989 directed the appellant to pay a sum of Rs.32,68,805.80 to the respondent along with interest at the rate of 15% till the date of final payment. On or about 14th of December, 1989, the appellant filed an application for setting aside the said award before the High Court. By a judgment and order dated 19th of October, 1994, a learned Judge of the High Court dismissed the said petition of the appellant, inter alia, on the following findings:

[1] The claim of the appellant that they were entitled to deduct certain amounts from the final payment to the respondent on account of his having consumed extra cement was rejected.

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[2] The Arbitrator did not have any jurisdiction in rejecting the claim in view of Clause 10 of the agreement.

[3] The claim of the appellant that it was entitled to deduct certain amount from the final bill on account of non utilization of steel was rejected.

[4] The Arbitrator awarded escalation price to the respondent on account of increase in prices even after the stipulated time of completion.

[5] The Arbitrator disallowed the claim of the appellant for deduction of amounts from the final bill on account of poor

workmanship.

[6] The claim towards purchase of surplus wood by the respondent was allowed along with the claim for filling of earth.

[7] The claim of the respondent towards transport charges for carrying wood was allowed despite the fact that the contract provided for local wood to be used.

[8] Expenses towards litigation and interest at the rate of 18% prior to the reference were also allowed.

5. Feeling aggrieved, an appeal was carried to the Division Bench of the Bombay High Court and by a judgment and order dated 11th of

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February, 2000, the Division Bench partly allowed the appeal limited to the question of interest but rejected all other contentions of the appellant. Feeling aggrieved by the aforesaid order of the Division Bench of the High Court, a special leave petition was filed, which on grant of leave was heard in the presence of learned counsel for the parties.

6. We have heard the learned counsel for the parties and examined the impugned order of the High Court as well as the application for setting aside the award passed by the Arbitrator filed at the instance of the appellant and other materials on record. On behalf of the appellant, Mr. Rakesh Dwivedi, learned senior counsel, contended at the first instance that there was an error apparent on the face of the award on the issue of ‘balance steel recovery’. Mr. Dwivedi contended that the respondent was having balance steel with it which was not consumed or returned and the respondent should, therefore, pay interest on it as per penal rates in terms of Clause 15[2][6] of the Contract. At this stage we may refer to Clause 15 [2][6] which runs as under :-

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> "if on completion of work, the contractor fails to return surplus materials out of those supplied by the Federation, then, in addition to any other liability which the contractor would incur, the Engineer In-

charge may, by a written notice to the contractor, require him to pay within a fortnight of receipt of notice, for such unreturned surplus materials at double the issue rates."

7. On this score, the finding of the Arbitrator was that there was no clear evidence put forward by either of the parties as to what happened to the balance steel and under that circumstances the claimant, namely, the respondent was directed to pay at the issue rates and not at the penal rates. However, though this was the observation in the body of the award, in Appendix 'C', the Arbitrator had given certain deductions based on balance steel under three heads. Mr. Dwivedi, therefore, contended that the appendices were part of the award itself which is to be interpreted in conjunction with Appendix 'C' and, therefore, in the light of Appendix 'C' where a finding of unutilized steel under three heads lying unutilized the Arbitrator should have awarded the respondent to pay at penal rates and by not doing so and directing the payment at issue rates it was against the express terms of the contract and liable to be interfered with. In response to this

argument, the learned counsel for the respondent, however, contended that Appendix 'C' could not be construed to be a part of the award, since, in the award the observation was that there was no clear evidence as to the balance steel, payment at penal rates could not have been awarded. It was further contended by learned counsel for the respondent that if anyone, it was the respondent who should be aggrieved and at any rate, the appendix did not give the appellant to contend that there was a finding of unutilized balance steel. The Arbitrator in his award clearly stated that in the absence of a positive finding of the same, the penal rate cannot be awarded. The Court, therefore, rightly held that Appendix 'C' did not mean to be a positive finding by the Arbitrator that such steel was unutilized and had been appropriated by the respondent. Accordingly, we do not find any infirmity either in the award of the Arbitrator or in the findings of the Division Bench as well as of the learned Single Judge on this

ground.

