

**M/s D. Khosla and Company**

**v.**

**The Union of India**

(Special Leave Petition (Civil) No. 812 of 2014)

07 August 2024

**[Pamidighantam Sri Narasimha and Pankaj Mithal,\* JJ.]**

#### **Issue for Consideration**

Arbitrator passed award granting interest for two periods-(i) Pre-award period, from the date of completion of the work up to the date of the award @ 12% per annum (simple interest); and (ii) Post-award, from the date of the award till the date of its payment or the date of the court decree @ 15% per annum. Whether interest was payable on interest or whether 15% interest per annum awarded would be on the principal sum award plus 12% per annum interest on it for the pre-award period.

#### **Headnotes<sup>†</sup>**

**Arbitration Act, 1940 – ss.29, 17 – Interest Act, 1978 – s.3 – Code of Civil Procedure, 1908 – s.34 – Court/Arbitrator if can award compound interest or interest upon interest unless specifically provided under the statute or the terms and conditions of the contract:**

**Held:** No – Though, there is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but, where no such power is conferred ordinarily, the courts do not award interest on interest – Neither the Act specifically empowers the Arbitrator or the Court to award interest upon interest or compound interest nor there is any other provision which provides for grant of compound interest or interest upon interest – s.34, CPC is also silent in this regard whereas s.3(3) of the Interest Act specifically prohibits the same – In the present case, the award and the decree nowhere awarded 15% interest per annum on the amount awarded including the interest component i.e. the pre-award interest – This could not have been done even otherwise as there is no provision to that effect under the relevant statutes or the contract – The interest awarded under the award in the first part, was simple interest @ 12% per annum

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on the 'amount awarded' whereas in the second part, interest @ 15% per annum was awarded referring to the 'amount awarded' – The amount awarded in both the situations referred to the principal amount of compensation awarded i.e. Rs.21,56,745/- and was same and cannot be two distinct amounts – Concurrent judgments of the courts below not interfered with. [Paras 23, 24, 27, 28]

### Case Law Cited

*Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A.* [1999] 2 SCR 830 : (1999) 4 SCC 327; *State of Haryana and Others v. S.L. Arora and Company* [2010] 2 SCR 297 : (2010) 3 SCC 690; *Hyder Consulting (UK) Limited v. Governor, State of Orissa* [2014] 14 SCR 1029 : (2015) 2 SCC 189; *UHL Power Company Limited v. State of Himachal Pradesh* [2022] 1 SCR 1 : (2022) 4 SCC 116 – referred to.

### List of Acts

Arbitration Act, 1940; Interest Act, 1978; Code of Civil Procedure, 1908.

### List of Keywords

Award of interest; Interest upon interest; Compound interest; Interest on the amount awarded; Interest awarded in two parts; Pre-award interest and post-award interest on the principal amount; Simple interest; Simple interest on the amount awarded; Amount awarded; Principal amount; Principal amount awarded; Principal amount of compensation awarded; Principal sum.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No.812 of 2014

From the Judgment and Order dated 06.09.2013 of the High Court of Gujarat at Ahmedabad in SCA No.3036 of 2009

### Appearances for Parties

Ms. Jyoti Mendiratta, Sourabh Malhotra, Ms. Ananya Basudha, Advs. for the Petitioners.

Ms. Aishwarya Bhati, A.S.G., Ms. Sthavi Asthana, Akshaja Singh, Nitesh Shrivastav, Dr. N. Visakamurthy, Chitrangada Rastravara, Mukul Singh, Amit Sharma LI, Kartikeya Asthana, Mukesh Kumar Maroria, Advs. for the Respondent.

**M/s D. Khosla and Company v. The Union of India****Judgment / Order of the Supreme Court****Judgment****Pankaj Mithal, J.**

1. Heard Smt. Jyoti Mendiratta, learned counsel for the petitioner and Smt. Aishwarya Bhati, learned A.S.G. for the Union of India.
2. In connection with a contract of 1984-85 between the petitioner and the respondent, an award came to be passed by the Arbitrator on 17.09.1997 under the Indian Arbitration Act, 1940.<sup>1</sup> It was made the rule of the court under Section 14 read with Section 17 of the Act and a decree was accordingly drawn.
3. The award *vide* its paragraph 12 provided for the interest on the amount awarded. The interest was awarded for two periods *viz.* (i) from the date of completion of the work up to the date of the award @ 12% per annum (simple interest); and (ii) @ 15% per annum from the date of the award till the date of its payment or the date of the court decree, whichever is earlier.
4. The portion of the award which is relevant for our purpose concerning interest is reproduced hereinbelow:

**“12. Interest:-** The Union of India shall pay to M/s D Khosla & Company simple interest @ 12% per annum on the amount awarded from the date of completion of work upto the date of award and 15% from the date of award to the date of its payment or date of court decree whichever is earlier.”

