

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29th DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

MISCELLANEOUS FIRST APPEAL NO.5460/2016 (AA)

C/W

MISCELLANEOUS FIRST APPEAL NO.5461/2016 (AA)

MISCELLANEOUS FIRST APPEAL NO.5462/2016 (AA)

IN M.F.A.NO.5460/2016:

BETWEEN:

- 1 . MR. N. RAJGOPAL HEBBAR
S/O. LATE SRI N.V.K.HEBBAR,
AGED ABOUT 75 YEARS,
NERIYA VILLAGE,
BELTHANGADY TALUK,
D.K. ... APPELLANT

(BY SRI CHANDRANATH ARIGA K., ADVOCATE)

AND:

- 1 . MRS. PADMAVATHI
W/O. LATE SRI. M. ANANDA,
AGED ABOUT 74 YEARS,
LRS OF DECEASED R1 ARE
ALREADY ON RECORD AS R2 AND R3

(AMENDED VIDE ORDER DATED 13.08.2024)
- 2 . SMT. GEETHA
D/O. LATE SRI. M. ANANDA,
AGED ABOUT 55 YEARS,

- 3 . MR. HARISH
S/O. LATE SRI. M. ANANDA,
AGED ABOUT 54 YEARS,
- 4 . MR. YOGISH
S/O. LATE SRI. M. ANANDA,
AGED ABOUT 52 YEARS,
- 5 . SMT. CHITRA
D/O. LATE SRI. M. ANANDA,
AGED ABOUT 50 YEARS,
- 6 . SMT. NAMITHA
D/O. LATE SRI. M. ANANDA,
AGED ABOUT 48 YEARS,

APPELLANTS 1 TO 6 ARE
RESIDING AT "ANUGRAHA",
KADRI KAMBLA NEW ROAD,
MANGALURU-575 004.

- 7 . MR. H. SATHISHCHANDRA RAO
ADVOCATE,
BELTHANGADY-574 212,
D.K.

... RESPONDENTS

(BY SRI D.SADASHIVA, ADVOCATE FOR R2 TO R6;
VIDE ORDER DATED 13.08.2024
R2 TO R6 ARE TREATED AS LRS OF DECEASED R1)

THIS M.F.A. IS FILED UNDER SECTION 37(1)(b) OF THE
ARBITRATION AND CONCILIATION ACT, AGAINST THE
JUDGMENT AND AWARD DATED 22.04.2016 PASSED ON
A.S.NO.13/14 ON THE FILE OF THE 1ST ADDITIONAL DISTRICT
JUDGE, DAKSHINA KANNADA, MANGALORE, PARTLY DECREERING
THE ARBITRATION SUIT FILED UNDER SECTION 34 OF THE
ARBITRATION AND CONCILIATION ACT.

IN M.F.A.NO.5461/2016:

BETWEEN:

- 1 . MR. N. RAJGOPAL HEBBAR
S/O. LATE SRI. N.V.K. HEBBAR,
AGED ABOUT 75 YEARS,
NERIYA VILLAGE,
BELTHANGADY TALUK,
D.K. ... APPELLANT

(BY SRI CHANDRANATH ARIGA K., ADVOCATE)

AND:

- 1 . MRS. SUNANDA
W/O. LATE SRI. CHANDRARAJ ARIGA,
AGED ABOUT 85 YEARS,
KUVATHILU, MAPLAJE,
POST: NERIYA VILLAGE,
BELTHANGADY TALUK, D.K.

LRS OF DECEASED R1 ARE
ALREADY ON RECORD AS R2 AND R3

(AMENDED VIDE ORDER DATED 13.08.2024)

- 2 . MR. B. MAHAVEERA ARIGA
S/O. LATE SRI. CHANDRARAJ ARIGA,
AGED ABOUT 64 YEARS,
KUVATHILU MAPLAJE,
POST: NERIYA VILLAGE,
BELTHANGADY TALUK,
D.K.
- 3 . MR. YASHODHARA ARIGA
S/O. LATE SRI. CHANDRARAJ ARIGA,
AGED ABOUT 60 YEARS,
KUVATHILU MAPLAJE,

POST: NERIYA VILLAGE,
 BELTHANGADY TALUK, D.K.
 RESPONDENT NO.1 AND 3 ARE
 REPRESENT BY GPA HOLDER/RESPONDENT.2.