8. It was next contended by the learned senior counsel for the appellant that there was inferior quality of workmanship as a result

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of which it was entitled to make deduction from the bills. The learned Arbitrator had refused to accept this submission from the side of the appellant that under the contract the respondent was obliged to use local materials including local bricks, that the bricks in the Bombay region were of inferior quality and further that all the bills presented had been passed by the Architect of the appellant without any objection, therefore, the appellant was estopped from raising the issue and no recovery could be allowed. We do not find any infirmity in the aforesaid findings of the Arbitrator as well as the findings arrived at by the High Court. Mr. Dwivedi had drawn our attention to the fact that under the contract this was an issue which was left to the sole discretion of the Managing Director of the appellant and, therefore, was not within the jurisdiction of the Arbitrator to arbitrate upon. In this connection, Mr. Dwivedi placed reliance on Clause 10[b], [c] and [f] and Clause 11 of the Articles of Agreement. The learned Single Judge as well as the Division Bench, after examining the Clauses, as indicated hereinabove, held that these Clauses did not include within their purview ‘bad workmanship’ and, therefore, it was beyond the jurisdiction of the Arbitrator to decide it. In respect of Clause 10

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[c], the Court, in our view, has rightly rejected the argument of the appellant that ‘negligence or lack of proper care’ was synonymous to bad workmanship. Accordingly, we do not find any ground to interfere with the findings of the High Court in rejecting the submissions of the learned counsel for the appellant on this ground. In any view of the matter, the Arbitrator had considered the entire materials on record and the rival submissions of the

parties and then came to the conclusion of fact, which was accepted by the courts below, it is not open to this Court to interfere with such conclusions until and unless it is manifest that such conclusions are perverse or arbitrary. That apart, we are of the view that this would not be a ground for setting aside the award under the Arbitration Act, 1940.

9. That apart, in our view, the High Court was justified in holding that the poor workmanship did not fall under any of the sub-clauses of Clause 10 of the Articles of Agreement, which enumerates the matters in which the Managing Director will have the exclusive authority to decide the dispute as per Clause 11 of the Agreement. Clause 10(b) provides that all special losses and damages

suffered by the Employer, as certified by the certificate of the Engineer-in-charge, shall be final, conclusive and binding. Clause 10(c) of the agreement makes "losses suffered by the employer or damages due to negligence or lack of proper care" on the part of the contractor shall be liable to be reimbursed and the certificate of the Engineer-in-charge as to the extent of damage and its value is declared to be final, conclusive and binding upon the contractor. Clause 11 provides that all disputes and differences arising out of the contract as contained in the proceedings in paragraphs (a) to (f) of Clause 10 shall be referred to the Managing Director of Employer whose decision shall be final, conclusive and binding and shall not be referred to arbitration or to any Court of law. In this connection, as noted herein earlier, the High Court was fully justified in holding that "lack of proper care or negligence" appearing in Clause 10(c), was not synonymous to bad workmanship by which the respondent had based its claim. Workmanship refers to skill or talent displayed in the performance of a work and is not related to the care or diligence showed in the work or choosing the materials. Accordingly, this submission of

Mr.Dwivedi, learned senior counsel appearing for the appellants is not worthy of consideration and, therefore, it is rejected.

10. We also find from the impugned judgment of the High Court that both the parties had admitted before the Arbitrator that the format to be used for analysis of extra items shall be the CPWD Format and that both the parties had indicated to the Arbitrator that there was no difference between them as to the format used by them in analyzing the extra items. However, the parties are not at ad idem on the actual rates to be taken for labour and material, referred to in the format. It also appears from the judgment of the High Court that while the appellant insisted that the rates prescribed by CPWD in respect of the labour and material had to be used, the respondent insisted that local rates would have to be used. Considering the resolution approved in a meeting on 6th of March, 1986, where the Architect approved extra items 1 to 6 at the rates that were put forward by the respondent and with regard to extra items 7 and 8 the rates analysis put forward by the appellant was not even contested by the respondent. With regard to the analysis of item No.9 pertaining to transportation and wages, the Arbitrator

denied the claim of the respondent. With regard to item No.10, the rate put forward by the appellant was accepted by the Arbitrator. In these circumstances, it is no longer open to hold the contention that there was any requirement that the CPWD rates must be accepted and that no deviation therefrom was permissible under the Contract. In this view of the matter, it is difficult to agree that the Arbitrator had acted beyond the terms and conditions of the contract while coming to the findings of fact relating to the extra items on rates other than the CPWD rates also.