(emphasis supplied)

5. The decree of the court that was drawn according to the award reads as under:

**“02) Decree for Rs.21,56,745 (Rupees Twenty One Lac Fifty Six thousands seven hundred and forty five) in terms of Arbitration Award to be drawn on payment of the Court Fees by the Opponent no.1. Opponent no.2- Union of India is hereby ordered to pay interest @ 12% p.a. on the awarded amount up to the date of the award and interest**

<sup>1</sup> hereinafter referred to as ‘the Act’

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@ 15% p.a. from the date of award till the realization of the decretal amount as per the terms of award.”

(emphasis supplied)

6. A simple reading of the aforesaid decree reveals that interest has been awarded in two parts on the amount of Rs.21,56,745/- i.e. (i) 12% per annum on the awarded amount up to the date of award; and (ii) 15% per annum from the date of award till the realization of the decretal amount.
7. It appears that the petitioner was paid the principal amount of compensation awarded and interest of 12% and 15% for the two periods i.e. pre-award and post-award on the principal amount awarded. However, petitioner was not satisfied and he moved execution for the realization of certain amount as shortfall of the interest. The petitioner contended that insofar as 15% interest is concerned, it is payable on the principal amount of compensation awarded plus 12% simple interest on the said amount. In other words, petitioner sought to include 12% interest in the principal amount of compensation awarded for the purposes of claiming 15% simple interest for the post-award period.
8. The Principal Senior Civil Judge, Khambhalia, in Execution Petition No.9 of 2006 preferred by the petitioner, refused to accept the contention of the petitioner so as to award 15% interest on the principal amount of compensation awarded plus 12% simple interest thereof. In a way, he declined to grant interest upon interest for the reason that the Arbitrator has not awarded it in so many words.
9. In the petition preferred by the petitioner before the High Court, the same view was adopted by the High Court vide its judgment and order dated 06.09.2013. It held that as the Arbitrator had used word ‘simple interest’ and had not specifically awarded compound interest, therefore, the petitioner is only entitled to simple interest @ 12% per annum on the amount awarded as compensation for the pre-award period and simple interest @ 15% per annum for the post-award period only on the amount of compensation awarded.
10. Aggrieved by the judgment and order of the High Court dated 06.09.2013 and that of the Principal Senior Civil Judge, Khambhalia, dated 29.08.2008, the petitioner has preferred this Special Leave Petition.

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11. Ms. Mendiratta, learned counsel for the petitioner argued that 12% interest per annum awarded for the pre-award period is part of the principal sum and it has lost its character as separate interest. Therefore, 15% interest per annum awarded for the post-award period is both on the principal sum and the 12% interest inclusive.
12. In contrast, Ms. Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the respondent, has argued that though there is no controversy with regard to the power of the arbitrator to award interest on interest or compound interest in a given case. However, it cannot be paid to the claimant until and unless it is specifically granted by the award or the order of court.
13. In the instant case, the arbitrator had granted interest for two separate periods on the principal sum adjudged only and there is no direction that the interest for the subsequent period would be payable on the principal sum adjudged including interest for the first period.
14. The sole simple issue herein for our opinion is whether interest is payable on interest or whether 15% interest per annum awarded would be on the principal sum award plus 12% per annum interest on it for the pre-award period.
15. Section 29 of the Act provides that the court may in the decree order interest at the rate deemed reasonable to be paid on the principal sum as adjudged by the award meaning thereby in drawing the decree, the court may order for payment of interest on the principal sum as adjudged by the award. In other words, the court cannot order for payment of interest on interest but only on the principal sum adjudged.
16. Since the award under the Act is in the nature of a decree in terms of Section 17 of the aforesaid Act, it attracts the provisions of the Code of Civil Procedure<sup>2</sup> also to a limited extent namely insofar as award of interest is concerned and for the execution of the decree drawn pursuant to the award.
17. Section 34 of the CPC provides that where the decree is for payment of money, the court may order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged. Again,

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2      hereinafter referred to as "CPC"

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the reading of the aforesaid Sub-Section (1) of Section 34 CPC would reveal that the interest is payable on the principal sum adjudged and not on interest part of the award.

