2022 LiveLaw (SC) 63

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

N. V. RAMANA; CJI, A.S. BOPANNA; J, HIMA KOHLI; J.

CIVIL APPEAL NO. 1533 OF 2017; January 18, 2022

ATLANTA LIMITED THR. ITS MANAGING DIRECTOR

VERSUS

UNION OF INDIA REPRESENTED BY CHIEF ENGINEER MILITARY ENGINEERING SERVICE

Arbitration Act, 1940; Section 30, 33 - Scope of interference by courts - A Court does not sit in appeal over an Award passed by an Arbitrator and the only grounds on which it can be challenged are those that have been specified in Sections 30 and 33 of the Arbitration Act, namely, when there is an error on the face of the Award or when the learned Arbitrator has misconducted himself or the proceedings. (Para 10-15)

For Appellant(s) Mr. Chirag M. Shroff, AOR

For Respondent(s) Mr. Mukesh Kumar Maroria, AOR

J U D G M E N T

Hima Kohli J.

1. The appellant-claimant has preferred this appeal against the judgment and order dated 20th July, 2010 passed by the Division Bench of the High Court of Madras partly allowing the appeal preferred by the respondent-Union of India under Section 39 of the Arbitration Act[1], 1940 and interfering with the order dated 19th January, 2009 passed by the learned Single Judge in O.P No. 663 of 1999, a petition filed by the respondent-Union of India under Sections 30 and 33 of the 1940 Act against the arbitral Award dated 24th June, 1999. Vide judgment dated 19th January, 2009, the learned Single Judge had dismissed the said petition filed by the respondent-Union of India and had upheld the Award. The Division Bench of the High Court has, however, set aside the amount awarded by the learned Sole Arbitrator in favour of the appellant herein towards idle hire charges and value of the tools and machineries. Further, the findings returned in the Award relating to extension of time and illegal termination of the contract by the respondent-Union of India in favour of the appellant-claimant were also set aside. On the remaining issues, the order of the learned Single Judge was duly confirmed and the decree upheld.

1 In short '1940 Act'

2. A conspectus of the facts of the case, relevant for disposing of the present appeal, are as follows:

On 16th November, 1988, the appellant-claimant, a construction company, entered into a contract with the respondent-Union of India for construction of a runway

and allied works at the Naval Air Station, Arakonam for a total contract price of ₹19,58,94,190/-[Rupees Nineteen Crores fifty eight lakhs ninety four thousand one hundred and ninety]. As per the contract, the work was to be completed within a period of 21 months from the date of the commencement, ending on 23rd August, 1990. It is the stand of the respondent-Union of India that the site was handed over to the appellant-claimant on 24th November, 1988 and reckoned from the said date, the date of completion of the contract would have expired on 23rd August, 1990. On the contrary, the appellant's stand is that it could commence the work only on 1st January, 1989, since the site was heavily waterlogged due to the rainy season. During the course of execution of the work, the appellant-claimant sought extension of time for completion of the project for 45 fortnights w.e.f. 15th July, 1992 as the probable target date. The respondent-Union of India granted extension of time thrice, firstly upto 31st December, 1990, then upto 30th June, 1991 and lastly upto 31st March, 1992. By Mid-March, 1992, the appellant-claimant claims to have completed the substantial work of construction of the runway and taxi track to the extent of 72%. Since the respondent-Union of India proposed to have the runway inaugurated by the then President of India on 11th March, 1992, the appellant-claimant had to hand back the site on 9th March, 1992 whereafter, for security reasons, the station became a restricted area. As a result, the appellant-claimant had to request the respondent-Union of India to issue passes for its staff, operators and labourers to complete the balance work. But no entry passes were issued. Instead, vide letter dated 2nd April, 1992 the contract was terminated with immediate effect by the Chief Engineer, who declined to extend the time any further for completion of the work which was otherwise to expire on 31st March, 1992.

