

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

R.F.A. No.1630/2024

Date of hearing	22.04.2024
Appellant by	Mr. Waleed Khalid, Advocate
Respondents by	Ch. Muhammad Usman, Advocate

Ch. Muhammad Iqbal, J:- Through this single judgment, we intend to decide the titled appeal [R.F.A. No.1630/2024] as well as R.F.A. No.1628/2024 and R.F.A. No.1655/2024 as common questions of law and facts are involved in these cases.

2. Through these regular first appeals under Section 39 of The Arbitration Act, 1940, the appellants have challenged the validity of orders dated 16.10.2023 passed by the learned Civil Judge, Lahore who dismissed the objection petition of the appellants, made Award dated 09.03.2016 rule of the Court and modified the Award by holding that the interest at the rate of 6% will be calculated from the date of order/decree and not from the year 2014.

3. Brief facts of the cases as contended by learned counsel for the appellants are that a gas supply agreement exists between the parties and Section 18.1 of the Gas Supply Agreement provides that any dispute between the appellant and respondent No.1 shall be finally determined by an arbitration in accordance

with the rules of London Court of International Arbitration [hereinafter referred to as “LCIA”] as well as the dispute between the parties regarding certain events of non-supply of gas during the period from 28.02.2011 to 10.05.2011. In this regard, respondent No.1 was liable to pay claim of the appellant amounting to Rs.23,96,84,090/-. The appellant instituted arbitration proceedings with LCIA by filing request for arbitration on 27.02.2014 against respondent No.1. On 27.06.2014, LCIA notified the appellant and respondent No.1 regarding appointment of Prof. Dr. M.S.A Wahab (respondent No.2) as a sole arbitrator in the arbitration proceedings. The arbitrator finally gave award on 09.03.2016. Respondent No.1 filed an application on 08.06.2016 for making Award as rule of the Court. The appellant filed an objections to the above award contending therein that arbitrator lacks jurisdiction to award interest. The learned Civil Judge, Lahore vide judgment & decree 16.10.2023, dismissed the objection petition of the appellant, modified the relief granted by the arbitrator given in clause 3 by holding that the interest at the rate of 6% will be calculated from the date of order/decrees and not from the year 2014. Hence, these appeals.

4. We have heard the arguments of learned counsels for the parties and have gone through the record.

5. The main dispute between the parties is regarding the date of commencement of rate of interest. The arbitrator gave decision dated 09.03.2016 with regard to this dispute with the following relief:

“(ii) The Respondent breached the GSA and is ordered to pay Rs.239,684,090 in compensation to the Claimant for the loss suffered thereby.

(iii) The Claimant is awarded interest at the rate of 6% per annum on the amount of Rs.239, 684, 090, payable as of 18 August 2014 until the date of actual payment by the Respondent.”

In these cases, the only dispute agitated by the appellants is regarding the modification in commencement of rate of interest made by the learned Civil Judge, Lahore in the judgment & decree dated 16.10.2023 as under:

“...however, the 6% interest awarded by the arbitrator will be calculated from the date of order/decree and not from the year 2014.”

The points involved in these cases can be formulated into following two questions:

- i. Whether the arbitrator was competent to award interest at the rate of 6% per annum on the amount of compensation payable as of 18.10.2014 till date of actual payment?
- ii. Whether the Court has jurisdiction to modify, amend or grant interest on award?

Under Section 15 of the Arbitration Act, 1940, the Court has jurisdiction to modify, amend or correct the Award. For ready reference, aforesaid provision is reproduced as under:

“15. Power of Court to modify award. The Court may by order modify or correct an award—

- (a) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separate from the other part and does not affect the decision on the matter referred; or
- (b) Whether the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.”

Under Section 29 of the Act ibid, the Court has a power to grant interest on the compensation, which provision reads as under:

“29. Interest on awards. Where and insofar as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.”

In the Act ibid no such provision is available which empowers the arbitrator to award interest on compensation amount.