4 . MR. H. SATHISHCHANDRA RAO
 ADVOCATE,
 BELTHANGADY-574 212,
 D.K. DISTRICT. ... RESPONDENTS

(BY SRI VARUN GOWDA, ADVOCATE FOR R2 TO R3;
 VIDE ORDER DATED 13.08.2024,
 R2 AND R3 ARE TREATED AS LRS OF DECEASED R1;
 R4-SERVED AND UNREPRESENTED)

THIS M.F.A. IS FILED UNDER SECTION 37(1)(c) OF THE
 ARBITRATION AND CONCILIATION ACT, AGAINST THE
 JUDGMENT AND DECREE DATED 22.04.2016 PASSED IN
 A.S.NO.10/2014 ON THE FILE OF THE I ADDITIONAL DISTRICT
 AND SESSIONS JUDGE, D.K., MANGALURU, PARTLY DECREERING
 THE SUIT FILED UNDER SECTION 34 OF THE ARBITRATION AND
 CONCILIATION ACT.

IN M.F.A.NO.5462/2016:

BETWEEN:

1 . MR. N. RAJGOPAL HEBBAR
 S/O LATE SRI N.V.K. HEBBAR,
 AGED ABOUT 75 YEARS,
 NERIYA VILLAGE,
 BELTHANGADY TALUK,
 D.K. ... APPELLANT

(BY SRI CHANDRANATH ARIGA K., ADVOCATE)

AND:

- 1 . MR. B. MAHAVEERA ARIGA
S/O LATE SRI. CHANDRARAJ ARIGA,
AGED ABOUT 64 YEARS,
R/AT KUVATHILU MAPLAJE,
POST: NERIYA VILLAGE,
BELTHANGADY TALUK,
D.K.
 - 2 . MR. H. SATHISHCHANDRA RAO
ADVOCATE,
BELTHANGADY -574 212
D.K.
- ... RESPONDENTS

(BY SRI VARUN GOWDA, ADVOCATE FOR R1;
R2-SERVED AND UNREPRESENTED)

THIS M.F.A. IS FILED UNDER SECTION 37(1)(c) OF ARBITRATION AND CONCILIATION ACT, AGAINST THE JUDGMENT AND DECREE DATED 22.04.2016 PASSED IN A.S.NO.9/2014 ON THE FILE OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU, PARTLY DECREERING THE ARBITRATION SUIT FILED UNDER SECTION 34 OF ARBITRATION AND CONCILIATION ACT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.11.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

1. Heard the learned counsel for the appellant and learned counsel for the respondents in all the appeals.

2. These three appeals are filed against the judgment and award passed in A.S.No.9/2014, A.S.No.10/2014 and A.S.No.13/2015 on the file of I Addl. District Judge, Dakshina Kannada, Mangalore wherein modified the award passed by the Arbitrator and appellants are same in all these three appeals and respondents are different and similar judgments are passed in all the matters on the same ground and hence taken up together for consideration.

3. In M.F.A.No.5460/2016, the case of the claimant before the Arbitrator is that there was an agreement to sell standing timber between Sri.M.Ananda and respondents in this appeal are the legal representatives of M.Ananda and common claimant is Sri.Rajagopala Hebbar and application

was given on 02.04.1986 for cutting permit and report of range officer was given on 06.12.1998 and rejecting the application to fell the trees was passed on 25.03.1991, the same was challenged in W.P.No.746-755/1996 allowing the writ petition holding that there is a deemed provision to cut and remove the timber vide order dated 16.03.1999, the same was questioned before the writ appellate Court in W.A.No.384-393/2000 and appeals filed by the State are dismissed.

4. The claimant has given the notice nominating Arbitrator as the Arbitrator on 25.11.2005 and Arbitrator passed the award on 18.06.2014, the same has been challenged before the I Addl. District Judge and the same has been set-aside on the ground that there is no quantification of damages. Being aggrieved by the order, the present appeal is filed.

5. In M.F.A.No.5461/2016, the factual matrix of this case is that there was an agreement of sale of standing

timber between owner of the property and appellant Rajagopal Hebbar and in pursuance of the said agreement to sell, application was given for cutting permit on 02.04.1986 and range forest officer submitted the report on 06.12.2018 and order rejecting the application to fell the trees was passed on 25.03.1981 and common writ petitions are filed in W.P.Nos.746-755/1996 and the same were allowed holding that there is deemed provision to cut and remove the timber vide order dated 16.03.1999, the same was questioned before the writ appellate Court in W.A.No.384-393/2000 and appeals filed by the State are dismissed.