11. The next ground of attack of the impugned judgment rests on payment of interest. From the impugned judgment, it appears that

three limbs of the argument of the parties were dealt with by the Division Bench of the High Court. It is not in dispute that the learned Arbitrator entered upon the reference on 1st of March, 1989. The Arbitrator having found that the appellant was liable to pay a total sum of Rs.32,68,805.80 p. directed that if the said amount is not paid by the appellant to the respondent on or before 15th of December, 1989, the same would carry interest @ 15% per annum till the payment was made. The total sum of

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Rs.32,68,805.80 as found by the learned Arbitrator included the following three claims :-

Claim No.1 : Rs.17,36,994.97

Claim No.2 : Rs.2,40,615.96

Claim No.8 : Rs.2,68,000.000

So far as Claim No.1 was concerned, the Arbitrator found that what was due was Rs.13,62,349/- to which he added interest from January 1987 to October, 1989 @ 15% which worked out to Rs.3,74,645.97. Thus the total amount in respect of Claim No.1 as mentioned above worked out to Rs.17,36,645.97 (there is an apparent inconsistency in the figures of claim No.1 reproduced with this figure), but the thing remains that the learned Arbitrator calculated interest @ 15% for the period from January 1987 to October, 1989 and added it to make up the claim No.1. Similar was the exercise carried out by the learned Arbitrator in regard to claim No.2 in which the Arbitrator having found that a total sum of Rs.1,88,718.40 p. was due, added interest for the period from January 1987 to October, 1989 again @ 15% which amounted to Rs.51,897.56 making the total under the head of CPWD as Rs.2,40,615.96 p. So far as Claim No.8 as mentioned by the learned

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Arbitrator is concerned, it appears that the learned Arbitrator re-calculated the amount of interest and awarded Rs.2,68,000/- as interest on delayed payment. It is not in dispute that the learned Arbitrator in his final analysis had allowed interest @ 15% per annum.

So far as the payment of interest is concerned, the Division Bench of the High Court after analyzing the decisions of this Court, namely, Executive Engineer, (Irrigation) Balimela & Ors. Vs. Abhaduta Jena & Ors. [1988 (1) SCC 418], Secretary, Irrigation Department, Government of Orissa & Ors. vs. G. C. Roy [1992 (1) SCC 508] came to the conclusion of law which was that the Arbitrator has power to award pendente lite interest and where the contract was silent as to the awarding of interest, the Arbitrator has the power to award interest for the pre-reference period if there is a substantive law which empowers him to do so or if there is a usage of trade for payment which has the force of law. In our view, the High Court was perfectly justified in holding that the Arbitrator has the power to award interest for the pre-reference period. It needs to be repeated at this juncture that the arbitration in question was governed not by the present Act of 1996 but by the provisions of Arbitration Act, 1940. However, as this power emanates from Section 3 of the Interest Act,

1978, the High Court noted that the rate of interest cannot be more than 'the current rate of interest' as stipulated by the said Section. Accordingly the High Court had reduced the rate of interest for pre-reference period from 18% to 15%. It was, however, argued on behalf of the appellant that the High Court was not justified in awarding interest for pre-reference period in view of Section 3 of the Interest Act, 1978 which was pursuant to a special clause in the Contract. As in the present case there was no such clause in the agreement and hence it was not within the power of the Arbitrator to make an award with respect to interest.

12. In our view, this argument lacks substance. The position of law, as found by the High Court in its impugned judgment on consideration of various other judgments of this Court, would clearly show that in those judgments the High Court relied on also did not stipulate any express agreement with respect to interest as a precondition to the authority of the Arbitrator to award interest for the

pre-reference period. The matter would have a different issue altogether if there had been a specific provision prohibiting grant of interest which was, of course, not the case of the appellant.

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13. In the case of State of Rajasthan and Anr v. Ferro Concrete Construction Pvt. Ltd, [2009 (8) SCALE 753], the same work was advanced in which this Court observed:

> "But this Court has held that in the absence of an express bar, the arbitrator has the jurisdiction and authority to award interest for all the three periods - pre reference, pendente lite and future (vide decisions of Constitution Bench in Secretary, Irrigation Department, Government of Orissa vs. G. C. Roy - 1992 (1) SCC 508, Executive Engineer, Dhenkanal Minor Irrigation Division vs. N. C. Budharaj - 2001 (2) SCC 721 and the subsequent decision in Bhagawati Oxygen vs. Hindustan Copper Ltd -2005 (6) SCC 462). In this case as there was no express bar in the contract in regard to interest, the Arbitrator could award interest."

14. In view of the above decision in law now settled by this Court, we are unable to hold that the Arbitrator was not entitled to award interest on the pre-reference period because there was no clause in the agreement prohibiting such awarding of interest. However, the High Court had reduced the rate of interest to the ‘current rate of interest’ and, therefore, it is not open for us to interfere with such rate of interest at this stage in this appeal. Therefore, there is no substance in this argument, accordingly it is rejected.