6. The learned counsel for the appellant argued that the arbitrator rightly awarded 6% interest per annum from 18.08.2014 but in this regard, he failed to refer any provision from The Arbitration Act, 1940 on which basis the arbitrator was shown competent to award interest. The controversy regarding grant of interest by the arbitrator has been resolved by the Hon'ble Supreme Court of Pakistan in *Messrs A. Z. Company*'s¹ case by holding that the interest cannot be allowed on damages for breach of contract. It was further held that the compensation assessed by the arbitrator until the amount has been so determined there is no sum payable to the seller on which interest can run. For ready reference, relevant portion of the judgment (supra) is reproduced as under:

“It is true that a great number of decisions under the Interest Act are not easily reconcilable. But so far as grant of interest by way of damages is concerned there is not much divergence of judicial opinion. Hence in the light of the aforesaid decisions I am of opinion that generally in the absence of an express or implied contract to pay interest, or usage of trade, interest cannot be allowed on damages for breach of a contract.

Some arguments were advanced to show that the claim being for an ascertained sum, Interest Act was attracted to this case. The right of the seller under the agreement is to have compensation assessed by the Arbitrators and until the amount has been so determined there is no sum certain payable to the seller upon which interest can run. Therefore mere fact of issue of a debit note by the seller in respect of the claim would not bring the case under the Interest Act.”

Another reliance is placed on *Ghulam Abbas*'s case² wherein the Hon'ble Supreme Court of Pakistan has held that:

“18.... In M/s A. Z. Company v. M/s S. Maula Bukhsh Muhammad Bashir (PLD 1965 SC 505), this court has already

¹ *Messrs A. Z. Company Vs. Messrs S. Maula Bukhsh Muhammad Bashir (PLD 1965 SC 505)*.

² *Ghulam Abbas Vs. Trustees of the Port of Karachi (PLD 1987 SC 393)*

ruled that generally in the absence of express or implied contract to pay interest, or of usage of trade, interest cannot be allowed on damages for breach of contract. The compensation for breach of contract qua the claims accepted by the Arbitrator as awarded could not, therefore, be subjected to a further liability to pay interest according to the dictum laid down in the aforesaid decision.

21....So far as the law in this country is concerned, in the case of A. Z. Company (Supra), this court has held that interest on the sum awarded as damages cannot be allowed for period prior to the date of award except on the grounds already mentioned which are not applicable in the present case..... it was an unliquidated claim until the passing of the award and in any event interest could only be awarded if there were a debt or sum certain payable at a certain time, interest on a claim for damages arising out of breach of contract cannot be allowed both on principle and in law.....In A. Z. Company (supra) the law is settled so far as this Court is concerned and we find no reason to depart from that statement of the law that interest in such a case cannot be allowed for period prior to date of award and we hold accordingly.

22. As far as the grant of interest from the date of the award until the payment of the principal sum it may be observed that the Arbitrator can under no circumstances award interest for the period beyond the passing of the decree by the Court on the award for the simple reason that the statutory provisions contained in section 29 of the Arbitration Act take over and it is the Court within whose discretion lies the power to order interest from the date of the decree at such rate as the Court deemed reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree. From this it necessarily follows that future interest with effect from the date of the decree could not legally be awarded by the Arbitrator.....The Arbitrator, therefore, exceeded his authority, in any case, to have awarded future interest for the period between the date of the award and the date of the decree on any basis....As we have held that the Arbitrator in the facts of the present case could not according to law grant interest as claimed, there would be an error of law apparent on the face of the record....

23. The conclusion from the foregoing discussion is that so far as the item of interest in dispute is concerned the Arbitrator committed an illegality in awarding interest except that the interest awarded from the date of decree onwards has been saved by virtue of section 29 of the Arbitration Act.”

The Hon’ble Apex Court in Dawood Cotton Mills’ case³ has also held that an arbitrator has no power to grant interest on

³ Dawood Cotton Mills Ltd. Vs. K. F. Development Corporation Ltd. (2006 SCMR 1555)

compensation. For reference, relevant portion of the judgment (supra) is reproduced as under:

“11. After taking into consideration the respective arguments of the learned counsel for the parties and perusing the relevant provisions of the Act as well as the case-law cited by Mr. Dastagir we are of the opinion that the learned Single Judge had committed serious illegality in allowing interest to the respondent from the date prior to the decree as the Court did not have the power and authority to allow such interest in view of the provisions of section 29 of the Act, it will be appropriate to reproduce section 29 of the Act as under:--

“29. Interest on awards.--- Where and insofar as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at the rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.”