6. The claimant has given the notice nominating Arbitrator as the Arbitrator on 25.11.2005 and Arbitrator passed the award on 18.06.2014, the same has been challenged before the I Addl. District Judge and the same has been set-aside on the ground that there is no quantification of damages. Being aggrieved by the order the

present appeal is filed challenging the modification of the order.

7. In M.F.A.No.5462/2016, the factual matrix of this case is that there was an agreement of sale standing timber between owner of the property and appellant Rajagopal Hebbar and in pursuance of the said agreement to sell, application was given for cutting permit on 02.04.1986 and range forest officer submitted the report on 06.12.2018. The order rejecting the application to fell the trees was passed on 25.03.1981 and common writ petitions are filed in W.P.Nos.746-755/1996 and the same was allowed holding that there is deemed provision to cut and remove the timber vide order dated 16.03.1999, the same was questioned before the writ appellate Court in W.A.No.384-393/2000 and appeals filed by the State are dismissed.

8. The claimant has given the notice nominating Arbitrator as the Arbitrator on 25.11.2005 and Arbitrator

passed the award on 18.06.2014, the same has been challenged before the I Addl. District Judge and the same has been set-aside on the ground that there is no quantification of damages. Being aggrieved by the order the present appeal is filed challenging the modification of the order.

9. The appellant's counsel in all the appeals urged common ground stating that in M.F.A.No.5460/2016, the sale consideration for timber is for an amount of Rs.1,10,000/- and in other two appeals i.e., M.F.A.No.5461/2016 and M.F.A.No.5462/2016, the sale consideration for timber is amount of Rs.80,000/- respectively and in all the matters 50% of the amount was paid i.e., as against Rs.1,10,000/- and in other two appeals Rs.40,000/- as against Rs.80,000/- each was paid and in view of not granting the permission to cut and remove the trees, matter was back to the High Court and appeal was also filed and ultimately the appellant was succeeded to get

the felling order and the owner/respondent cut and removed the trees and hence filed the claim petition before the Arbitrator invoking the Arbitration clause and all the claim petitions are similar set of facts mentioning the consideration of the agreement and also to pay the entire amount in three installments and period of three years was fixed for completion and cutting and transportation of timber and other tree growth and responsibility to obtain necessary permission etc., was also on the defendant No.1 and it was at his cost and consequences. The grounds which have been stated in the synopsis are the similar grounds which have been urged for each sequence of events in all the appeals.

10. The respondents herein have also filed statement of objections before the Arbitrator and they contend that the agreements are created and taken the advantage of fiduciary relationship and denied all averments of the plaint contend that not entitled for any

amount. The Arbitrator having consider the pleadings of the parties, framed the point for consideration regarding proving of agreement and sale consideration and payment of advance amount and also payment of additional amount and in view of the contention taken by the respondent that burden is also on the claimant whether he had properly valued the timber rate as on the date of filing the claim petition and also framed an issue whether the agreement is forged document with the help of scribe and entitled for amount as claimed and the arbitrator answered all the 4 issues in favour of appellant/claimant and negatived the issue No.5 in coming the conclusion that the document is not forged as contended by the respondent and allowed the claim petition quantifying the amount and directed to pay the amount within six months in all the claim petition, the same is challenged before the I Addl. District Court and common grounds are urged by the respondents before the District Court and District Court having considered the

contentions of the parties and material placed on record, accepted the finding of the Arbitrator with regard to the agreement is concerned and payment is concerned but modified the award passed by the Arbitrator in coming to the conclusion that the goods to be sold were, therefore, unascertained and it is well settled law that the contract for unascertained goods is not complete sale and it is only a promise to sell where the Goods are not ascertained are may not exist at the time of contract, when the nature of the transaction, no property in the Goods can be passed to the purchaser by virtue of the contract itself; where certain Goods have been selected and appropriated by the seller, and have been approved and assented to by the buyer, then the case stands as to the vesting of the property very much in the same position as of contract for the sale of Goods which are ascertained at the time of the contract. The Trial Court also taken note of Section 73, 74 of Contract Act and also Section 21 of the sale of goods Act

and while modifying the order, given the reasons in paragraph No.21 in giving 7 reasons for modifying the same. Hence, present appeals are filed before this Court urging common grounds in all the appeal.