3. Aggrieved by the aforesaid termination order, the appellantclaimant invoked the Arbitration Clause in the contract executed by the parties and a Sole Arbitrator was appointed to adjudicate the disputes between them. Several claims were raised by the appellant-claimant before the learned Sole Arbitrator. The respondent-Union of India also raised counter claims. The learned Sole Arbitrator framed as many as 33 issues and on evaluating the evidence and hearing the parties pronounced a detailed Award dated 24th June, 1999, running into 506 pages, wherein a sum of ₹25,96,87,442.89p[Rupees Twenty five crores ninety six lakhs eighty seven thousand four hundred forty two and eighty nine paise] was awarded in favour of the appellant-claimant, inclusive of interest upto 31st May, 1999. Further, future interest was directed to be paid by the respondent-Union of India from 1st June, 1999 at the rate of 18% per annum on the principal amount of ₹14,12,50,907.55p.[Rupees Fourteen crores twelve lakhs fifty thousand nine hundred and seven and fifty paise], till realization. As regards the counter-claim of the respondent-Union of India, the learned Sole Arbitrator awarded a sum of ₹1,42,255/-[Rupees One lakh forty two thousand two hundred and fifty five] in its favour in respect of Claim No. 6 along with future interest.

4. Aggrieved by the Award dated 24th June, 1999, the respondent- Union of India moved a petition under Section 30 read with Section 33 of the 1940 Act, which was dismissed by the learned Single Judge vide order dated 19th January, 2009 and a decree was passed in terms of the Award holding that the appellant-claimant herein would be entitled to interest at the rate of 12% per annum on the principal amount from the date of the decree, i.e., 19th January, 2009, till the date of payment. The judgment dated 19th January, 2009 was challenged in an intra-court appeal filed by the respondent-Union of India. By the impugned judgment, the Division Bench has set aside the amount awarded in favour of the appellant-claimant towards idle hire charges and the value of the tools and machineries. Further, the findings returned in the Award in respect of the extension of time and illegal termination of the contract on the part of the respondent-Union of India, were also set aside. Hence, the present appeal.

5. We may note that arguments have been addressed in the present appeal only on two issues, viz. (i) reasonableness of the extension of time and validity of the termination of the contract on the part of the respondent-Union of India; and (ii) the claim granted in favour of the appellant-claimant in respect of idle hire charges at the site from 02nd April, 1992 to 23rd December,1995, with interest from 24th December, 1995 to 31st December,1999 and the value of the tools and machineries.

6. Ms. Meenakshi Arora, learned Senior Advocate appearing for the appellant-claimant assailed the impugned judgment and submitted that it was for cogent reasons that the learned Sole Arbitrator had ruled in favour of the appellant-claimant in respect of the claim relating to reasonableness of the extension of time granted by the respondent- Union of India for completing the project and a related claim pertaining to the validity of the decision taken by the respondent-Union of India to terminate the contract. The claim of the appellant-claimant in respect of idle hire charges and the value of the machinery and its equipment lying at the site was also awarded in its favour for justified reasons and has been erroneously turned down by the Division Bench. It was canvassed that the Appellate Court has erred in re-appreciating the evidence led by the parties which was duly scrutinized and evaluated by the learned Sole Arbitrator and upheld by the learned Single Judge. Learned senior counsel contended that the scope of interference by courts in arbitral Awards made under the old Act, viz., the Arbitration Act, 1940, is fairly limited. Courts do not sit in appeal over an Award passed by the learned Arbitrator, nor do courts interfere with the Award only on the ground that the Arbitrator has taken a possible view, though a different view could have been taken on the very same evidence. Stating that the present case is not one where the Award suffers from any patent perversity or an error of law; nor has the learned Sole Arbitrator mis-conducted himself on the proceedings, learned senior counsel submitted that the Appellate Court has exceeded its jurisdiction by substituting its own opinion in place of the conclusions arrived at by the

learned Sole Arbitrator. To buttress the argument on the scope of interference by courts in an arbitral Award passed under the 1940 Act, reliance has been placed on ***NTPC Ltd. v. Deconar Services Pvt. Ltd .***[2] .

