IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR-1700-2025 (O&M)
Date of Decision: 20.03.2025

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
.......Petitioner

Versus

NAVJEEVAN CHARITABLE HOSPITAL AND INSTITUTION
.....Respondent

CORAM: HON'BLE MS. JUSTICE LAPITA BANERJI

Present:- Mr. Tushar Arora, Advocate,
for the petitioner.
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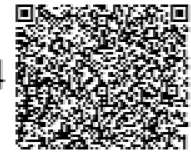
LAPITA BANERJI, J.(Oral)

1. The present civil revision has been filed under Article 227 of the Constitution of India challenging the orders dated October 28, 2024 (AnnexureP-4) and February 21, 2025 (Annexure P-5). The said orders were passed by the learned Additional District Judge, Chandigarh in Execution Petition No.81 of 2019.

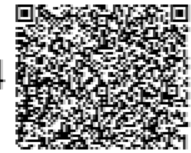
2. Vide the impugned dated October 28, 2024 (Annexure P-4), the learned ADJ recorded that the Ld. Arbitrator directed the petitioner-Insurance Company to pay the awarded amount vide award dated June 3, 2015 (Annexure P-1) within 03 months from the date of publication of the award. In the event, the petitioner-Insurance Company- award debtor failed to disburse the awarded amount, the claimant-decree holder would be entitled to receive interest in accordance with Section 31(7)(b) of the

2025:PHHC:038384 

Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act'). It was also recorded that the award was admittedly passed in the presence of counsel for both the parties. Therefore, undoubtedly the parties were aware of the passing of the award. In the 1996 Act, there is no provision for publication of the award. In the Section 34 application also no ground was taken regarding publication of award. Therefore, no distinction could be made between the date of publication of the award and the date of the award. Consequently, the date of the award was considered to be the date of receipt of the same, for all intents and purposes.

3. The learned ADJ held that the judgment debtor-petitioner was liable to pay interest from the date of passing of the award. Vide impugned order dated February 21, 2025 (Annexure P-5), the learned ADJ disposed of the application filed by the judgment debtor-petitioner for recalling an order dated January 14, 2025 contending that the calculation submitted by the decree holder-claimant was not correct, by issuing warrants of attachment of the property of the petitioner.

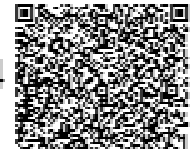
4. The contention of the petitioner that due to the applicability of the doctrine of "merger" the interest was payable to the decree-holder from 2018 and not from 2015, was rejected. The award was passed on June 3, 2015 and the petition for setting aside of the award under Section 34 of the 1996 Act was rejected on November 12, 2018. So, it was contended on behalf of the judgment debtor that interest would start running from the February 12, 2019, 3 months after the award merged with the order passed under Section 34 of the 1996 Act.

2025:PHHC:038384 

5. Accordingly, it was contended by the learned counsel appearing on behalf of the judgment debtor-petitioner that the total interest amounted to Rs.2,48,148/-. The total amount deposited by it was Rs.8,95,743/-. The judgment debtor had already deposited a sum of Rs.11,95,176/- on October 04, 2023. Therefore, a sum of Rs.2,99,433/- had to be refunded to the judgment debtor.

6. The contention of the judgment debtor-petitioner that the doctrine of "*merger*" was applicable to the facts in question was rejected by the learned ADJ. It held that the said doctrine was applicable only where an appeal or revision was filed by a party against an order/judgment passed by a Court or Tribunal before a superior forum and the superior forum modifies, reverses or affirms the decision. Only then the order passed by the Sub-ordinate Forum/Court would merge with the decision passed by the superior forum. In the event a decree was affirmed by a superior Court, even then the interest would run from the date of the decree and not from the date of the appellate Court's order.

