IN THE HIGH COURT OF JHARKHAND AT RANCHI

C.M.P. No. 1064 of 2022

C.I.S.C.-S.R.S.C. (Joint Venture), having its Registered office at 7/1, Lord Sinha Road, Lords Building, Suit No. 302, 3rd Floor, Kolkata, P.O. & P.S. Kolkata, PIN – 700071 (State of West Bengal) ; through one of its authorized signatory, namely, Om Prakash Pareek, aged about 61 years, son of Radhe Shyam Pareek, resident of 48, Subhash Sangha Squyar, Subhash Pally, Benachity, Durgapur (m. Corp.), P.O. Benachity, P.S. Durgapur, District Barddhman, PIN – 713213 (State of West Bengal).

... ... Petitioner

Versus

Central Coalfields Limited, through its Managing Director, having its office at Darbhanga House, P.O. Kotwali, P.S. G.P.O., District Ranchi, (Jharkhand), PIN – 834001. ... Respondent

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CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Sumeet Gadodia, Advocate
Mr. Prakash Narayan, Advocate.
For Respondent : Mr. Amit Kr. Das, Advocate.

C.A.V. On: 03.04.2025 **Pronounced On: 25.04.2025**

M.S. Ramachandra Rao, C.J.(Oral)

This Civil Miscellaneous application is filed under Article 227 of the Constitution of India challenging the order dt. 25.08.2022 of the Commercial Court, Ranchi in Commercial Execution Case No. 40 of 2015.

2. The petitioner is a joint venture entity of the Calcutta Industrial Supply Corporation Limited and Shri Rani Sati Carriers styled as M/s.C.I.S.C.-S.R.S.C. (JV).

3. The respondent is the Central Coalfields Limited, which is a Government of India undertaking.

The Background facts

4. The respondent had issued a tender dt. 27.05.2002 for extraction/breaking of coal/coal measures data in slices/layers without resorting to drilling and blasting and then loading/transfer of broken

materials into tipping trucks/dumpers provided by the project management with a specification that the broken materials should not be greater than 100 MM of size.

5. The petitioner became the successful tenderer and was issued a Letter of Intent on 26.10.2002 to start the said work.

6. The work started on 29.11.2002 and the agreement/contract between the parties was signed on 12.04.2003.

7. Disputes arose between the parties.

8. The petitioner herein filed an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') being Arbitration Application No.38 of 2004 in this Court.

9. During the pendency of the said application, the respondent stated that an ex-CMD by name S.K. Verma was appointed as the sole arbitrator.

10. Later, he was replaced by another arbitrator by name M.A. Ubaid, who was also an ex-CMD.

<u>The Arbitral Award</u>

11. The learned Arbitrator rendered an award on 22.12.2007 allowing certain claims made by the petitioner and rejecting the counter claims made by the respondent. He awarded Rs.2,62,02,434/- to the appellant.

12. With regard to interest on claim, the arbitrator stated in para 25 of the the award that *"interest at prevalent rates for claim due and ordered, is to be paid for the period it is due to the date of payment"*.

13. *In this Revision, we are concerned with only this aspect of the matter.*

14. The said award of the arbitrator was challenged by the respondent under section 34 read with section 16 (b), 17 of the Act before the court of

the Sub-Judge, VIII, Ranchi in Arbitration Miscellaneous Case No. 24 of 2008. He dismissed the said challenge vide order dt. 30th January, 2015.

15. The respondent then filed Arbitration Appeal No. 4 of 2015 before this High Court against the decision dt. 30.01.2015 of the Sub-Judge, VIII, Ranchi in the Arbitration Miscellaneous Case No. 24 of 2008.

16. This Arbitration Appeal No. 4 of 2015 was also dismissed by this Court on 06.07.2020.

17. In the meantime, the petitioner had filed before the Commercial Court, Ranchi, Commercial Execution Case No. 40 of 2015, praying for issuance of appropriate directions for directing the respondent to pay the decretal amount along with interest.

18. In the said application, he gave computation of interest as per the Arbitral Award read with section 31 (7) (b) of the Act (unamended), claiming interest at the rate of 18% per annum from the date of the Arbitral Award.

