Delhi High Court Uttam Singh Duggal & Co. Ltd. vs Union Of India (Uoi) And Ors. on 20 March, 1998 Equivalent citations: 72 (1998) DLT 798 Author: C Nayar Bench: C Nayar JUDGMENT C.M. Nayar, J. 1. This judgment will dispose of the objections filed by the respondent Union of India under Sections 16, 30 and 33 of the Arbitration Act, 1940 against the Award dated August 11, 1995. 2. The brief facts of the case are that the claimants entered into an Agreement with the respondent Union of India for construction of Main Athletic Stadium at Lodhi Road Complex, New Delhi-SH: Structural RCC Framework Group-I vide Agreement No. EE/CI/AG/80-81/I. The disputes and differences arose between the parties and Mr. S.S. Juneja, Arbitrator in the Ministry of Urban Affairs and Employment New Delhi was appointed by the Chief Engineer (NDZ) I CPWD, New Delhi under his letter No. 4(32)83-A&C(NDZ) dated July 15, 1991 as Sole Arbitrator to decide and make the Award regarding the disputes falling within the purview of Clause 25 of the Agreement executed between the parties. The claimants filed the statement of claims containing 14 claims and the respondents filed the counter statement of facts alongwith three counter-claims while repudiating the contentions raised in the claims statement. 3. The learned Counsel for the respondents has only impugned the findings in respect of the Award for claims 1, 2, 3, 8 & 13. Awards in respect of Claims 6 and 7 were not challenged and Claims 4 and 5 were not pressed at the time of arguments and,therefore, it will not be necessary to deal with the same: 4. Claim No. 1: Claim for a sum of Rs. 30,000/- for shifting of steel on three occasions including segregating of fabricated steel, sorting of steel section wise, loading into vehicle, transport by mechanical means, unloading at the new fabrication yard and stacking. The learned Arbitrator considered on the available evidence on record and heard arguments advanced by the parties and came to the conclusion that the claimants were entitled to reasonable compensation. The Award was made on the basis of filing of vouchers by the claimants showing rates of carriage @ Rs. 10/- per Metric Tonne and a sum of Rs. 20,000/- was awarded in favour of the claimants. The learned Counsel for the respondents has not been able to give cogent grounds to assail the findings in respect of this claim and indeed no fault can be found as the evidence on record was examined and an award was made on that basis. Claim No. 2 : Claim for a sum of Rs. 1,50,000/- on account of shifting of hutments and stores platform and form work for fabrication of inclined beam and equipment including tower crane due to vacation of allotted site for construction of roads, parks etc. In respect of this claim the learned Arbitrator held as follows : “I have considered all the available evidence on record and arguments advanced by parties. I find that respondents have neither denied shifting of hutments nor details of quantification and costs given by claimants as per their Annexure-1. The claimants have given number of huts and details of quantity and cost in Annexure-1. Proof of number of huts involved is not filed by them. Considering the quantum of work and contract amount of Group-1 @ Rs. 218 lac and 30% as labour element as per contract agreement, I assess minimum number of Huts at 210 Nos. and the cost of shifting @ Rs. 370/-works out to Rs. 77,700/-. Claim for mobilisation of labour is irrelevant to shifting of labour hutments.

I award payment of

(a) Removal and rebuilding hutments: Rs. 77,700/-

(b) Shifting Tower Crane: Rs. 10,000/-

Rs. 87,700 /- is, therefore, awarded in favour of claimants against this claim."

