

ITEM NO.1

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).11114/2009

(From the judgement and order dated 31/03/2008 in APO No. 5/2008
of The HIGH COURT OF CALCUTTA)

UNION OF INDIA

Petitioner(s)

VERSUS

M/S AMBIKA CONSTRUCCION

Respondent(s)

(With appln(s) for c/delay in filing SLP)
(FOR FINAL DISPOSAL)
WITH SLP(C) NO. 17219 of 2009
(With office report)

Date: 22/09/2010 These Petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Mohan Jain, ASG
 Mr. D.K. Thakur, Adv.
 mr. M. Khairati, Adv.
 Mr. K.K. Sharma, Adv.
 Mr. R. Mukerjee, Adv.
 Mr. Mukesh Kumar, Adv.
 Mr. A.K. Sharma, Adv.
 Ms. Yogita Yadav, Adv.
 Mr. K. Khuriti, Adv.
 Mr. Deepak Jain, Adv.
 Ms. Sushma Suri, Adv.

For Respondent(s) Mr. Raj Kumar Mehta, Adv.
(In SLP(C)11114/2009 & Mr. Antaryami Upadhyay, Adv.
For Petr. In SLP(C) Mr. S. Lakhi Singh, Adv.
No.17219 of 2009)

UPON hearing counsel the Court made the following

O R D E R

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The issue involved in this case is in regard to
the award covered by the Arbitration act, 1940.
Arbitrator has awarded pendente lite interest ignoring an
express bar in the contract regarding award of interest.

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There are two decisions of this Court which have taken the view that the Arbitrator can award pendente lite interest. They are Board of Trustees for the Port of Calcutta vs. Engineers-De -Space-Age 1996 (1) SCC 516 followed in Madnani Construction Corpn. (P) Ltd. vs. Union of India & Ors. 2010 (1) SCC 549.

In two other decision that is, Syed Ahmed & Co. vs. State of U.P. 2009 (12) SCC 26 and Sree Kamatchi Amman Construction vs. Divisional Rly.Manager/Works & Ors. 2010 (8) SCALE 293, this Court has expressed a doubt whether the decision in Engineers-De-Space-Age (supra) is good law in view of the Constitution Bench judgments in Irrigation Department, Govt. of Orissa vs. G.C. Roy 1992 (1) SCC 508 and Executive Engineer, Dhenkanal Minor Irrigation Division vs. N.C. Budharaj 2001 (2) SCC 721, which held that Arbitrator had the jurisdiction and authority to award interest in regard to three periods, namely, pre-reference period, pendente lite and future period, if there was no express bar in the contract regarding award of interest. However, this Court in

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Syed Ahmed & Co. and Sree Kamatchi Amman Construction (supra) did not examine the matter further as those cases related to matters arising under the new Act, namely, Arbitration and Conciliation Act, 1966.

In view of the above legal position, we refer this matter to a Larger Bench for decision. Place the matter before Hon'ble the Chief Justice of India for appropriate orders.

(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master