19. The respondent filed its objection thereto disputing the calculation of interest submitted by the petitioner. The contention of the respondent was that section 31 (7) (b) of the Act, as amended would apply; and since the Arbitral Tribunal had not prescribed the rate of interest payable on the arbitral award, interest is to be calculated in terms of the amended section 31 (7) (b) of the Act. It contended that the "current" rate of interest as defined under clause (b) of section 2 of the Interest Act, 1978 would be payable on the amount awarded by the arbitral award from the due date till the date of payment.

20. Reply was filed thereto by the petitioner contending that if the arbitral Tribunal had not prescribed the rate of interest, the same would be payable in terms of unamended provision of section 31 (7) (b) of the Act, which provides interest to be paid at the rate of 18% per annum from the date of the award to the date of payment.

Alternatively, it was contended that the term "interest @ prevalent rate" cannot be equated with the expression "current rate of interest"; and the prevailing interest rate provided by the arbitral Tribunal would mean the highest rate of interest, payable by the judgment debtor under any loan obtained from the schedule bank.

<u>The impugned judgment of the Commercial Court</u>

21. The Commercial Court, Ranchi through the impugned judgment dt. 25.08.2022 directed that the interest awarded by the arbitral Tribunal is required to be computed in terms of section 2 (b) of the Interest Act, 1978 and the provisions of the Interest Act, 1978 will be taken for calculating the amounts for different periods, since rate of interest was fluctuating.

22. The Commercial Court, Ranchi in the impugned judgment noted that section 31 (7) of the Act was amended with effect from 23.10.2015 by the Arbitration and Conciliation Amendment Act, 2015 and clause (b) of section 31 (7) came to be substituted as under:

> *"[(b). A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. Higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*

> *Explanation.- The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]"*

23. It then referred to the definition of the expression '*current rate of interest'* in clause (b) of section 2 of the Interest Act, 1978; and that the arbitrator noted that the previous provision i.e. clause (b) of section 31 (7) was substituted as above by Act 3 of 2016 and that prior to its substitution it read as under:-

> *"A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per cent per annum from the date of the award to the date of payment".*

24. The Commercial Court then referred to Section 87 of the Act which stated that unless parties otherwise agreed, the amendments made to the Act by the Arbitration and Conciliation Amendment Act, 2015 (3 of 2016) shall not apply to arbitral proceedings commenced before the commencement of the Arbitration and Conciliation Amendment Act, 2015 (3 of 2016) i.e. 23.10.2015.

25. It then held that admittedly parties had not agreed, and so the amendment will not apply, and only Section 31(7) as it stood prior to the date of amendment would apply.

26. It then held that under the unamended section 31 (7) (b) a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 18% per annum from the date of award to the date of payment, but since in Para 25 of the Award, the arbitrator had mentioned about the rate of interest to be paid, and the period for which it is to be paid, therefore interest at the rate of 18% per annum claimed by the

petitioner from the date of the award to the date of the payment, cannot be awarded.

27. It then interpreted Para 25 of the award where the arbitrator had dealt with the interest and interpreted the word '*prevalent rate*' to mean '*current rate of interest*'.

28. It then quoted section 2 (b) of the Interest Act, 1978 which deals with the term "*current rate of interest*" and noted that it defines the same as meaning "*the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949*."

29. The Commercial Court then noted that the Reserve Bank of India issued directions/bulletins regarding rate of interest meant for different purposes namely interest on savings, rate of interest on lending, rate of interest on different amount of deposits for different periods and concluded as under:-

> *"(1). The interest applicable will in terms of Section -2 (b) of the Interest Act, 1978 corresponding to Para – 25 of the Award.*
>
> *(2). The rate of interest as envisaged in Section 2 (b) of the Interest Act 1978 will be taken for calculating the amount for different periods since the rate of interest keep fluctuating.*
>
> *(3). Since there is no agreement as regards compound interest the interest will be calculated as simple interest.*

(4). The Decree-Holder shall get this amount calculated through a Chartered Accountant and will file the same in the court with a copy to the other side.

At the cost of repetition, it is noted that the Judgment Debtor has taken all steps for stalling the payment to the Decree Holder who (the Decree Holder) has not received a single penny from the Judgment Debtor. All the petitions filed in this respect stands disposed off today.