The findings in respect of this claim are rendered on appreciation and perusal of evidence on record and it will not be open for this Court to arrive at different conclusions by reappraising evidence and materials as placed before the learned Arbitrator. Claim No. 3; Claim for a sum of Rs. 6,00,000/- for additional set of form work necessitated due to alleged delay on the part of the Deptt. In finalisation of design, drawing and details in respect of inclined beams and issue of drawings for inner columns. The following findings were recorded by the learned Arbitrator while considering the award under this Head : "On consideration of documents filed and arguments advanced by parties, I find that there has been delay on the part of respondents in issuing construction drawings and details for execution of work. Three rotations of a set of centering and shuttering required total number of two and half sets under normal working conditions as per contract agreement to complete the work in time. The claimants arranged on additional set i.e. three in all after advance for the purpose was granted by respondents. The respondents did not give, any notice to call upon claimants to arrange two and half sets till about half the period of contract work was over vide their letter dated 7.7.81 (Exh.C-102). The respondents have not denied that three sets of centering and shuttering were arranged by claimants and used in execution of work. The claimants have claimed Rs. 6,00,000/- for one additional set and given details thereof in S.F. assuming that they were to arrange two sets of centering and shuttering as contended by them and have thus taken half the cost of items of work of centering and shuttering of inclined beams and columns of Rs. 14.42 lac as per contract agreement i.e. Rs. 7.21 lac per set as the cost of use and waste of one set centering and shuttering they have deducted overheads and profits @15% and claimed net cost of one set @ Rs. 6 lacs. I am of the view that two and half sets were to be arranged by claimants as per agreement. Further deducting 15% overheads and profits and 30% as part of labour cost recovered by claimants by way of items executed as paid for in final bill, I assess the cost of use and waste of one set @ Rs. 3.75 lacs. I am further of view that centering and shuttering can still be sold as scrap @ 50%. In the absence of exact proof I further restrict it to Rs. 1.75 lac. I, therefore, award Rs. 1,75,000/- as reasonable compensation in favour of the claimants against this claim." The learned Counsel for the respondents has vehemently argued that the claimants were required to provide two and half sets of centering and shuttering and only two numbers were used in the initial stages whereas the learned Counsel for the claimants has argued that the respondents were not sure and certain of suitable type of supporting system for the work in view of inclined nature of beams of heavy section. The claimants arranged an additional

set of centering and shuttering i.e. three in all after advance for the purpose was granted by respondents. Therefore, he contends that having granted an advance for the third set the respondents can not now turn around and argue to the contrary. The learned Arbitrator has considered the technical aspects of the matter and arrived at the conclusions which have been reproduced above on the basis of appreciation of evidence and documents on record and an Award of a sum of Rs. 1,75,000/- as reasonable compensation in favour of the claimants cannot be open to challenge in the present proceedings. Claim No. 4: Claim for a sum of Rs. 3,41,280/- on account of re-erection of scaffolding for top parapet which could not be cost simultaneously with the inclined beams due to alleged delay in finalisation of design of parapet by the Department. Award: Rs. 51,000/-. Claim No. 5 : The contractor alleged that only less quantity of cement was received in bags. He claims a sum of Rs. 60,000/- on this account. Award: Rs. 24,000/-. Claim No. 6: Claim for a sum of Rs. 6,00,000/- on account of steel sections of over weight issued by the department. Award Rs. 23,442/-. The Award under the above said Claims 4, 5 and 6 were not seriously contested by the learned Counsel for the respondents at the time of hearing. Therefore, it will not be necessary to deal with the same. Claim No. 7: Claim for a sum of Rs. 15,000/- on account of alleged excess deduction made by the department for issue of cement at site instead of CPWD godown at Netaji Nagar. This claim was disallowed. Claim No. 8(a): The contractor claimed the following on account of prolongation of contract period from 15 months to 24 months. Claim No. 8(b): A sum of Rs. 90,000/- on account of use of transport vehicles for longer period. (c): A sum of Rs. 1,00,000/- on account of difference in cost of materials, stone metal sand, shuttering material etc. (d) A sum of Rs. 9,50,000/- on account of under utility of labour and tools and plants. The following findings were recorded by the learned Arbitrator in respect of these claims: "I have considered documents on record and arguments advanced by parties. I find that work of claimants was hindered by respondents. I have held in Claim No. 3 that respondents delayed supply of drawings/designs. Thus work got delayed and prolonged beyond stipulated contract period, due to hindrances on the part of respondents. I have also held subsequently in this award that respondents are not entitled to compensation under Clause-2 of contract agreement. Due to prolongation of contract work, claimants were thus bound to suffer losses on establishment for which they have claimed Rs. 1,95,766/-. As per Clause 36 of contract agreement (CS-11 page 77 of contract agreement) claimants were required to employ technical staff for the supervision of the type of work involved. I find there has been no fine on claimants for default, if any. Some more staff will also be necessary for proper execution of work. In the absence of vouchers and other proof I assess and award Rs. 60,000/-against part (a) of claim. 2. Part(b): in the absence of any notice and proof of loss filed by claimants, claim is not substantiated. I disallow it. 3. Part(c): The claimants have filed no proof that they had incurred more cost on materials due to prolongation nor any voucher has been filed. Claim is not substantiated. I disallow it. 4. Part(d): in the absence of any authentic details of cost and proof of loss suffered in this respect, claim cannot be quantified. I disallow it. In view