11. In all the appeal it is contended that order setting aside the reasoned order by the District Court is erroneous and the District Court committed an error in coming to the conclusion that the quantum of damage is not stipulated in the agreement and therefore assessment of damage of compensation carried out by the Arbitrator is not in accordance with settled principles of law and basics tenets of assessment of damages. It is also contended that the Court below fail to appreciate that damage is quantified by the claimant. There is definite quantification of the damages claimed by the appellant. There is a proof for the damages by way of value of trees on the land and committed an error invoking Section 73 of Contract Act.

12. The Trial Court also committed an error in giving a finding that number of trees in the flat was not ascertained and therefore damages cannot be awarded. The finding of the Court number of trees on the land is not ascertained at the time of the agreement and therefore damages cannot be awarded is an erroneous finding. Hence, it requires interference of this Court.

13. The counsel in support of his argument he relied upon the judgment reported in **1986 (Supp) SCC 506 in case of Hindusthan Tea Company V/s K.Shashikanth Co., and another** and brought to notice of this Court principles held in the judgment that when the award reasoned one and not opened to challenge on the ground that the umpire had reached a wrong conclusion or failed to appreciate facts or acted contrary to Section 70 of the Contract referring paragraph No.2 of the judgment.

14. The counsel also relied upon the judgment reported in **2010 (11) SCC 296 in case of Sumitomo**

Heavy Industries Ltd., V/s ONGC and brought to notice of this Court the principles laid down in the judgment referring paragraph No.43 wherein also an observation is made that finding and award of the umpire are rendered after considering the material on record and giving due weightage to all the terms of the contract. Calling the same to be perverse is highly unfair to the umpire. The counsel also brought to notice of this Court paragraph No.47 wherein an observation is made that we are not required to go into that issue since we are otherwise holding that the award was not only a plausible one but a well-reasoned award.

15. The counsel also relied upon the judgment reported in **2015 (3) SCC 49 in case of Associate Builders V/s Delhi Development Authority** the counsel referring this judgment brought to notice of this Court that in this judgment Apex Court held that only when award is in conflict with public policy of India as per Section

34(2)(b)(ii) that merits of an arbitral award are to be looked into under certain specified circumstances. The counsel also brought to notice of this Court elaborate discussion was made and scope of Section 34 of Arbitration Act also discussed in detail.

16. The counsel relies upon the judgment reported in **(2016) 9 SCC 478 in case of Harish Chandra & Co., V/s State of UP** referring this judgment brought to notice of this Court paragraph No.23 wherein also discussion was made referring the judgment **(2003) 7 SCC 396 paragraph No.4** scope of Section 30 if the award is a speaking one and Arbitrator has assigned sufficient and cogent reasons in support thereof. The Court is precluded from re-appraising the evidence. The counsel also brought to notice of this Court paragraph No.26 wherein also discussion was made with regard to scope of Section 30 of the old Arbitration Act wherein held that none of the grounds can be made the foundation for setting aside the award because they do not

fall within the four corners of any of the three sub-clauses of Section 30 of the Arbitration Act, 1940.

17. The counsel also brought to notice of this Court ***(2018) 15 SCC 230 in case of Atlanta Infrastructure Ltd., V/s Municipal Corporation of Greater Mumbai and others*** the counsel referring this judgment brought to notice of this Court paragraph No.5 wherein also held that Arbitrator has given good reasons stating that what has been awarded is by way of direct expenses, loss of productivity of machinery and equipment and by way of loss of overheads and profits. We find nothing in any of the clauses mentioned in the agreement which would bar reasonable compensation for this amount. The counsel also brought to notice of this Court paragraph No.9 wherein also observation is made that division bench exceeded its bounce in interfering with the well reasoned award of the Arbitrator.

18. The counsel appearing for the appellant referring these judgment would vehemently contend that the reasoning given by the District Court is erroneous that the trees are not unascertained. The counsel would contend that taken the value of the timber and Arbitrator discussed the same and clause 5 also very clear that the appellant/claimant has to bear the expenses and he met the expenses and Ex.P16 taken note of seigniorage report and Arbitrator award is well reasoned but committed an error in accepting the same by the District Court. Hence, it requires interference.