2 (2021) SCC Online SC 498

7. Per contra, Mr. Sanjay Jain, learned Additional Solicitor General appearing for the respondent-Union of India, supported the impugned judgment and submitted that the Appellate Court had every reason to set aside the Award in respect of the findings returned by the learned Sole Arbitrator on the aspect of reasonableness of extension of time, validity of the termination of the contract by the respondent-Union of India as also the claim of idle cost of the machinery and plant awarded in favour of the appellant-claimant. He submitted that the issues relating to reasonableness of extension of time and validity of termination of the contract were *"excepted matters"* in terms of Clauses 7, 11, 54 and 70 of the contract governing the parties, which aspects were completely overlooked by the Sole Arbitrator; that the issue relating to the validity of termination of the contract on the part of the respondent-Union of India was also covered under *"excepted matters"* by virtue of Clauses 54 and 70 of the contract and that the Sole Arbitrator had travelled beyond the terms of the contract by allowing the claim for idling cost of plant and machinery in favour of the appellant-claimant.

8. It was submitted on behalf of the respondent-Union of India that allowing idling charges in favour of the appellant-claimant amounted to a patent illegality in the Award for the reason that in a separate proceeding initiated by the appellant-claimant, the High Court had permitted it to lift its material from the site, post termination of the contract, an option which it elected not to exercise, for reasons best known to it. To buttress his argument that an *"excepted matter"* cannot be adjudicated by an Arbitrator, the decisions in ***Food Corporation of India v. Sreekanth Transport*** [3], ***Grid Corporation of Orissa Ltd. And Another v. Balasore Technical School*** [4] and ***General Manager, Northern Railway and Another v. Sarvesh Chopra*** [5] have been cited. On the scope of Sections 30 and 33 of the Arbitration Act, 1940, reliance has been placed on the decision of this Court in ***Rajasthan State Mines and Minerals Ltd. v. Eastern Engineering Entereprises and Another*** [6] and on the aspect of the Sole Arbitrator mis-conducting himself or the proceedings, reference has been made to in ***K.P. Poulose v. State of Kerala and Another*** [7].

3 (1999) 4 SCC 491 4 (2000) 9 SCC 552 5 (2002) 4 SCC 45 6 (1999) 9 SCC 283 7 (1975) 2 SCC 236

9. We have heard the arguments advanced by learned counsel for the parties and carefully perused the records. Before dealing with the submissions made on behalf of the parties, it is considered apposite to examine the scope of interference by courts in arbitral Awards passed under the Arbitration Act, 1940.

10. The consistent view taken in several judicial pronouncements is that the Court does not sit in appeal over an Award passed by an Arbitrator and the only grounds on which it can be challenged are those that have been specified in Sections 30 and 33 of the Arbitration Act, namely, when there is an error on the face of the Award or when the learned Arbitrator has mis-conducted himself or the proceedings. In this context, we may usefully refer to ***Kwality Manufacturing Corporation v. Central Warehousing Corporation*** [8], where it has been observed as follows:

8 (2009) 5 SCC 142

"10. **At the outset, it should be noted that the scope of interference by courts in regard to arbitral Awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence.** The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings."

[emphasis added]

11. In ***Assam State Electricity Board and Others v. Buildworth Private Limited*** [9], where the learned Arbitrator has taken a particular view on the construction of the provisions of the contract, the Court had held as below:

9 (2017) 8 SCC 146

"13. The arbitrator has taken the view that the provision for price escalation would not bind the claimant beyond the scheduled date of completion. This view of the arbitrator is based on a construction of the provisions of the contract, the correspondence between the parties and the conduct of the Board in allowing the completion of the contract even beyond the formal extended date of 6-9-1983 up to 31-1-1986. **Matters relating to the construction of a contract lie within the province of the Arbitral Tribunal.** Moreover, in the present case, the view which has been adopted by the arbitrator is based on evidentiary material which was relevant to the decision. There is no error apparent on the face of the record which could have warranted the interference of the court within the parameters available under the Arbitration Act, 1940. The arbitrator has neither misconducted himself in the proceedings nor is the awarded otherwise invalid."