12. From a bare perusal of section 29 of the Act it is crystal clear that it confers power/authority on the Court making the award rule of the Court in allowing or granting interest on the principal sum adjudged by the award and confirmed by the decree on such rate as deemed reasonable from the date of decree. This section does not confer power on the Court to grant interest prior to the date of award. It is the grant of interest from the date of decree which falls within the exclusive domain of the Court proceedings with the matter for making award rule of the Court in terms of section 14 of the Act. In the circumstances order, dated 3-3-1999 was illegal to the extent of granting interest before the period of award as it had usurped the jurisdiction/power, which vested in the Arbitrator. The judgment in the case of Ghulam Abbas (supra) is of no help to the case of the respondent as this Court categorically held that grant of interest prior to the date of award was within the domain of the Arbitrator and grant thereof from the date of decree was within the authority and power of the Court and the two forums could not act otherwise and if anyone of them acted contrary to the provisions of section 29 of the Act, the order would be an illegal order.

13. As the order, dated 3-3-1999 suffered from a patent illegality, the same could be assailed at any time as it being an order in illegal exercise of jurisdiction was an order coram non judice.

14. For the foregoing facts, reasons and discussion this appeal is found to have force. Accordingly it is allowed. Impugned judgment dated 12-3-2002 of learned Division Bench of the High Court in H.C.A. No.230 of 2001 and the order of the learned Single Judge, dated 3-9-2001 in Execution Application

No.150 of 2000 are set aside and the order dated 3-3-1999 of the learned Single Judge making the award rule of the Court is modified to the extent that the respondent would be entitled to the mark-up the rate mentioned in the decree from the date of decree till the payment of the decree. Parties are left to bear their own costs.”

In A. Outubuddin's case⁴ the Hon'ble Apex Court has held that:

Award of Interest by the Arbitrator..-

30. Although, the respondent has not questioned the award of interest by the Arbitrator from the date of earlier award, which, by consent of the parties, was set aside. I would like to dilate upon this aspect of the matter.

31. An Arbitrator cannot award interest prior to date of decree, in the absence of any express or implied agreement between the parties, mercantile usage and statutory provisions or on equitable grounds in a proper case. Thus, award of interest prior to date of decree is a patent illegality appears on the face of award.

32. The fact that the Arbitrator has the power to deal with and decide disputes which cropped up at a point of time, would certainly not clothe the Arbitrator with any power, which neither any law confers upon him nor there is any usage of trade having the force of law nor is there any agreement between the parties conferring that power. Although, technical rules of procedure contained in the Code of Civil Procedure are not extended to Arbitration proceedings, even if, I look elsewhere for the power of Arbitrator to award interest pendente lite or prior to that. Section 34 of C.P.C., which gives discretion to Court to award interest from the date of suit or period prior to it, does not apply to arbitration proceedings. Likewise, the Interest Act also did not confer power on the Arbitrator to award interest.

33. The grant of interest from the date prior to award or from the date of award until payment of the amount due and payable, the Arbitrator can under no circumstances award interest for the period beyond the passing of the decree by the Court in terms of award, as under section 29 of the Act, only the Court and not the Arbitrator have discretion to order interest, from the date of the decree at such a rate as the Court deemed reasonable. In this view of the matter, grant of interest prior to date of award, in absence of an express or implied, statutory provisions, agreement between the parties, in the facts of the case, is an error of law apparent on the face of the award.”

In Punjab Province's case⁵, this Court has held as under:

⁴ A. Outubuddin Khan Vs. Chec Millwala Dredging Co. (Pvt.) Limited (2014 SCMR 1268)

“11. It is, next, contended on behalf of the department that the arbitrators in this case did not have the authority to award interest, because, the appellant had made delays in paying what was due to the respondent and that interest could not be awarded by way of damages. A reference in this behalf is made to clause 39 of the “Additional Condition” of the Contract, which is arbitrator clause. It lays down that the “disputes which may be referred for arbitration shall be limited to:

- (i) any question difference or objection whatsoever which shall arise in any way connected with or arising out of the contract, or/and
- (ii) the meaning of the operation of any part of the contract, or/and
- (iii) the rights, duties or liabilities of either party, or/and
- (iv) whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination.”

It is submitted that the respondent’s case falls within the ambit of sub-clauses (i) and (ii), which cover almost any dispute that may arise between the parties. This, however, does not seem to be the intention of clause 39 which lays down that “disputes which may be referred for arbitration shall be limited to” what is contained in the four sub-clauses. My interpretation of clause 39 is that only such disputes can be referred to arbitration as arise out of or are connected with the contract. The arbitration clause does not give the arbitrators the authority to impose punishments or penalties on a party, unless the penalty is contemplated in the terms of the contract itself. I have not been shown any clause of the contract prescribing a penalty for late payment of unascertained amounts to the contractor in the shape of penal interest.

