**Neutral Citation No. - 2025:AHC:146428**

**Court No. - 07**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 11680 of 2023

**Petitioner :-** State Of U.P. and 2 Others
**Respondent :-** M/S Satish Chandra Shiv Hare-Brothers
**Counsel for Petitioner :-** C.S.C.
**Counsel for Respondent :-** Tarun Agrawal

**HON'BLE PIYUSH AGRAWAL,J.**

***1.*** Heard Shri Manish Goyal, learned Additional Advocate General, assisted by Shri Amit Kumar Singh, learned Additional Chief Standing Counsel for the State-petitioners and Shri Tarun Agarwal along with Shri Shashank Bharti, learned counsel for the respondent.

***2.*** By means of this writ petition under Article 227 of the Constitution, the petitioners assail the orders dated 18.07.2023 and 27.07.2023 passed by the Commercial Court, Agra directing the Petitioners to pay Simple Interest at the rate of 18% per annum for a period of 12 years starting from 17.12.2010 and attaching the bank accounts of the Executive Engineer and Superintendent Engineer respectively.

***3.*** Learned counsel for the petitioner submits that the respondent is an Approved Contractor who had entered into a contract with the petitioner for the construction of a gymnastic hall at Iklavya Sports stadium in Agra. He further submits that due to some disputes, the parties entered into arbitration on behest of the Respondents and the Arbitral Tribunal passed an award in the claimant’s favour. The claimants were awarded Rs. 40, 61, 264 alongwith costs and 18% Simple Interest per annum from 31.03.2000 to 26.08.2007. He further submits that while they were pursuing the available legal remedies, the respondents initiated execution proceedings u/s 36 of the Arbitration Act in which the impugned orders have been passed.

***4.*** He further submits that although the 2015 Amendment to the Arbitration Act is prospective in nature generally, procedural provisions are an exception. He further submits that procedural law has always been held to operate retrospectively and no party has a vested right in procedure. He further submits that procedural law includes grant of post-award interest.

***5.*** He further submits that when the Arbitral Tribunal had only awarded interest for a specific period (31.03.2000 - 26.08.2007), rejecting the claimant’s prayer for post-award interest up till actual payment, then the same cannot be imposed in the execution proceedings. He further submits that without determining the final amount payable, the Commercial Court, Agra through the impugned orders has directed the attachment and freezing of their bank accounts. Hence, this writ petition.

***6.*** Per contra, learned counsel for the respondent supports the impugned orders.

***7.*** After hearing the learned counsel for the parties, the court has perused the record.

***8.*** The record shows that the respondents were successful bidders for the construction of a gymnastic hall but due to some disputes the parties moved before the arbitral tribunal where the tribunal awarded claimant/respondent with INR 40,61,264 in addition to 18% SI/ annum. Aggrieved by the award, petitioners moved before District Judge under section 34 which was rejected. Further, petitioners preferred a FAFO under section 37 which got dismissed and subsequently before the apex court through SLP which was also dismissed. However, the section 34 application was pending, meanwhile, the respondents initiated the execution proceeding for getting the award along with the interest. In the execution proceedings, the Presiding Officer, Commercial Court has directed the Petitioners to pay post-award interest from the date of award till actual payment at the rate of 18% and has further ordered the attachment of their bank accounts and properties.

***9.*** It is now well settled after the judgment in ***BCCI v. Kochi Cricket Pvt. Ltd. & Anr. (MANU/SC/0256/2018)*** that the 2015 Amendment to the Act is, in general, prospective in nature. Relevant paragraph is reproduced below:

> *"57. The Government will be well-advised in keeping the aforesaid Statement of Objects and Reasons in the forefront, if it proposes to enact Section 87 on the lines indicated in the Government's press release dated 7 March, 2018. The immediate effect of the proposed Section 87 would be to put all the important amendments made by the Amendment Act on a back-burner, such as the important amendments made to Sections 28 and 34 in particular, which, as has been stated by the Statement of Objects and Reasons, "...have resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, which tend to defeat the object of the Act", and will now not be applicable to Section 34 petitions filed after 23rd October, 2015, but will be applicable to Section 34 petitions filed in cases where arbitration proceedings have themselves commenced only after 23rd October, 2015. This would mean that in all matters which are in the pipeline, despite the fact that Section 34 proceedings have been initiated only after 23rd October, 2015, yet, the old law would continue to apply resulting in delay of disposal of arbitration proceedings by increased interference of Courts, which ultimately defeats the object of the 1996 Act. It would be important to remember that the 246th Law Commission Report has itself bifurcated proceedings into two parts, so that the Amendment Act can apply to Court proceedings commenced on or after 23rd October, 2015. It is this basic scheme which is adhered to by Section 26 of the Amendment Act, which ought not to be displaced as the very object of the enactment of the Amendment Act would otherwise be defeated."*

***10.*** In a recent judgment of the Delhi High Court in ***Union of India and Anr. v. Sudhir Tyagi 2025:DHC:2621***, the Hon'ble Single Judge bench clarified that the grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the

Arbitral Tribunal has is to decide the rate of interest to be awarded. Where the Arbitrator does not fix any rate of interest, then statutory rate, as provided in Section 31(7)(b), shall apply. Relevant paragraphs are reproduced below:

> *"11. In the present scenario, the court is more concerned with the interpretation of Clause (b), which deals with the post-award interest. What Clause (b) provides for is that Arbitral Tribunal may award interest on the sum adjudged under Clause (a). But if no such interest is awarded, then there shall be interest at the rate of 18% on the sum awarded by the Arbitral Tribunal from the date of the award to the date of payment. The intent behind granting the pre-award interest is to compensate the complainant for the loss suffered from the time the cause of action arose till the passing of the arbitral award. This is also for ensuring that the arbitral proceedings are concluded expeditiously. Similarly, the intent behind grant of post-award interest is that the award debtor is discouraged to delay the payment of the arbitral amount to the award holder.*
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> *12. Section 31(7)(b) of the Act specifically states that the Arbitral award shall carry an interest unless the award otherwise directs.*
>
> *22. In view of the aforesaid judicial pronouncement, the interpretation of Clause (b) of Section 31(7) of the Act is no more res-integra. The grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the Arbitral Tribunal has is to decide the rate of interest to be awarded. Where the Arbitrator does not fix any rate of interest, then statutory rate, as provided in Section 31(7)(b), shall apply. Since in the present case the Arbitrator did not award the post-award interest in respect of Claims No. 2, 3, 4 & 5, petitioners would be entitled to the post-award*

*interest at the rate of 18% per annum, as awarded by the learned executing court."*

***11.*** Keeping in the view the above-mentioned judgement, the executing court under Section 36 is empowered to carry out the award with full effect, including grant of interest constituting a component of the award. The Tribunal's determination of interest for 2000 to 2007 did not foreclose the statutory entitlement to interest for the balance period; the executing court correctly calculated interest for the period 17.12.2010 to 17.12.2022 at 18% p.a., and ordered recovery thereof.

***12.*** This Court, thus, finds no illegality or perversity in the impugned orders dated 18.07.2023 and 27.07.2023, passed by the learned executing court.

***13.*** The petition is, accordingly, dismissed.

**Order Date** :**-25/08/2025**
*Amit Mishra*