[*emphasis added]*

12. It is also a well-settled principle of law that challenge cannot be laid to the Award only on the ground that the Arbitrator has drawn his own conclusion or failed to appreciate the relevant facts. Nor can the Court substitute its own view on the conclusion of law or facts as against those drawn by the Arbitrator, as if it is sitting in appeal. This aspect has been highlighted in ***State of Rajasthan v. Puri Construction Co. Ltd. And Another*** [10], where it has been observed thus:

10 (1994) 6 SCC 485

"*26*. **The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate**

the facts. In *Sudarsan Trading Co.* v. *State of Kerala* [*Sudarsan Trading Co.* v. *State of Kerala*, (1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. ***Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties*.** Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. **By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons.** If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the arbitrator."

[*emphasis added]*

13. As long as the Arbitrator has taken a possible view, which may be a plausible view, simply because a different view from that taken in the Award, is possible based on the same evidence, would also not be a ground to interfere in the Award. In ***Arosan Enterprises Ltd. v. Union of India and Another*** [11], this Court has held as follows:

11 (1999) 9 SCC 449

"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award."

(Also refer ***Municipal Corporation of Delhi v. Jagan Nath Ashok Kumar and Another*** [12])

12 (1987) 4 SCC 497

14. In ***Rajasthan State Mines & Minerals Ltd.*** (supra), relied on by the respondent – Union of India, on a conspectus of the case law relating to an Award made under the Arbitration Act, 1940 and the scope of interference by courts in such an arbitral Award, the legal position was summarized by the court in the following words:

"44. From the resume of the aforesaid decisions, it can be stated that:

(a) it is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled arbitrator to arrive at his conclusion.

(b) It is not open to the court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the Award.

(c) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere.

(d) If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding.

(e) In a case of non-speaking Award, the jurisdiction of the court is limited. The Award can be set aside if the arbitrator acts beyond his jurisdiction.

(f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the Award.

(g) In order to determine whether arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the Award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

(h) The Award made by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot Award an amount which is ruled out or prohibited by the terms of the agreement. Because of specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of wider arbitration clause such claim amount cannot be awarded as agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement…….

(i) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.

(j) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law."

15. In a recent ruling in ***NTPC*** (supra), decided by a three Judge Bench of this Court, drawing strength from the decision in ***Kwality Manufacturing Corporation*** (supra), it has been held thus:

"13. From the above pronouncements, and from a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. **Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court [See *State of U.P.* v. *Allied Constructions*, (2003) 7 SCC 396; *Ravindra Kumar Gupta and Company* v. *Union of India*, (2010) 1 SCC 409; *Oswal Woollen Mills Limited* v. *Oswal Agro Mills Limited*, (2018) 16 SCC 219]**."

[*emphasis added]*

16. Keeping in mind the above parameters, we may now proceed to examine the pleas taken by the learned counsel for the appellant-claimant on the aspect of reasonableness of the extension of time granted by the respondent-Union of India to complete the work, coupled with the validity of the decision of the Union of India to terminate the contract between the parties held in its favour and turned down by the Appellate Court and whether the Appellate Court erred in setting aside the amount

awarded to the appellant-claimant on account of idle hire charges and the value of its machinery and equipment lying at the site.