.....

14. Reliance is also placed on *Chandras v. Isbrandtson Moller Co. Ltd.*, (3) in which it was held by the Court of appeal that it was an implied term of the submission that the Arbitrator should decide the dispute according to the existing law of contract which included the provisions of the Law Reforms (Miscellaneous Provisional Act, 1934, section 3 (1) of which gives a Court the power to award interest on debt or damages, and, therefore, the arbitrator had the power to award interest. It is obvious that this decision is based on the provisions of the Law Reforms (Miscellaneous Provisions) Act, 1931, whereas there is no such corresponding law in Pakistan. The question, whether interest could be awarded in the absence of there

⁵ *Punjab Province Vs. Zafar Iqbal Cheema (1983 CLC 513)*

being a contract between the parties or in the absence of a legal provision, was elaborately considered in *Messrs A. Z. Company v. Messrs Maula Bakhsh Mohammad Bashir*. It was held that:

“----- so far as the grant of interest by way of damages is concerned, there is not much divergence of judicial opinion. Hence in the light of the aforesaid decisions I am of opinion that generally in the absence of an express or implied contract to pay interest or usage of trade, interest cannot be allowed on damages for breach of contract.”

It has also been observed in the same case that:

“Section 1 of the Contract Act does not in cases where interest was not already payable by law permit interest where the sum claimed is not a sum certain. It only allows interest apart from contract in cases where a sum certain is due and a notice has been given that interest will be charged.”

There is, therefore, no warrant for the view that the arbitrators could award any interest in this case.”

In *Oazi Mughal Baz's* case⁶ it has been held that:

“13. We have carefully considered the arguments of the learned counsel for the parties in the light of the record placed before us. It is undisputable that reference in this case was made to the first Arbitrator after the appellant had instituted this suit against respondents for recovery of the specific amount mentioned in the plaint. The suit, after some proceedings therein, was stayed by the Court so that the matter could be referred to an Arbitrator in accordance with the terms of the agreement, which was accordingly done. Before the first Arbitrator, the claim (Attachment 'A' to award Exh.R-1) pressed by the appellant was the same as mentioned in the body of the plaint, except the items relating to interest the earnest money and the security amount. The incomplete award made by the first Arbitrator also related to the same items which were mentioned in Attachment 'A', referred to above. After this award had been made, it was on the application, dated 23-12-1972, made by the appellant that the suit filed by him be restored that the learned Senior Civil Judge summoned the file of the original suit and proceeded with it and made the award of the first Arbitrator rule of the Court. This order of the learned Senior Civil Judge was however, set aside, on 9-2-1977 by a Division Bench of this Court, in R.F.A. No. 71 of 1973, and the case remanded to him for proceeding further in the matter in the light of the observations made in the remand

⁶ *Oazi Mughal Baz Vs. The N.-W.F.P. through the Provincial Government through Secretary, P.W.D., Peshawar and 2 others (1987 CLC 50)*

order. While so proceeding with the suit, with a view to determining the part of the claim allowed wholly or in part by the first Arbitrator but left undetermined by him in terms of money, the Court, with the express consent of the parties to get the dispute resolved through arbitration and after obtaining from this lists of persons who could be considered by the Court for appointment as Arbitrator, appointed Mirza Maqsood Ahmad as Arbitrator, who submitted his award to the Court which was objected to by the respondents but with no success. The award made by Mirza Maqsood Ahmad in his own words, related to “outstanding points which remained undetermined by the previous Arbitrator”. It was accepted by the Court with some modifications and the rule based thereon after its merger with the award earlier submitted by the first Arbitrator. The decree passed by Court in favour of the appellant was of the amount not exceeding that claimed by him in the suit. We are, therefore, of the view that the arbitration in this case was with the intervention of the Court in a pending suit which had been filed by the appellant for recovery from the respondents of the amount specified in the plaint. That being so, the authority of both the Arbitrators to resolve the dispute extended to the claim and the amount which was specified in the plaint and not beyond that, and the decision made by the second Arbitrator awarding amount in excess of the suit amount, in so far as it related to that excess, was to be regarded as a decision without jurisdiction and beyond reference. The learned trial Judge, under section 15 of the Arbitration Act, read with section 25 thereof, had the jurisdiction to modify the award made by the Arbitrator, and the modifications made by him so that the awarded amount coincided with the amount claimed by the appellant in the suit could not, therefore, be taken exception to.