19. The counsel appearing for respondent in this appeal would vehemently contend that reply was given when the Arbitration notice was given in terms of Ex.P11. The counsel would vehemently contend that there was a delay in passing award i.e., after 9 years and also contend that is also after 20 years of transactions and also counsel would submits that an amount was deposited before this

Court and the same was withdrawn on 14.09.2016. The counsel also would vehemently contend that quantum assessed by the Arbitrator is against Section 73 and 74 and District Court having taken note of the said fact into considerations reasons are given and listed out the seven reasons by reversing the same and well reasons are given modifying the same.

20. The counsel in support of his argument he also relied upon the judgment of the Bombay High Court ***AIR 1928 Bombay 49 in case of Bhogilal Purshottam V/s Chimanlal Amrithlal*** and brought to notice of this Court page 50 and it is held that it is the duty of an Arbitrator to make up his mind and decide dispute. It is his duty to see prima facie that the proceedings are conducted with reasonable diligence, and if he so far fails in those duties, that he does nothing whatever for some five years and cannot satisfactorily explain the delay, then he can be said to have failed in material respects in his ordinary duties as

an arbitrator and so he is guilty of misconduct. The counsel referring this judgment would vehemently contend that in the present case on hand there is a delay of 9 years in passing an award.

21. The counsel also relied upon the judgment reported in ***AIR 2003 SC 2629 in case of Oil and Natural Gas Corporation Ltd V/s SAW Pipes Ltd*** and brought to notice of this Court paragraph No.31 particularly discussion was made with regard to the public policy of India used in Section 34 is given wider meaning. If the award on the face of it, patently in violation of statutory provision cannot be said to be in public interest. It likely to adversely affect the administration of justice and award could be set-aside if it is contrary to fundamental policy of Indian law, the interest of India; justice or morality and in addition if it is patently illegal. The counsel also brought to notice of this Court Section 73 and 74 was discussed in the judgment in paragraph No.31.

22. The counsel also relied upon the judgment reported in ***AIR 1963 SC 1405 in case of Fateh Chand V/s Balkishan Dass*** and brought to notice of this Court paragraph No.14 and 15 wherein discussion was made with regard to the measure of damages in the case of breach of stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case.

23. The counsel also relied upon the judgment reported in ***1970 (1) SCC 25 in case of Ram Narain Mahato V/s State of Madhya Pradesh*** and brought to notice of this Court paragraph No.10 wherein discussion was made that an agreement of promise to sell cannot be an agreement in the domain of Sale of Goods Act and counsel referring this judgment would contend that the

Apex Court in the judgment in paragraph No.10 categorically held when the contract was not for sale of ascertained goods and contract for sale of logs is doubtless, a contract for sale of goods. This is not a contract under which the trees of the entire forest in a particular village were agreed to be sold where the goods are not ascertained are may not exist at the time of contract, from the nature of the transaction, no property in the Goods can pass to the purchaser by virtue of the contract itself; where certain goods have been selected and appropriated by the seller and have been approved and assented through by the buyer then the case stands has to be vesting of the property very much in the same position as upon the contract for the sale of goods which are ascertained at the time of the bargain. The counsel referring these judgments would vehemently contend that the District Court taken note of all these facts into consideration.

24. The respondent's counsel in other two appeals would vehemently contend that it is not in dispute that there was an agreement in the year 1985 and also would contend that the sale consideration was Rs.80,000/- each and Rs.40,000/- was paid. The counsel would contend that Arbitrator was appointed unilaterally. The counsel also would vehemently contend that Arbitrator was appointed unilaterally. The counsel also would vehemently contend that complaint was given and case was registered and cognizance was taken and the same was challenged before this Court by filing petition under Section 482 and the same was also dismissed.

25. The counsel also brought to notice of this Court clause No.6 wherein Arbitrator has to be appointed and clause is also very clear and counsel also would contend that award was passed after 9 years and rightly passed an order to refund the amount and when the quantum was not stipulated, question of damages does not arise. The

counsel also would vehemently contend that the District Court taken note of Section 73 and 74 as well as Sale of Goods Act and rightly comes to the conclusion that it requires modification.