The decree holder is directed to take steps for getting the amount realized. Put up on 12.09.2022 for filing of charge of amount due to be recovered from Judgment Debtor."

<u>The instant Revision under Art.227 of the Constitution of India</u>

30. Challenging the same, this application under Article 227 of the Constitution of India has been filed by the petitioner.

31. Counsel for the petitioner contends that the judgment passed by the Commercial Court, Ranchi in Commercial Execution Case No. 40 of 2015 in so far as it directed payment of interest in accordance with section 2 (b) of the Interest Act, 1978 is perverse and contrary to the specific statutory provision contained under unamended Section 31 (7) (b) of the Act.

It is contended that while directing that interest would be computed in terms of section 2 (b) of the Interest Act, 1978, the Commercial Court had completely failed to appreciate that the Interest Act, 1978 is a general enactment and cannot override the specific statutory provision contained under the Act.

It is reiterated that in the absence of any specific rate of interest having been provided in the Arbitral Award, interest was payable at the rate of 18% per cent per annum in terms of unamended section 31 (7) (b) of the 1996 Act.

It is contended that though the Commercial Court in substance had held that the unamended provision of section 31 (7) (b) of the Act would be applicable, it was influenced by the provisions of the amended Section 31 (7) (b) of the Act while passing the impugned judgment, and it had incorrectly equated the expression '*interest at prevalent rate*' with the expression '*current rate of interest*', which has been provided in the 'explanation' to the amended provisions of section 31 (7) (b) of the Act.

According to the petitioner, the Executing Court by directing that interest would be computed in terms of section 2 (b) of the Interest Act, 1978, had travelled beyond the Arbitral Award, and in substance had modified the same, which was not tenable in law. The petitioner therefore prayed for setting aside of the impugned judgment.

32. The counsel for the respondent refuted the said contentions and supported the order passed by the Commercial Court in the Commercial Execution Case No. 40 of 2015.

<u>Consideration by the Court</u>

33. We have noted the contentions of both sides.

34. The only issue, which is to be adjudicated in the instant case is:

> *" Whether in exercise of the jurisdiction conferred on this Court under Article 227 of the Constitution of India, the judgment passed by the Commercial Court, Ranchi in Commercial Execution Case No. 40 of 2015 on 25.08.2022 with regard to award of interest is liable to be set aside or not?"*

35. Admittedly, the arbitrator in the Arbitral Award dt. 22.12.2007 had granted relief to the petitioner against the respondent for Rs.2,62,02,434/-. In clause 25 of the Arbitral Award, the learned Arbitrator had even awarded interest in the following manner:-

> *"25. Interest on claim-"Interest at prevalent rates for claim due and ordered to be paid for the period it is due to date of payment be paid"*

36. In our opinion, the Commercial Court was correct in applying unamended Section 31(7) (b) , in the absence of agreement between the parties to apply the amended Section 31(7) (b) (introduced by the Arbitration and Conciliation Amendment Act, 2015 (3 of 2016)), as required by Section 87 which states that '*unless parties otherwise agreed, the amendments made to the Act by the Arbitration and Conciliation Amendment Act, 2015 (3 of 2016) shall not apply to arbitral proceedings commenced before the commencement of the Arbitration and Conciliation Amendment Act, 2015 (3 of 2016) i.e. 23.10.2015*'.

37. Clause (b) of Section 31 (7) of the Act prior to the amendment by Act 3 of 2016 read as under:-

> *"A sum directed to be paid by an arbitral award shall, <u>unless the award otherwise directs</u>, carry interest at the rate of eighteen per cent per annum from the date of the award to the date of payment". (emphasis supplied)*

38. We are also of the view that since the Award in para 25 did mention about the interest awarded to the petitioner, petitioner cannot claim 18% interest awarded, *because the Award directs otherwise*, and can only get what the Award decrees.

39. The court below thus rightly rejected the plea of the petitioner that interest at the rate of 18% per annum has to be awarded to it.

40. In the Arbitral Award passed by the learned Arbitrator on 22.12.2007, the Arbitrator had not fixed the rate of interest mathematically by indicating the percentage specifically. He only said that interest at *prevalent rates* should be paid for claim. He did not say that the *prevalent* rate of interest payable on the claim for which he has granted relief should be the *lending* rate fixed by banks from time to time for granting loans to borrowers.