of above I award Rs. 60,000/- in favour of the claimants against this claim as a whole." The reading of the award in respect of these claims will also show that appropriate consideration has been granted and evidence which was produced before the learned Arbitrator was duly considered. The findings are based on due application of mind and proper appreciation of evidence including the documents which were placed on record. No interference is called for. Claim No. 9 : The contractor alleged that the Japanese Steel issued by the department and collected by him was not allowed to be used on the work due to which the same had to be returned. He claims a sum of Rs. 15,000/- on this account. The award in respect of this amount was made to the extent of Rs. 1,403/- and the same has not been impugned by the respondents. Claim No. 10 : Claim for a sum of Rs. 60,000/- on account of deductions effected by the Department for low cube strength of concrete. This claim was rejected by the learned Arbitrator. Claim No. 11: Claim for a sum of Rs. 47,210.44 for the amount deducted by the department on account of labour employed on the contractor's behalf for hacking rectification, repair works etc. The learned Arbitrator awarded the amount in the sum of Rs. 25,000/- under this claim which has not been impugned by learned Counsel for the respondents. Claim No. 12 : The contractor claimed that the final bill amount is Rs. 1,95,92,814/- (gross) against the final bill for Rs. 1,77,09,981/- (gross) prepared by the department. The Award was made for a sum of Rs. 1,29,903/- and Rs. 21,972.63. The Arbitrator referred to the extra items of work. The first claim was based on agreement items of work and the learned Arbitrator has held as follows : '"The claimants have stated that they accept payment against agreement items of work except item 3.6 for R.C.C. 1:1-1/2:3 in inclined beams which is paid for 2048 M3 and is much less than 2374.35 M3 paid in Group-II although each group represents half of total work of inclined beams and thus they have claimed for 267.841 M3 (2315.911 claimed minus 2048.070 paid) @ agreement rate of Rs. 485/M3 amounting to Rs. 1,29,903/- less 1/2% rebate. The respondents have stated that details of R.C.C. 267.841 M3 claimed have not been given by claimants and cannot claim on the basis of contract agreement of Group-II. I find that respondents have not proved that Group II was different from Group I for inclined beams. They have not pleaded that this quantity is paid in some other item. I consider claim justified and award for Rs. 1,29,903/- less 1/2% rebate which works out to Rs. 1,29,253/- in favour of the claimants." A sum of Rs. 21,973/- was awarded and this figure was arrived at after detailed examination was made with regard to extra items of work which will be indicative from reading of the Award. Therefore, the Award cannot be open to challenge and no grounds have been cited to arrive at different findings than the one which have been returned by the learned Arbitrator. 4. Counter Claim No. 1: Claim for a sum of Rs. 5,47,240.15 which is due to the department after adjustment of final bill and adjustment of amounts due and payable. 5. The learned Arbitrator considered the counter claims and examined the question of award of compensation/liquidated damages and arrived at the following findings: "I find that the respondents have granted extensions after expiry of contractual date of completion and dates of provisional extensions granted by them. Further continued beyond set dates of