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15. Now the question comes which is related to awarding of ‘interest on interest’. According to the appellant, they have to pay interest on an amount which was inclusive of interest and the principal amount and, therefore, this amounts to a liability to pay ‘interest on interest. This question is no longer res integra at the present point of time. This Court in McDermott International Inc. v. Burn Standard Co. Ltd, & Ors. [2006 (11) SCC 181] has settled this question in which it had observed as follows :

> "The Arbitrator has awarded the principal amount

> and interest thereon upto the date of award and future interest thereupon which do not amount to award on interest on interest as interest awarded on the principal amount upto the date of award became the principal amount which is permissible in law."

16. The High Court on this question has also rightly relied on a decision of this Court in the case of Oil and Natural Gas Commission vs. M/s. M .C. Clelland Engineers S.A. [1999 AIR SCW 1224]. That being the position, we are unable to find any ground to set aside the judgment of the Division Bench of the High Court while considering the ground of 'interest on interest'. So far as the ground relating to the power of the Arbitrator to award

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interest on the cost of arbitration is concerned, we are of the view that we do not find any infirmity in the said findings of the High Court relating to that ground. Since the legislature by way of an amendment in the year 1956 deleted Section 35(3) of the Code of Civil Procedure which empowered the court to award interest, the Arbitrator, on analogy, cannot have the power to award interest on costs. Therefore, the High Court has failed to justify in holding that the powers of the Arbitrator are not effected by changes made to the Code of Civil Procedure. The power of the Arbitrator, if any, shall be located from the act itself. We may note that awarding costs is a matter of discretion of the Arbitrator under the 1940 Act. Sir Mohd. Akbar Khan vs. S.Attar Singh (deceased) [AIR 1945 PC 170] is an answer to the aforesaid ground. Paragraph 8 of the First Schedule to the Arbitration Act, 1940 which contains "Implied Conditions of Arbitration Agreements" lays down that -

> "the costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by, whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client."

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17.A plain reading of this paragraph would show that there is a

provision in this clause which does not permit or prohibit the imposition of interest on costs of arbitration.

18. The High Court has also observed in the impugned judgment that the principles in relation to payment of interest on interest will apply in this context as well and that there is no principle or precedent prohibiting award of interest on cost. It may be noted that the Law Commission of India in its 55th Report submitted in 1973 discussed the rationale behind grant of interest on interest and on costs. Though the Commission found it fit not to disturb the position of law that emerged after the deletion of Section 35(3) of the Code of Civil Procedure, but Law Commission had expressed its opinion in favour of grant of interest on costs. The logic behind it was that the cost incurred in the litigation were actually and rightfully incurred by the successful litigant which he would have invested but for the lengthy litigation proceedings. Interest, which is damages for wrongful retention of money that rightfully belonged to one, thus can be paid on costs as well. This may also be considered that costs of arbitration are actually incurred by the

respondent and it is only that it becomes payable only with the award in its favour. Accordingly, we do not find any infirmity in the judgment of the Division Bench except in that we are of the view that the rate of interest from 15% should be reduced to 7%. In McDermott International vs. Burn Standards (supra), it had summarized the practice of this Court on this issue in the following words :-

> "The 1996 Act provides for award of 18% interest. The arbitrator in his wisdom has granted 10% interest both for the principal amount as also for the interim. By reason of the award, interest was awarded on the principal amount. An interest thereon was upto the date of award as also the future interest at the rate of 18% per annum.
>
> However, in some cases, this Court was resorted to exercise its jurisdiction under Article 142 in order to do complete justice between the parties.
>
> In pure Helium India (P) Ltd. [2003 8 SCC 593] this Court upheld the arbitration award for

payment of money with interest at the rate of 18% p.a. by the respondent to appellant. However, having regard to long lapse of time, if award is satisfied in entirety, respondent would have to pay a huge amount by way of interest. With a view to do complete justice to the parties, in exercise of jurisdiction under Article 142 of the Constitution of India, it was directed that award shall carry interest at the rate of 6% p.a. instead and in place of 18% p.a.

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Similarly in Mukand Ltd. vs. Hindustan Petroleum Corpn. [2006 (4) SCALE 453], while this Court confirmed the decision of the division bench upholding the modified award made by the learned single Judge, the court reduced the interest awarded by the learned single judge subsequent to the decree from 11% per annum to 7% per annum observing that 7% per annum would be the reasonable rate of interest that could be directed to be paid by the appellant to the respondent for the period subsequent to the decree.