17. The first limb of the arguments advanced by learned counsel for the appellant-claimant to assail the impugned judgment, whereby the findings returned by the learned Sole Arbitrator to the effect that the appellant-claimant was entitled to extension of time for completing the work and the Union of India ought not to have terminated the contract, the learned Arbitrator had framed the following three issues :

"1. What were the causes and which party was responsible for non-completion of the work within the time stipulated for its completion including the extended time?

2. Whether the extension of time granted upto 31.3.1992 was adequate and commensurate with the delay caused by the factor considered in issue No.1 above?

3. Whether the termination of the contract by the respondent was wrongful and illegal as stated by the claimant?"

18. After painstakingly sifting through the voluminous documents brought on record with a toothcomb, the aforesaid three issues being intertwined, were answered in favour of the appellant-claimant. Accepting as many as twenty reasons cited by the counsel for the appellant-claimant that had caused a delay in completing the work that necessitated extension of time, ranging from water logged conditions at the site due to which, the work could not commence till 31st December,1988, increase in the quantity of the work required to be executed, changes ordered by the respondent-Union of India from time to time without granting any extension of time or fixing proper rates for extra work, orders issued by the respondent-Union of India for procuring and deploying of sophisticated machinery and equipment that were not originally contemplated, non-availability of petroleum products due to the Gulf crisis, piecemeal extensions granted by the respondent-Union of India, stoppage of work for inauguration of the runway, non-issue of entry passes to labourers and removal of operators and staff of the operators, etc., it was held in the Award that the appellant-claimant could not be blamed for non-completion of the work within the stipulated time, including the extended time and that the respondent-Union of India ought to have extended the date of completion of the contract upto 31st May, 1993. The learned Sole Arbitrator also returned a finding that the extension of time granted by the respondent-Union of India upto 31st March, 1992, was inadequate and not commensurate with the delays caused for the factors referred to hereinabove.

19. Declaring that termination of the contract by the respondent-Union of India was wrongful and illegal, issues No.1 to 3 were answered in favour of the appellant-claimant. Agreeing with the aforesaid conclusions arrived at in the Award, the learned Single Judge declined to interfere therein. However, the Appellate Court differed with the concurrent findings given in the Award and the judgment impugned before it. Even though the Appellate Court was conscious of the limitations that are imposed on a Court when deciding a challenge laid to the arbitral Award made under the 1940 Act,

and despite acknowledging the same in the impugned judgment, it did not show any restrain and not only did it proceed to reappreciate the terms and conditions of the contract as also the evidence adduced by the parties before the learned Sole Arbitrator. Instead, the Award was faulted on the ground that the learned Sole Arbitrator had gone on the basis what he felt reasonable. The Appellate Court went on to hold that the Sole Arbitrator had rewritten the contract only because, in his opinion, extension of time ought to have been granted by the respondent-Union of India upto 31st May, 1993. After holding so, the Appellate Court went into minute details to justify the order of the Accepting Authority of the respondent-Union of India to grant an extension of 596 days for completion of the contract and observed that the said Officer's decision was final and binding.

20. We are of the opinion that once the learned Sole Arbitrator had interpreted the clauses of the contract by taking a particular view and had gone to great length to analyse several reasons offered by the appellant-claimant to justify its plea that it was entitled for extension of time to execute the contract, the Division Bench of the High Court ought not to have sat over the said decision as an Appellate Court and seek to substitute its view for that of the learned Arbitrator.

21. In the instant case, having gone through the Award, we find that the learned Sole Arbitrator was lucid in his reasoning for taking a particular view on the interpretation of the terms and conditions of the contract between the parties. It was for this very reason that the learned Single Judge had forbore from interfering with the arbitral Award and dismissed the petition filed by the respondent-Union of India under Sections 30 and 33 of the 1940 Act. By going into the minute details of the evidence led before the learned Sole Arbitrator with a magnifying glass and the findings returned thereon, the Appellate Court has clearly transgressed the limitations placed on it. In any case, we are of the opinion that the reasons offered for taking such a view, are neither justified nor called for for interfering with the arbitral Award.