14. In regard to the interest allowed by the second Arbitrator, suffice it to say that there is nothing on the record to show that this point was specifically referred to Mirza Maqsood Ahmad for arbitration. The award made by him clearly shows that he was conscious of the points in dispute which were referred to the first Arbitrator and also the order of this Court passed in R.F.A. No.71 of 1973. He has mentioned these facts in his award and has given decision in respect of outstanding points. That being so, his award relating to interest was without jurisdiction. The case, therefore, fell to be governed by section 29 of the Arbitration Act and the learned trial Judge was right in modifying the award in regard to this item in the manner he did.”

In *Ch. Muhammad Sharif's* case⁷ it has been held that:

“Claim No. 4.

⁷ *Ch. Muhammad Sharif Vs. Lahore Municipal Corporation (1988 MLD 2647)*

The arbitrator awarded a sum of Rs.1,11,838.24 as compensation at the rate of 14% per annum on Rs.79,884.53 found due on claim No.1 from 1st of August, 1971 to 31st of May, 1981. The learned Civil Judge has held that the compensation was in the nature of interest and the arbitrator in the absence of any enabling provision in the agreement was not competent to allow the same. Learned counsel for the appellant has contended that interest was impliedly included in the dispute referred to the arbitrator. He has cited *Lal Chand Roy v. Nerode Kanta Goswamy AIR 1966 Cal. 478*. This authority is of no avail to him as it deals with an agreement which was in a sufficiently wide form and the arbitrator had been given power to adjudicate upon all disputes between the parties and to adjust all equities. In this case, however, it is admitted that the agreement between the parties does not envisage payment of compensation on the amount found due from the respondent. Learned counsel for the respondent has supported the finding of the learned trial Court on this claim. He has cited *Punjab Province v. Zafar Iqbal Cheema 1983 CLC 513*, *Messrs Sheikh Hussain Bux and Co. v. Messrs Zaib Tun Textile Mills Ltd. PLD 1981 Kar. 28* and *Qazi Mughal Baz v. The N.-W.F.P. through the Provincial Government through Secretary, P.W.D. Peshawar and 2 others 1987 CLC 50* according to which arbitrator has no power to award interest or impose penalty on the amount unless the same is contemplated in the terms of the contract itself and specifically referred to arbitration. Therefore, the finding of the learned trial Court on this claim is unexceptionable.”

Further reliance is placed on *The Federation of Pakistan*⁸’s case wherein it has been held that:

“11. It is well-settled that mere absence of objection per se does not absolve the Court of its primary responsibility of deciding whether the award was valid on the face of it. It is equally recognized principle of law that where a dispute is referred to an arbitrator of the choice of the parties and he makes an award, it becomes the duty of the Court to give every reasonable intendment in favour of the award and lean towards upholding it rather than vitiating it. It may not be out of context to reproduce the dictum of Koy, L. J., 1 In Re: Heihley, Maxsted & Co. and Durant & Co., (1893) 1 Q B 405:

“The Courts have already been exceedingly cautious in dealing with awards. Prima facie, an award is final and not subject to appeal; the arbitrator is chosen by the parties who presumably prefer a domestic tribunal which is not bound rigidly by the rules of evidence; and a

⁸ *The Federation of Pakistan, Chambers of Commerce and Industry, Karachi Vs. Messrs Al-Farooq Builders [2001 MLD 99 (D.B)]*

mistake of law or fact is not, per se, a ground for sending back the award of such a Tribunal.”

14. Adverting to the second ground of attack, it may be observed that section 29 of the Arbitration Act providing for award of interest on payment of the amount due reads as under:--

S. 29. Interest on award.---Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, adjudged by the award and confirmed by the decree.

15. Learned counsel did not dispute the authority of the Court to award interest on an award for the payment of money from the date of decree as the Court deems reasonable but he vigorously contended that in the absence of any clause in the contract between the Contractor and the Employer, arbitrator appointed by the parties does not possess any authority to grant interest. For this proposition, he referred to the following cases:

- (a) Plaintiffs v. Sole Arbitrator etc. (NLR 1992 CLJ 321),
- (b) Dr. Mahmoodur Rehman v. Secretary, Ministry of Law, Justice and Parliamentary Affairs (PLD 1992 FSC 153), and
- (c) Ghulam Abbas v. Trustees of the Port of Karachi (PLD 1987 SC 393).