completion at agreement terms and conditions without respondents reserving any right to claim liquidated damages. Time was thus set at large and it was no longer essence of contract. I am of the view that the respondents are not entitled to levy compensation and recovery of Rs. 32,370/- is not, justified. I thus disallow recovery of Rs. 32,370/-. 3. Part-iii Rs. 2,037.60 Although no proof is given of such a work, some melba is however bound to be there. I, therefore, allow recovery of expenditure incurred on removal of Melba amounting to Rs. 2037.60 say Rs. 2038/-. In view of my findings above the counter claim is justified as under: 1. Part(i) Item No. Particulars Amount of recovery allowed. 1. Income Tax Rs. 2,701.00 2. Single rate recover of materials Rs. 3,41,721.00 3. Other recoveries of materials. Rs. 3,798.00 4. Rectification of defects item 4.1 to 4.3 Rs. 16,914.00 5. Penalty
6. Electric consumption bill. Rs. 3,311.00 7. (i) Penal rate recoveries on items 7.1 to 7.4
(ii) Credit for 97.515 steel returned. Rs. 3,08,927.00 Total recoveries items 1 to 7 Rs. 59,518.00 Deduct credit as given by respondents: (–) Rs. (–)31229.00
(a) Net amount of recoveries: Rs. 28,288.00
(b) Deduct refund of amount withheld for C.T.E. observations (Claim 11, Para 11.3(iii) Rs. (–)24000.00
(c) Deduct amount of work done as per final bill as per figure given by respondents (Exh.R-24)(–) Rs. 1,35,042.00 Total Counter claim No. 1(i) (A+b+c) (–) Rs. 1,30,754.00 Thus in reference to respondents counter Claim No. 1(Part-i) and claimants claim against recoveries part of Claim No. 12 and my findings above, net amount of final bill works out to plus Rs. 1,30,754/-. I award Rs. 1,30,754/- to claimants against recoveries part of Claim No. 12 and nothing is due to respondents against counter Claim No. 1 (Part-i). 2. Part (ii). —- 3. Part (iii) Rs. 2,630.00 Total counter Claim No. 1 (–) Rs. 1,28,716.00 Thus in reference to respondents counter Claim No. 1 and claimants claim against recoveries from final bill Claim No. 12 and my findings above. I award Rs. 1,28,716/- to claimants against recoveries part of Claim No. 12 and nothing is due to respondents against counter Claim No. 1." Counter claims were considered by co-relating to the amounts due to the claimants as referred to in Claim No. 12. The Award in the sum of Rs. 7,47,487/- was as a consequence made and the claimants were awarded interest at the rate of 14% per annum from the date of award to the date of payment or decree whichever was earlier in case the payment was not made within 45 days from the date of publishing the Award. The payment was not made and, therefore, the interest has to be awarded from the date of the Award till realisation. Counter Claim No. 2 relating to payment of pendentelite and future interest @18% p.a. on the amount due from the contractor and Claim No. 14 relating to interest @ 21% p.a. from 14.3.83 till the date of refund of Rs. one lakh with quarterly rates as compensation for encashment of Bank Guarantee No. U/8/81 dated 10.3.81 for Rs. 1,00,000/- were rejected. The settled position of law in such matters may now be examined. The scope of jurisdiction was considered in the judgment reported as Jagdish Chander v. Hindustan Vegetable Oils Corpn. and Anr., . The learned Judge categorically held that where an award was made by an Expert well versed in