7. Thereafter, the ADJ held that due to the operation of Section 87 of the 1996 Act, the provisions of the 1996 Act prior to the 2015 Amendment would apply as the award was passed on June 03, 2015 and the amended Act came into force on October 23, 2015. Therefore, it held that the judgment debtor was liable to pay interest component of Rs.5,22,796/- to the decree-holder. If the entirety of the said amount was not discharged by March 04, 2025 then warrant of attachment was directed to be issued on filing of list of properties.

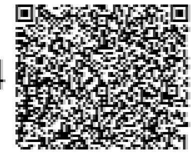
2025:PHHC:038384 

8. Learned counsel for the petitioner-judgment debtor submits that the calculation has not been provided by the decree-holder for disbursal of interest. A decision of the Supreme Court ***Gujarat Water Supply & Sewerage Board vs Unique Erectors (Gujarat) (P) Ltd. & Anr*** dated January 24, 1989 reported in 1989 AIR 973, has been cited to contend that the date of the award was different from the date of publication of the award.

9. This Court had heard the learned counsel for the petitioner and perused the material on record.

10. It finds that both the impugned orders are well-reasoned. The applicability of doctrine of "merger" to cases where applications under Section 34 of the 1996 Act for setting aside of the award have been dismissed, is mis-conceived. The interest has to be paid from the date of the decree/award till the realization of the same. Doctrine of "*merger*" has been succinctly delineated by the Apex Court in ***Kunhayammed & Ors. V. State of Kerala & Anr.*** reported in (2000) 6 SCC 359. Relevant extract is reproduced hereinafter:-

> *"44. To sum up, our conclusions are:*
> *(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*

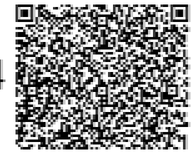
2025:PHHC:038384 

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine c of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated

2025:PHHC:038384 

in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

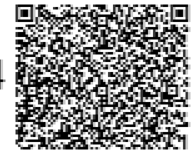
(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger, the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

11. It has been held in several judgments of the Apex Court that a Court exercising power under Section 34 of the 1996 Act is not a Court of appeal. A beneficial reference may be made to the decision of the Supreme Court in ***Associate Builders Vs. Delhi Development Authority,*** *(2015) 3 SCC 49.* The relevant extract is reproduced herein below:-

12. xxxxx xxxxxxx xxxxxx xxxxx xxxxx

It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral. Thus an award based on little evidence or on evidence which does not measure up in quality of a trained legal mind would not be

held to be invalid on this score[1]. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.

xxxx xxxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxxx

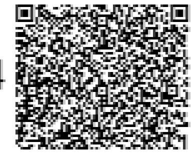
An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do. It was further held that it has been opined by this court that when it comes to setting aside of an award under the public policy ground, it would mean that the award should shock the conscience of the court and would not include what the court thinks is unjust on the facts of the case seeking to substitute its view for that of the arbitrator to do what it considers to be "justice".

xxxxx xxxxxx xxxxxx xxxxx xxxxxx xxxx xxxxx"

12. A beneficial reference may be made to the decision of the Apex Court in ***Konkan Railway Corporation Limited Vs. Chenab Bridge Project Undertaking,*** *(2023) 9 SCC 85.* The relevant extract is reproduced hereinbelow:-

"14. Analysis: At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in **MMTC Ltd. VS. Vedanta Ltd., (2019) 4 SCC 163** *is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.*

15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or

2025:PHHC:038384 

interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal."

13. The decision in **Gujarat Water Supply** (supra) does not aid the petitioner in any manner. It is decision under the Arbitration Act, 1940. In that case, it was held that since the award was made on July 08, 1985 and the parties were informed on July 19, 1985 about the signing of the award, the date of publication of the award would be on July 19, 1985.

14. In the present case, arbitration proceedings were contested between the parties. Therefore, it has to be deemed that the parties had received the award on the date mentioned in the award.

15. Accordingly, this Court finds no merit in the present civil revision.

16. Consequently, CR**-1700-2025** is **dismissed.**

17. Connected application(s), if any, are accordingly **dismissed.**

(LAPITA BANERJI)
JUDGE

20.03.2025
Jyoti Thakur

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No