16. This argument was also raised before the learned Single Judge and the case of Ghulam Abbas was cited before him, but the objection raised was that the arbitrator could not have awarded interest on uncertain amount. Contention was repelled by the learned Single Judge by observing that in the statement of claim respondents had claimed a total amount of Rs.14,38,075.38 as due and payable by the appellants. Learned Single Judge found that this amount had been wrongfully withheld by the appellants as ascertained by the arbitrator who had awarded interest from the date of award of contract till the date of award which was not open to exception.

17. In the case reported in NLR 1992 CLJ 321, a learned Single Judge of this Court held that Arbitrator is not empowered to award interest against one party or other unless there is an agreement to that effect between the parties.

18. The case reported as Dr. Mahmoodur Rehman is famous authority by the Federal Shariat Court relating to Riba (interest) founded on 115 Shariat Petitions and three (3) suo motu notice cases which is presently sub judice before the Shariat Appellate Bench of the apex Court and lays down the guidelines for regulating the award of interest and the express

prohibitions in Islam. This judgment in our view is not operative as contemplated by proviso to Article 203-D of the Constitution because of pendency of appeal enforce the Supreme Court.

19. The question of grant of interest by arbitrator, however, received attention in the case of Ghulam Abbas (*supra*). In this judgment a Full Bench of the Supreme Court observed that the mere fact that pleadings were before the arbitrator and issues were then settled on the pleadings of the parties incorporating the question of interest does not necessarily give rise to the inference that the parties had agreed to refer specifically the question of grant of interest as a question of law for the decision of the arbitrator, so as to preclude any party to the arbitration from challenging the award on the ground of error of law on the face of the award. Supreme Court observed that the real import the section 29 of the Arbitration Act whereby power has been conferred on the Court to order payment of interest while making the award the rule of the Court, if the same is for payment of money this interest covers the post-decree period on the principal sum in the award. Their Lordships further clarified that by its own terms, this section does not contemplate or create any embargo on the power of the arbitrator to award interest in adjudicating upon the reference before him. While laying down that right to interest for the period prior to the date of suit or prior to the reference to arbitration was a matter of substantive law, as contrasted with the power given to a Court of law under section 34, C.P.C. or section 29 of the Arbitration Act which is a statutory power within the domain of procedural law, apex Court observed that the right to interest for the period prior to the suit arises in one of the four following ways:

- (i) Agreement, express or implied between the parties.
- (ii) mercantile usage,
- (iii) statutory provisions,
- (iv) interest may be also allowed on equitable grounds in proper cases.

20. Supreme Court cited with approval the following extract from the Privy Council case reported as Bengal Nagpur Railways Co v. Ruttanji Ramji and others (AIR 1938 PC 67):

“.....The crucial question, however, is whether the Court has authority to allow interest for the period prior to the institution of the suit; and the solution of this question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period prior to the date of the suit may be awarded, if there is an agreement for the payment of interest at a fixed rate, or it is payable by the usage

of trade having the force of law, or under the provision of any substantive law entitling the plaintiff to recover interest as for instance, under section 80, Negotiable Instruments Act, 1881, the Court may award interest at the rate of 6 per cent. per annum, when no rate of interest is specified in the promissory note or bill of exchange.....”

21. As in the case before the Supreme Court, plaintiff/contractor had claimed interest by way of compensation for wrongful retention of moneys due to the plaintiff which amount was unascertained and claimed by way of unliquidated damages reaffirming its earlier view in M/s. A.Z. Company v. M/s. Maula Bukhsh Muhammad Bashir (PLD 1965 SC 505), it was held that compensation for breach of contract could not be awarded by the Arbitrator. Furthermore, it was observed that even on the assumption that interest was recoverable as damages for wrongful detention of money since the claim of the appellant was disputed and required to be determined by adjudication in the arbitration proceedings, it was an unliquidated claim until the passing of the award. In any event interest could only be awarded if there were a debt or sum certain payable at a certain time. Supreme Court observed that interest on a claim for damages arising out of breach of contract could be allowed both on principle and in law. Dealing with the question whether Arbitrator was competent to award interest in the circumstances of the case and whether in having awarded interest he committed an error of law apparent on the face of the award, the Supreme Court held that the general rule of law is that an award is final as to both fact and law but there is an exception to the rule namely that an error of law apparent on the face of award is ground for setting it aside. There is a further rider to this rule namely that if the parties have specifically referred a question of law to arbitration then the general rule would apply and the award will be beyond reproach even if such a question is decided erroneously. It may also be pertinent to refer to another important principle of law laid down in the judgment that as a general principle, the Arbitrator has always been considered to have implied authority to follow the ordinary rules of law.”