Civil Engineering, it should not be lightly interfered with. It was also reiterated that the Court was not entitled to examine the record and it was for the Arbitrator to decide sufficiency of evidence. The following passages from this judgment may be reproduced : "15. Before dealing with the contentions of the learned Counsel for the respondent, it is necessary to bear in mind that the jurisdiction of the Court hearing objections under Section 30 of the Arbitration Act is not an appellate jurisdiction. It is now well settled that an award can be set aside only for the reasons specified in Section 30 of the Arbitration Act. When the parties, by agreement, refer the disputes to an Arbitrator then the decision of the Arbitrator is not to be lightly interfered with by the Court. It is also pertinent to notice, in a case like the present, that the Arbitrator who has been appointed was a serving officer of the Government of India holding a very high rank, namely, he was a Chief Engineer of the P.W.D. The Supreme Court has had occasion to comment on the expertise of the Arbitrator with respect to the subject-matter involved in the dispute. After observing, in the case of Municipal Corporation of Delhi v. Jagan Nath Ashok Kumar, , that the Arbitrator was a Sole Judge of the quality and quantity of the evidence even though, on the same evidence the Court might have arrived at a different conclusion, the Court noted with approval the following observations of Lord Goddard, C.J. In Mediterranean & Eastern Export Co. Ltd. v. fortress fabrics ltd. (1948) 2 All ER 186:"The modern tendency is in my opinion more especially in commercial arbitrations to endeavour to uphold awards of the skilled persons that the parties themselves have selected to decide the questions at issue between them. If an Arbitrator has acted within the terms of his submission and has not violated any rules the Courts should be slow indeed to set aside his Award". In the present case, the Arbitrator who was chosen was a person, who was, presumably, an expert or well-versed in civil engineering. The Arbitrator was selected by the agreement of the parties and the selection of a Chief Engineer shows that the parties wanted to appoint a person who was an expert in the line. An award made by such a person should not, therefore, be lightly interfered with. 20. Under Section 30 of the Arbitration Act, one of the grounds on which the award can be set aside is if an Arbitrator"has misconducted himself or the proceedings". As I understand this provision, apart from legal misconduct which must be apparent on the face of the award, there can be a misconduct which is personal to the Arbitrator like where the Arbitrator was related to one of the parties and, therefore, biased or has accepted a bribe. The other type of misconduct which is referred to in Section 30 is the misconduct of the proceedings. If proceedings are held in violation of the principles of natural justice it would amount to the Arbitrator having misconducted the proceedings. For example, if evidence is improperly shut out or evidence is taken behind the back of one of the parties or sufficient opportunity is not granted to any of the parties to present its case or defend itself before the Arbitrator then the award may be set aside under Section 30(a) of the Arbitration Act. 21. In order to see whether there has been any misconduct of the proceedings or any other misconduct, the Court may be entitled to see the record before the Arbitrator. The Court, however, is not entitled to examine the record and then hold that the decision

of the Arbitrator, on merits, is incorrect. Though a number of decisions were cited before me on the question of non-speaking award, it is not necessary to refer to all of them except to note the latest decision that of Sudarsan Trading Co. v. The Govt. of Kerala in which it was inter alia observed as follows (at pp. 900-901 of AIR):"The next question on this aspect which requires consideration is that only in a speaking award the Court can look into the reasoning of the award. It is not open to the Court to probe the mental process of the Arbitrator and speculate, where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusion. See the observations of this Court in Hindustan Steel Works Construction Ltd. v. C. Rajasekhar Rao, . In the instant case the Arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the Court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the Arbitrator cannot be challenged. Appraisement of evidence by the Arbitrator is never a matter which the Court questions and considers. If the parties have selected their own Forum, the deciding Forum, must be conceded the power of appraisement of the 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. See the observations of this Court in Municipal Corpn. of Delhi v. Jaganath Ashok Kumar, . The same principle has been stated in Alppi Parshad & Sons Ltd. v. The Union of India, (supra). There this Court held that the award was liable to be set aside because of an error apparent on the face of the award. An arbitration award might be set aside on the ground of an error on the face of it when the reasons given for the decision, either in the award or in any document incorporated with it, are based upon a legal proposition which is erroneous. But where a specific question is referred, the award is not liable to be set aside on the ground of an error on the face of the award even if the answer to the question involves an erroneous decision on a point of law. But an award which ignores express terms of the contract is bad. Similarly, in Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji (supra) this Court reiterated that an award by an Arbitrator is conclusive as a judgment between the parties and the Court is entitled to set aside an award if the Arbitrator has misconducted himself in the proceedings or when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid under Section 30 of the Act. An award may be set aside on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the Arbitrator has committed some mistake in arriving at his conclusion." It is in the light of the aforesaid observations that the contentions of the learned Counsel for the respondent have to be examined." 6. The Supreme Court in the judgment reported as State of Rajasthan v. Puri Construction Co. Ltd. and