26. In reply to the arguments of both the respondent's counsel, the counsel would vehemently contend that notice was given on 25.11.2004 in terms of Ex.P5 and reply was given on 20.01.2005 in terms of Ex.P6 and counsel also would vehemently contend that no bar for universal appointment of Arbitrator in view of old Arbitration Act, 1940 since agreement of the year 1985. The counsel also would vehemently contend that when the forgery is attributed in criminal case held negative and agreement Ex.P1 is very clear with regard to the contract and other matter also Ex.P12 is also very clear with regard to the nature of trees and also measurement is taken note of date is also fixed and value of trees also taken note of by the Arbitrator and Arbitrator has given well reasoned order

but no doubt District Court given well reasoned order but there is a flaw in modifying the award of the Arbitrator. The counsel also brought to notice of this Court that reasons given by the Arbitrator was accepted by the District but interfered by giving unwanted reasons. Hence, it requires interference of this Court.

27. Having considered the grounds which have been urged in all the common appeal and also submissions of the respective counsel and principles laid down in the judgment, the point that would arise for consideration of this Court is

1) Whether this Court can invoke Section 37(e) of the Arbitration and Conciliation Act, 1996 in view of the grounds urged in the appeal?

2) What Order?

28. Having heard appellant's counsel and also the counsel appearing for the respondents and also principles

laid down in the judgment referred supra, no dispute with regard to the fact that there was an agreement between the parties in the year 1984 and also in the year 1985 in respect of selling of standing timber between the owners and also the appellant/claimant herein. It is also not in dispute that an application was given for cutting permit and report was also given by the range forest officer and the request was rejected in the year 1981. It is also not in dispute that rejection order was challenged in the respective writ petition Nos.746-755/1996 and the same was allowed holding that there is deemed provision to cut and remove the timber. It is also not in dispute that against that order writ appeal was filed and writ appeal was also dismissed confirming the order of the writ petition. It is also not dispute that notice was given in terms of Ex.P5 and Ex.P6 and reply was given for appointment of Arbitrator in the year 2005. It is also not in dispute that Arbitrator passed an Arbitration award on 18.06.2014 and the same

has been challenged before the District Court and District Court reversed the same by modifying the same. The main contention of the appellant in all the appeals is that the District Court committed an error in modifying the same and it requires interference.

29. Having considered the material available on record and learned District Judge also having considered the grounds urged in the Arbitration suit taken note of scope of Section 34 and the grounds which have been urged particularly two grounds are urged before the District Court. The first being about the proof of the agreement and comes to the conclusion that that agreement has been proved though it is contended that the same is not executed and on perusal of material also taken note of the reasoning given by the Arbitrator and 2nd ground is with regard to award is patently illegal as it dehors the basic principles of assessment of compensation and elaborate discussion was made in paragraph Nos.12 and 13 even

extracted the reasoning given by the Arbitrator and also comes to the conclusion that the Arbitrator rightly comes to the conclusion that the case of the defendant has not been rebutted by the plaintiff and not possible for this Court to interfere in respect of the same and also given the reasons by the Arbitrator by coming to such a conclusion regarding agreement and payment of the amount.

30. Having perused the reasoning also this Court does not find any ground to set-aside the finding of the District Court with regard to the material on record and both Arbitrator and also the District Court rightly comes to the conclusion that the contract was proved and payment was also has been proved.

31. The 2nd ground is regarding assessment of compensation made by the Arbitral Tribunal and District Judge has taken note of the grounds which have been urged in the Arbitration suit, particularly the principle of assessment of the damages or compensation whether the

same is inconsonance under Section 73 and 74 of Indian Contract Act. The District Judge also taken note of the recitals of the agreement between the parties in paragraph No.14 of the judgment and also the terms of the agreement. It is also noted that in terms of the agreement, 50% of the amount was paid as advance and also taken note of Section 2(7) of Sale of Goods Act defines Goods as meaning " every kind of movable property other than actionable claims and money and also comes to the conclusion that the trees from which lakhs of timber were agreed and cut and sold and things attached to are forming part of the land. Having considered Section 73 and 74 of Indian Contract Act and Section 21 of Sale of Goods Act and detail discussion was made in terms of the contract and even extracted Section 73 of the Contract Act payment of compensation for loss and damages caused by breach of contract. It is not in dispute that there was an agreement and also an application has to be given for getting the

permission to fell the tree and also material discloses that there was a delay in getting the permission that too consequent upon the order passed by this Court in the writ petition only, permission was given and Section 74 of Contract Act also taken note of by the District Court for just and reasonable compensation, but not speculative or punitive. It is also discussed in paragraph No.19 that concept of punitive damages is not at all accepted by the Indian Courts and only accepted reasonable damages where there is a breach of contract.