In this case, given the long lapse of time, it will be in furtherance of justice to reduce the rate of interest to 7%."

19. Following the aforesaid decision and considering the fact that there was a long lapse of time and for the ends of justice, we are, therefore, of the view that the judgment of the Division Bench can be modified only to the extent that the rate of interest should be reduced from 15% to 7%. As we also find in this case that such reduction of interest is warranted because the award was passed on 20th of October, 1989, now 20 years have passed since then.

20. This Court in Mcdermott International Inc. vs. Burn Standard Co.Ltd. & Ors. (supra) S.B.Sinha,J., (as His Lordship then was), following the two earlier decisions of this Court in the case of Pure Helium India (P) Ltd. vs. ONGC [(2003) 8 SCC 593] and

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Mukand Ltd. vs. Hindustan Petroleum Corpn. Ltd. [(2006) 9 SCC 383] and considering the fact that due to long lapse of time if the entire award is satisfied, the appellant would have to pay a huge sum of money by way of interest. Therefore, in that decision, this court directed reduction of rate of interest in order to do complete justice between the parties in the exercise of its jurisdiction under Article 142

of the Constitution of India and that is the reason we also reduce the rate of interest from 15% to 7%.

21. Before parting with this judgment, we may refer to two decisions of this Court which were cited at the bar in the case of T.N. Electricity Board vs. Bridge Tunnel Constructions & Ors. [1997 4 SCC 121] and Trustees of the Port of Madras vs. Engineering Constructions Corpn. Ltd. [1995 5 SCC 531]. So far as the case of T.N. Electricity Board is concerned, we have no quarrel with the principle laid down in the aforesaid decision. In that decision, it was held that one of the question that was decided was that the Arbitrator cannot clothe himself conclusively with the jurisdiction to decide or omit to decide the arbitrability of a particular item or the claim made by the parties. It was held that when a specific reference has been

made to the Arbitrator and the parties raise the dispute of arbitrability, with the leave of the court/by a direction of the court in a proceeding under Section 33, he is to decide the arbitrability of the dispute and make a decision while giving reasons in support thereof. It was further held that the decision of the Arbitrator in granting a particular sum by a non-speaking award, therefore, hinges upon the arbitrability of a dispute arising under the contract or upon a particular item claimed thereunder. It was further observed that he was required to give the decision thereon. Therefore, it was held that the question of decision by implication does not arise since his jurisdiction to decide the dispute on merits hinges upon his jurisdiction to decide the arbitrability of the dispute.

22. The aforesaid decision of this Court, therefore, in our view cannot come to help the appellant.

23. So far as the decision in the case of Trustees of the Port of Madras vs. Engineering Constructions Corpn. Ltd. (supra) is concerned, this case also has no application in the facts of this case.

In that case, the principles have been laid down in the case of a

reasoned award and the court can interfere if the award is passed upon a proposition of law which is unsound in law. The error apparent on the face of the award contemplated by Section 16(1)(c) as well as Section 30 (c) of the Arbitration Act is an error of law apparent on the face of the award and not an error of fact. Therefore, this decision, in our view, is also of no help. The Arbitrator has passed his award on the basis of the conditions of the clauses in the agreement and passed an award and nothing could be shown from which it could be held that the court could interfere with the award if the same was passed upon the proposition of law which is unsound in law.

24. For the reasons aforesaid and subject to the modification as noted hereinabove, this appeal has no merit and the same is hereby dismissed. There will be no order as to costs.

.....J.
[Tarun Chatterjee]

New Delhi;
September 10, 2009.

.....J.
[Harjit Singh Bedi]

ITEM NO.1-B COURT NO.4 SECTION IX
[FOR JUDGMENT]

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

CIVIL APPEAL NO(s). 2732 OF 2001

U.P. COOPERATIVE FEDERATION LTD. Appellant (s)

VERSUS

M/S. THREE CIRCLES Respondent(s)

Date: 10/09/2009 This matter was called on for judgment today.

For Appellant(s) Mrs Rani Chhabra,Adv.

For Respondent(s) Ms. Manjula Gupta,Adv.

Hon’ble Mr. Justice Tarun Chatterjee pronounced reportable judgment of the Bench comprising of His Lordship and Hon’ble Mr. Justice Harjit Singh Bedi.

Appeal is dismissed in terms of signed reportable judgment placed on the file. There will be no order as to costs.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed reportable judgment is placed on the file)