This Court in *Province of Punjab's*⁹ case has reiterated this view by holding that:

“6. For the submission about the charge of the interest is concerned, obviously, notwithstanding the absence of the objections the Court below was duty bound to see, whether the interest has been lawfully granted by the arbitrator or otherwise, I am not convinced, that in the agreement there is

⁹ *Province of Punjab through Secretary to Government of Punjab, Communication and Works Department Vs. Awan Engineering Enterprises* (2006 YLR 881)

any such clause, which permits the arbitrator grant interest upon the amount of security. Though, Mr. Muhammad Shahid Piracha, Advocate, submits it to be otherwise, but when specifically questioned, he had not been able to pinpoint any clause of the nature, under which the arbitrator was permitted to grant the interest or even this could be done under any law, therefore, it is held that the arbitrator had no power to award to grant any interest, on the amount due, to a claimant. Resultantly, the award to the extent of Rs.27,6000, granted interest to the respondent cannot be sustained. To this extent, it is modified, and by excluding such amount, the remaining award is directed to be made rule of the Court, and decree in pursuance thereof be passed.”

The Supreme Court of India in *State of Orissa's case*¹⁰ has held that:

“13. It is now well-settled that the interest pendente lite is not a matter within the jurisdiction of the arbitrator. In this connection reference may be made to the observations of this Court in Executive Engineer (Irrigation), Balimela v. Abhaduta Jena (1988) 1 SCC 418; (AIR 1988 SC 1520) where this Court held that the arbitrator could not grant interest pendente lite. In the aforesaid view of the matter this direction in the award for the payment of such interest must be deleted from the award. So, we delete the following portion from the award—“The award amount shall bear interest at 10% per annum from 9-9-1975 till the date of decree or payment, which is earlier.” The order of the High Court is modified to the extent that the award is confirmed subject to deletion of the interest as aforesaid. We make it clear that in the facts of this case interest for the period from 26-9-1981 to 18-3-1983, the date of the award be deleted. The High Court has, however, granted interest from the date of the decree. That is sustained.”

For what has been discussed above, the questions formulated by this Court are answered as under:

Q.I. Whether the arbitrator was competent to award interest at the rate of 6% per annum on the amount of compensation payable as of 18.10.2014 till date of actual payment?

Ans. No. The arbitrator has no such power or authority in the law to award interest on the amount of compensation rather

¹⁰ *State of Orissa Vs. Dandasi Sahu (1989 MLD 404)*

only the Court is competent to do so and that only grant interest from the date of order/decrees.

Q.II Whether the Court has jurisdiction to modify, amend or grant interest on award?

Ans. Yes. The Court is fully competent to modify, amend or grant interest on award.

As per Section 29 as well as dictum laid down by the Hon'ble Supreme Court of Pakistan as mentioned above, the order of the arbitrator in respect of award of interest to the appellant is without jurisdiction. It is settled law that arbitrator has no power, authority to grant interest on the amount of damages/compensation from the year 2014 till realization. This power is only with the Court under Section 29 and the interest should be granted if court desires from the date of order or decree. The Hon'ble Supreme Court of Pakistan observed as mentioned above that generally in the absence of express or implied contract to pay interest, interest cannot be allowed on damages for breach of contract. Arbitrator could not award the interest of his own on the amount of compensation. Moreover, the interest and sum of award as damages cannot be allowed for period prior to the date of award under Section 29 and the court is empowered/competent to allow interest of award from the date of decree till payment, as such the trial court rightly modified the order in respect of interest awarded by the arbitrator, as such the order of arbitrator in respect of interest is without jurisdiction.

7. Learned counsel for the appellants has not pointed out any illegality or material irregularity in the impugned judgment & decree of the trial Court, which does not call for any interference by this Court in its appellate jurisdiction.

8. Resultantly, all these three appeals being devoid of any merits are hereby ***dismissed***. No order as to costs.

(Muhammad Raza Qureshi)
Judge

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Judge

Abdul Hafeez