Anr., also examined the questions with regard to validity of Award. Paragraphs 25, 27, 30 of this judgment may be reproduced as follows: "25. 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. Government of Kerala and Anr., , 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. 27. In this case, claims before the Arbitrators arise from the contract between the parties. It is well settled that if a question of law is referred to Arbitrator and the Arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this Court in Alopi Prashad v. Union of India (reported as 1960(2) SCR 799) and Kapoor Nilokheri Cooperative Dairy Farm Society (reported in 1973 (1) SCC 78). In Indian Oil Corporation Ltd. v. Indian Carbon Ltd. , this Court has held that the Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous. 30. A Court of competent jurisdiction has both right and duty to decide the lis presented before it for adjudication according to the best understanding of law and facts involved in the lis by the Judge presiding over the Court. Such decision even if erroneous either in factual determination or application of law correctly, is a valid one and binding inter parties. It does not, therefore, stand to reason that the Arbitrator's award will be per se invalid and inoperative for the simple reason that the Arbitrator has failed to appreciate the facts and has committed error in appreciating correct legal principle in basing the award. An erroneous decision of a Court of law is open to judicial review by way of appeal or revision in accordance with the provisions of law. Similarly, an award rendered by an Arbitrator is open to challenge within the parameters

of several provisions of the Arbitration Act. Since the Arbitrator is a Judge by choice of the parties, and more often than not, a person with little or no legal background, the adjudication of disputes by an arbitration by way of an award can be challenged only within the limited scope of several provisions of the Arbitration Act and the legislature in its wisdom has limited the scope and ambit of challenge to an award in the Arbitration Act Over the decades, judicial decisions have indicated the parameters of such challenge consistent with the provisions of the Arbitration Act. By and large the Courts have disfavoured interference with arbitration award on account of error of law and fact on the score of misappreciation and misreading of the materials on record and have shown definite inclination to preserve the award as tar as possible. As reference to arbitration of disputes in commercial and other transactions involving substantial amount has increased in recent times, the Courts were impelled to have fresh look on the ambit of challenge to an award by the Arbitrator so that the award does not get undesirable immunity. In recent times, error in law and fact in basing an award has not been given the wide immunity as enjoyed earlier, by expanding the import and implication of 'legal misconduct' of an Arbitrator so that award by the Arbitrator does not perpetrate gross miscarriage of justice and the same is not reduced to mockery of a fair decision of the lis between the parties to arbitration. Precisely for the aforesaid reasons, the erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very rightly, as,legal misconduct rendering the award as invalid. It is necessary, however, to put a note of caution that in the anxiety to render justice to the party to arbitration, the Court should not reappraise the evidences intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the Arbitrator is, according to the understanding of the Court, erroneous. Such exercise of power which can be exercised by an Appellate Court with power to reverse the finding of fact, is alien to the scope and ambit of challenge of an award under the Arbitration Act. Where the error of finding of facts having a bearing on the award is patent and is easily demonstrable without the necessity of carefully weighing the various possible view points, the interference with award based on erroneous finding of fact is permissible. Similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the Arbitrator. In ultimate analysis, it is a question of delicate balancing between the permissible limit of error of law and fact and patently erroneous finding easily demonstrable from the materials on record and application of principle of law forming the basis of the award which is patently erroneous. It may be indicated here that however objectively the problem may be viewed, the subjective element inherent in the Judge deciding the problem is bound to creep in and influence the decision. By long training in the art of dispassionate analysis, such subjective element is, however, reduced to minimum. Keeping the aforesaid principle in mind, the challenge to the validity of the impugned award is to be

considered with reference to judicial decisions on the subject." In B.V. Radha Krishna v. Sponge Iron India Ltd., JT 1997(3) 327 the jurisdiction of the High Court in such matters was considered and it was held that it would not be open for the High Court to substitute its own view in place of the Arbitrator's view as if it was dealing with an appeal. Paragraphs 12, 13 and 14 of the judgment which also refer to the other judgments read as follows : "12. The disposal of the matter by the High Court in the manner shown above does not come within the ambit of Section 30 of the Arbitration Act. This Court, time and again, has pointed out the scope and ambit of Section 30 of the Act. In State of Rajasthan v. Puri Construction Co. Ltd. and Anr., after referring to decisions of this Court as well as English cases, the Court observed as follows :"On the scope and ambit of the power of interference by the Court with an award made by an Arbitrator in a valid reference to arbitration, various decisions have been made from time to time by Law Courts of India including this Court and also by the Privy Council and the English Courts. Both the parties have referred to such decisions in support of their respective contentions. The factual contentions of the respective parties are proposed to be scrutinised and then the facts are proposed to be tested within the conspectus of judicial decisions governing the issues involved." 13. This Court again observed in paras 26-28 as follows : "The Arbitrator is the final arbiter for the disputes 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. Govt. of Kerala, 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 tasks of being a Judge on the evidence before the Arbitrator. In Municipal Corporation of India v. Jagan Nath Ashok Kumar, it has been held by this Court that appraisement of evidence by the Arbitrator is ordinarily never a matter which the Court questions and considers. It may be possible that on the same evidence the Court may arrive at a different conclusion than the one arrived at by the Arbitrator but that by itself is no