22. We accept the findings returned by the learned Sole Arbitrator endorsed by the learned Single Judge that there was sufficient justification for the appellant-claimant to have sought extension of time for completing the work and that the decision of the respondent-Union of India to terminate the contract, was not for legitimate reasons.

23. The second argument concerns the amount that was awarded in favour of the appellant-claimant on account of idle hire charges and the value of its machinery and equipment lying at the site, that has been set aside in the impugned judgment. This point was covered in Issue No.17 framed by the learned Sole Arbitrator, as below:

"17. Is the claimant entitled to Rs.25,45,88,460.00 for the loss of his overhead and profit, loss of idle hire charges of machinery and equipment, loss on account of missing parts, loss suffered due to wrongful and illegal encashment of Bank Guarantee and for compensation of extra expenditure incurred due to price rise during the extended period as claimed in his claim No.3 ?"

24. Though the appellant-claimant had sought compensation under several heads, the learned Sole Arbitrator granted it an amount of ₹15,35,40,785/-[Rupees Fifteen Crores thirty five lakhs forty thousand seven hundred and eighty five] towards idle hire charges and for the value of the machinery, inclusive of interest upto 31st May, 1999. For arriving at the above figure, reliance was placed on the report of an Engineer appointed by the Division Bench of the High Court of Madras in a separate proceeding filed by the appellant-claimant praying *inter alia* that it be permitted to take back the machinery, tools and equipment lying at the site of the Naval Air Station, Arakonam after the value was assessed by an approved valuer. The High Court appointed an Engineer to ascertain the availability of the different items and machineries and their value. The Engineer and Insurance Surveyor submitted a report, just after a year from the date of termination of the contract, stating *inter alia* that there were 21 items of machinery available at the site and their collective market value was ₹.2,72,95,000/-[Rupees Two Crores seventy two lakhs ninety five thousand] and that the condition of most of the machineries had deteriorated and they were no longer usable. Vide order dated 21st July, 1993, the High Court allowed the appellant-claimant to remove 21 items of the machinery lying at the site, subject to it furnishing a bank guarantee for a sum of ₹2.73 crores within three weeks. Though permission was granted to the appellant-claimant to take delivery of the said machineries after furnishing a bank guarantee, it did not do so on taking a plea that when the respondent-Union of India was approached for inspection of the machineries and to verify tampering/missing parts, the latter had refused to prepare any inventory and had stated that the machineries and equipments will be released on a *"as is where is basis".* The learned Sole Arbitrator observed that after termination of the contract of the appellant-claimant, the balance contract work was got completed by the respondent-Union of India through the Border Road Organization [BRO] on 23rd December, 1995 and till that time, the tools and machinery had remained with the respondent-Union of India.

25. Finding fault with the respondent-Union of India of having failed to mitigate the damages by handing back the tools and machineries to the appellant-claimant at least immediately after 23rd December, 1995, in the arbitral Award held that the appellant-claimant was entitled to idle hire charges from 2nd April, 1992, the date of termination of the contract, till 23rd December, 1995, the date of completion of the balance contract work by the BRO. Relying on the report of the Valuer appointed by the Court to give a Report relating to the machineries at the site and their condition and valuation and further, noting that both sides had accepted the said Report, the learned Sole Arbitrator held that it was fairly considered it safe to rely on the said Report for purposes of assigning valuation to the tools and machinery. It is noteworthy that even for purposes of computing the idle hire charges of the machineries for the period between 2nd April, 1992 to 23rd December, 1995, the calculation given by the appellant-claimant based on a particular formula, was not objected to by the respondent-Union

of India. Premised on the said formula, a sum of ₹6,77,41,386/- [Rupees Six Crores seventy seven lakhs forty one thousand three hundred and eighty six] was awarded in favour of the appellant-claimant towards idle hire charges of machineries and equipment with interest payable @ 18% p.a. and a sum of ₹2,72,95,000/-[Rupees Two Crores Seventy two lakhs ninety five thousand] was granted to the appellant-claimant towards the value of the tools and machineries totalling to a sum of ₹15,35,40,785/-[Rupees Fifteen Crores thirty five lakhs forty thousand seven hundred eighty five], inclusive of interest.