41. Only if there was no direction in the arbitral award regarding the rate of interest would the petitioner be entitled to the rate at the rate of 18% per cent per annum.

42. So we hold that the Commercial Court also rightly did not accept the plea of the petitioner that the rate of interest charged by the bank for *lending* purposes on the basis of which the petitioner had submitted a calculation before it.

43. If the petitioner had any doubt about the quantum of interest awarded by the Arbitrator it was open to the petitioner to seek a correction of the arbitral award or seek interpretation of the Arbitral Award on this aspect from the Arbitrator by moving an application under Section 33 (b) within 30 days from the receipt of the Arbitral Award. The petitioner has failed to do so.

44. The petitioner had also never challenged the Arbitral Award on this ground under Section 34 of the Act. It was the respondent which had challenged the Arbitral Award under section 34 of the Act in Arbitration

Miscellaneous Case No. 24 of 2008 which got dismissed on 30th January, 2015.

45. It was the respondent, who also challenged the said order in this Court in Arbitration Appeal No. 4 of 2015 and lost vide judgment dt. 06.07.2020.

46. It is also stated across the Bar that there was an SLP filed in the Supreme Court by the respondent against the order passed by the High Court under section 37 of the Act, which was also dismissed.

47. Thus, for a period from 2007 till 2015 when the Execution case was filed, the petitioner did not doubt the portion of the arbitral award dealing with award of interest to it. It erred in proceeding to assume in the Execution petition that it is entitled to interest at the rate of 18% per annum as per the unamended section 31 (7) (b), forgetting that the award otherwise directs, i.e., there was a specific direction in the Award about payment of interest.

48. When the arbitrator had mentioned in clause 25 of the Award that the interest would be at *prevalent rate,* the question arises:

> 'whether there was any perversity in the arbitrator construing the word *prevalent* rate of interest as the *current* rate of interest?'

49. In the Oxford Advanced Learners Dictionary (8th edition 2010), the word '*prevalent*' is given the following meaning:-

> "*That exists or is very common at a particular time or any particular place*"

and the word '*prevailing*' is given the synonym '*current*'.

50. In the Shorter Oxford English Dictionary (Sixth Edition), the word '*prevail*' is given a meaning *'Be in general use or practice; be prevalent or current; exist*' and the word '*prevailing*' has been given the meaning

'generally *current or accepted*'. The word 'prevalent' has been given the meaning '*generally occurring or existing; in general use; usual'.*

51. Therefore, we agree with the Commercial Court when it interpreted the words 'prevalent rate of interest' as 'current rate of interest', since it is a probable view. It cannot therefore be said that the said view is a perverse view.

52. In ***Estralla Rubber-Vs.-Dass Estate (P) Limited***[1]**,** the Supreme Court held that the High Court while acting under Article 227 of the Constitution of India cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error which is not apparent on the face of record. It held that the High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law of justice, where if a High Court does not interfere, a grave injustice remains uncorrected. The High Court can set aside or ignore findings of fact of an inferior court or tribunal if there is no evidence at all to justify or the finding is so perverse that no reasonable person can possibly come to such a conclusion which the court or tribunal has come to.

53. In ***Surya Dev Rai-Vs.-Ram Chander Rai and others***[2]**,** it was reiterated that exercise of supervisory jurisdiction under Article 227 is not

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[1] (2001) 8 SCC 97
[2] (2003) 6 SCC 675

available to correct mere errors of fact or of law unless the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice as occasioned whereby.

54. In the facts and circumstances of the instant case, we are satisfied that the view taken by the Commercial Court is a possible view which cannot be said to be perverse or falling within the scope of interference by this Court under Article 227 of the Constitution of India. This Court cannot sit in appeal over the Arbitral Award and act as if it has wide power to interfere with the same when the petitioner itself did not chose to challenge the award under Section 34 of the Act or to seek an interpretation from the arbitrator on this aspect under section 33 (1) (b) of the Act.

55. We also disagree with the contention of the counsel for the petitioner that the Commercial Court in the instant case had travelled beyond the scope of the decree or order and had committed an error making its order as one without jurisdiction.

56. We therefore do not find any merit in the petition. It is accordingly dismissed with costs.

(M. S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

APK