32. The main contention of the appellant's counsel that the District Court committed an error in modifying the award contending that there was a report of seigniorage and value of the trees and tree count which was submitted and the same has not been accepted by the District Court. The Court has to take note of details of transaction was taken place. Admittedly in both the agreements it was the agreement of the year 1984 as well as 1985 and also take

note of delay in passing the award though matter was referred to the Arbitration long back in the year 2005. The award was passed after 9 years since it was registered in the year 2005 and award was passed on 18.06.2014 and the same is also taken note of by the District.

33. It is also important to note that while assessing the awarding of compensation, the Court has to take note of the girth and circumferences of the timber of the year 1984 and 1985 and when the contract was entered into between the parties and contract is also to cut and remove the same after getting the felling order. The District Court also while taking into note of said fact into consideration and also Section 73 of the Contract Act, comes to the conclusion that Arbitrator did not follow the settled principles of law and value of the timber in the year 2005 cannot be justified under any provisions of law when the contract was entered into 1984-85 and also basic principles of assessment of damages also to be taken note of.

Admittedly, number of trees in the plot of land was not ascertained at the time of the agreement and also the property in the form of standing timber had not been permitted to sever under the relevant provisions of law by the Government since the same was not severed and it was not ready for transportation when the agreement was entered and also material discloses that litigation was reached to this Court and only after giving felling order, the permission was given and at that time, subject matter of the agreement was unascertained by the parties and damages could be calculated, the value which was not anticipated at the time of entering into the contract between the parties, almost two decade has been elapsed and also direct damages cannot be ascertained and all these factors also taken note of by the District Court and also while assessing the compensation, the same has to be assessed by considering the remote and indirect loss. It is also important to note that there is no contract between the

parties in case what could be the damages in case of any breach in terms of contract. It is also important to note that the agreement was only for the period of 3 years, but time was taken on account of no permission was given to fell the tree and under the peculiar facts and circumstances of the case, the correct compensation cannot be assessed regarding the loss to the land owners as well as the agreement owners and all these factors were also taken note of by the District Court and given the reasons while passing an order.

34. The Court also taken note of the fact that what could be the compensation and in paragraph No.22 taken note of the amount was paid as advance and also taken note of litigation pending before the Court since based on the R.F.O report, permission was rejected and the same was questioned by approaching this Court in the writ petition and order was given and the same was challenged by the State by filing writ appeal and the same was

dismissed. Ultimately, permission was given to cut and remove the trees. It is also important to note that the District Court taken note of the advance amount and also the expenses what they have claimed i.e., Rs.20,000/- for obtaining the permission to cut the tree and litigating the same to taking the matter to this Court and hence rightly while answering point Nos.3 and 4 comes to the conclusion that advance amount as well as the expenses which have been incurred has to be refunded with interest at 12% since the interest also payable from the date of commencement of the arbitration proceeding till the realization, the same was taken note of and in the order portion it is very clearly made it that advance amount paid with 12% interest from the date of agreement and sum of Rs.20,000/- from the date of commencement of Arbitration proceedings till realization and the same would take care of the interest of the appellant and having passed the reasoned order passed by the District Court and also the scope of Section 37 is

very limited and even the District Court also exercised the powers within the scope of Section 34 of the Arbitration Act and such being the case, when the reasoned order has been passed by the District Court. The very contention of the appellant's counsel that reasoned award has been passed by the Arbitrator cannot be accepted in view of the discussion made above and no dispute with regard to the principles laid down referred supra by the appellant's counsel when the reasoned order has been passed by the Arbitrator the same cannot be interfered, the District Judge taken note of Section 73, Section 74 of Contract Act and Section 21 of the Sale of Goods Act while considering the grounds which have been urged in the Arbitration suit and hence I do not find any error committed by the District in modifying the award passed by the Arbitrator and hence, the same does not requires any interference and answered the point accordingly.

35. In view of the discussions made above, I pass the following:

ORDER

Miscellaneous First Appeals are ***dismissed***.

Sd/-
(H.P. SANDESH)
JUDGE

RHS