ground for setting aside the award. It has also been held in the said decision that it is difficult to give an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not covered by authority the verdict of jury of the decision of a Judge sitting as a Jury usually determines what is 'reasonable' in each particular case. The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An Arbitrator acting as a Judge has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Therefore, where reasons germane and relevant for the Arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable. In this case, claims before the Arbitrators arise from the contract between the parties. It is well settled that if a question of law is referred to Arbitrator and the Arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this Court in Alopi Parshad and Sons Ltd. v. Union of India and Kapoor Nilokheri Coop. Dairy Farm Society. In Indian Oil Corpn. Ltd. v. Indian Carbon Ltd., this Court has held that the Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous." 14. In Hindustan Construction Co. Ltd. v. Governor of Orissa and Ors., this Court observed on the scope of interference by the Court as follows : "It is well known that the Court while considering the question whether the award should be set aside, does not examine the question as an Appellate Court. While exercising the said power, the Court cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act." 7. The learned Counsel for the respondents has not been able to point out any factual errors and omissions apparent on the face of record nor has pointed out such errors or omissions in not properly considering the materials on record in misreading and misconstruing the same and consideration of documents and statements out of their contexts. The learned Arbitrator has made the Award by elaborate reference to evidence and documents available on record and clearly indicated the reasons for basing the findings. It has been held in the judgment State of Rajasthan (supra) which has been cited above that "even if it is assumed that on the materials on record, a different view could have been taken and the Arbitrator has failed t6 consider the documents and materials on record in his proper perspective, the award is not liable to be struck down in view of the judicial decisions referred to hereinbefore. An error apparent on the face of the record does not mean that on closer scrutiny of the import of documents and materials on record, the finding made by the Arbitrator may be held to be erroneous. Judicial decisions over the decades have indicated that an error of law or fact committed by an

Arbitrator by itself does not constitute misconduct warranting interference in the award". 8. The last point which has been stressed by learned Counsel for the respondents is that the Arbitrator has no jurisdiction to address itself to Claim No. 3 with regard to the award of compensation in favour of the claimants as this was a matter within the domain of Engineer-in-charge/Superintending Engineer. Reliance is placed on the judgment of the Supreme Court reported as Vishwanath Sood v. Union of India and Another, which inter-alia held "that the question of awarding compensation under Clause 2 is outside the purview of the Arbitrator and that the compensation determined under Clause 2 either by the Engineer-in-charge or on further reference by the Superintending Engineer will not be capable of being called in question before the Arbitrator. 9. The above plea is of no consequence in the facts of the present case as the amount has been awarded in favour of the claimants on the basis of use of additional set of centering and shuttering which had to be arranged to ensure completion of work within the stipulated period. The Arbitrator considered the pleas of the parties and the respondents also had invited decision on the same and claimed compensation in their counter claims. The findings as recorded by the learned Arbitrator which have been already referred to in the earlier part of the judgment will no where indicate that the plea that the matter was not arbitrable was even remotely raised before him and on the contrary, the decision in this regard was invited. 10. For the aforesaid reasons, the objections filed by the respondents are dismissed and the Award dated August 11, 1995 is made Rule of the Court and decree in terms of the same is passed. The petitioners shall also be entitled to interest at the rate of 12 percent per annum from the date of decree till realisation. There will be no order as to costs.