26. The Appellate Court has set aside the aforesaid claim by taking a view that the learned Sole Arbitrator lost sight of the fact that once the High Court had passed an order granting permission to the appellant-claimant to remove the equipment and machineries from the site in the proceedings initiated by it and still they were not removed, then it has none else to blame but itself for the situation. Holding that the learned Sole Arbitrator had misconducted himself by observing that the claimant *"may be correct"* in not taking the machineries without an inventory when they were available at the site, the Appellate Court held that the appellant-claimant was not entitled to any amount towards the value of the tools and machineries, having been awarded idle hire charges for the very same equipments.

27. The aforesaid conclusion drawn by the Appellate Court is manifestly erroneous and flies in the face of the settled legal position that the Arbitrator is the final arbiter of the disputes between the parties and it is not open to a party to challenge the Award on the ground that he has drawn his own conclusions or has failed to appreciate certain facts. It is beyond the jurisdiction of the Appellate Court to assign to itself, the task of construing the terms and conditions of the contract and its provisions and take a view on certain amounts awarded in favour of a party. It is reiterated that the learned Sole Arbitrator had given certain cogent reasons for awarding the amount in favour of the appellant-claimant towards idle hire charges of the parts of the machineries and equipments and loss of machinery. It was beyond the domain of the Appellate Court to have examined the reasonableness of the said reasons by re-appreciating the evidence to arrive at a different conclusion. Having regard to the fact that amounts have been awarded in favour of the appellant-claimant on the above heads, based on the Report submitted to the Court by the Court Commissioner for valuing the tools and machinery and premised on the formula offered by the appellant-claimant for arriving at the idle hire charges, both being undisputed, we see no good reason for the Appellate Court to have interfered in the manner it did.

28. The submission made on behalf of the respondent-Union of India that the learned Sole Arbitrator had misconducted himself, is also unmerited. On the contrary, the conclusions are consistent with his findings and the records reveal that material documents were thoroughly examined by the learned Sole Arbitrator in the correct

perspective. Nor are we persuaded by the plea that the learned Sole Arbitrator acted in excess of his jurisdiction by taking upon himself, the task to decide some of the disputes raised, when purportedly, they were specifically barred in the contract, described as *"excepted matters".*

29. Having carefully perused the Award, we find that the terms and conditions of the contract referred to by learned ASG appearing for the respondent-Union of India, namely, Clauses 7, 11, 54 and 70 have been duly noted, discussed and declared as inapplicable to the fact situation by the learned Sole Arbitrator, by relying on the facts of the case, the conduct of the parties and some other material terms and conditions of the contract, which in his view disentitled the respondent-Union of India from claiming that it was justified in refusing to extend the time as prayed for by the appellant-claimant, to complete the project. We therefore reject the submission made on behalf of the respondent-Union of India that the learned Sole Arbitrator had misconducted himself. Having held so, none of the decisions cited on the aspect of *"excepted matters"* would be of any assistance to the respondent-Union of India. Nor will the reliance placed by learned ASG on Para 44(g) of the decision in ***Rajasthan State Mines and Minerals Ltd.*** (supra) be of any benefit to the respondent-Union of India.

30. In view of the discussion above, the impugned judgment dated 20th July, 2010 passed by the Division Bench of the High Court cannot be sustained and is quashed and set aside, while restoring the judgment dated 19th June, 2009 passed by the learned Single Judge and upholding the decree granted in favour of the appellant-claimant in terms of the Award along with interest.

31. The appeal is disposed of alongwith pending applications, if any, while leaving the parties to bear their own costs.