18. The Interest Act, 1978 vide Sub-Section (3) of Section 3 specifically lays down that nothing in Section 3 which permits the court to award interest shall empower the court to award interest upon interest. It means that ordinarily the courts are not entitled to award interest upon interest unless specifically provided either under any statute or under the terms and conditions of the contract.
19. In [Oil and Natural Gas Commission vs. M.C. Clelland Engineers S.A.](#)<sup>3</sup> which was also a case under the Act, this Court observed that there cannot be any doubt that the Arbitrators have power to grant interest akin to Section 34 CPC and it is clear that interest is not permissible upon interest awarded but only upon the claim made. In the aforesaid case, the claim made was in two parts, and in the second part, interest on delayed payment was also claimed. In that situation, the court held that the interest awarded would form part of the damages or compensation for delayed payment and would become part of the principal amount and thus, in that circumstances, Arbitrator has the power to grant interest on interest which partakes the compensation awarded.
20. In [State of Haryana and Others vs. S.L. Arora and Company](#),<sup>4</sup> it was observed that interest, unless otherwise specified, refers to simple interest and that interest is payable only on principal amount and not on any accrued interest. It was further held that the compound interest can be awarded if there is a specific provision under the statute or in the contract for compounding of interest but no general discretion lies with the courts or tribunals to award compound interest or interest upon interest.
21. In [Hyder Consulting \(UK\) Limited vs. Governor, State of Orissa](#),<sup>5</sup> this Court was dealing with Section 31(7) of the Arbitration and Conciliation Act, 1996, wherein for the purposes of payment of post-award interest, the phrase 'sum directed to be paid by award'

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3 [\[1999\] 2 SCR 830](#) : (1999) 4 SCC 327

4 [\[2010\] 2 SCR 297](#) : (2010) 3 SCC 690

5 [\[2014\] 14 SCR 1029](#) : (2015) 2 SCC 189

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was used and it was held that it includes the pre-award interest and, therefore, post-award interest is payable on the sum awarded which includes pre-award interest. However, a distinction was made between Section 31(7) which simply uses the word 'sum' and Section 34 CPC wherein the phrase 'on principal sum adjudged' has been used. The departure in the use of the language in the two provisions was held to be of great significance which clearly showed that the term 'sum' under Section 31(7) refers to aggregate amount of the award and the pre-award interest whereas 'principal sum adjudged' under Section 34 CPC refers only to the amount awarded.

22. The case of [UHL Power Company Limited vs. State of Himachal Pradesh](#),<sup>6</sup> is again in relation to interpretation of Section 31(7) of the Arbitration and Conciliation Act, 1996, wherein the principal laid down in [Hyder Consulting \(UK\) Limited](#) (supra) has been accepted.
23. In the light of the above legal provisions and the case law on the subject, it is evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is specific stipulation to that effect under the terms and conditions of the contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case subject to the power conferred under the statutes or under the terms and conditions of the contract but where no such power is conferred ordinarily, the courts do not award interest on interest.
24. Neither the Act specifically empowers the Arbitrator or the court to award interest upon interest or compound interest nor there is any other provision which provides for grant of compound interest or interest upon interest. Even Section 34 CPC is silent in this regard whereas Sub-Section (3) of Section 3 of the Interest Act specifically prohibits the same.
25. In view of the above legal position, we have to examine the award in question and the decree drawn in pursuance thereof to find out if compound interest or interest upon interest has been awarded.
26. The relevant part of the award pertaining to the interest and that of the decree has been reproduced hereinbefore.

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6 [\[2022\] 1 SCR 1](#) : (2022) 4 SCC 116

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- 27.** A plain reading of the aforesaid award and decree reveals that interest awarded under the award has been dissected into two parts. The first part relates to the pre-award period from the date of the completion of the work till the passing of the award whereas the second part is the post-award period commencing from the date of the award till the satisfaction of the award. In the first part, simple interest @ 12% per annum has been awarded on the 'amount awarded' whereas in the second part, interest @ 15% per annum has been awarded referring to the 'amount awarded'. The amount awarded in both the situations have to be the same and cannot be two distinct amounts. The 'amount awarded' refers to the principal amount of compensation awarded that is Rs.21,56,745/-. The award and the decree nowhere specifically contemplate for awarding 15% interest per annum on the amount awarded including the interest component i.e. the pre-award interest. This could not have been done even otherwise as there is no provision to that effect under the relevant statutes or the contract. No material has been placed before us or as a matter of fact before any court below to show that the terms and conditions of the contract contained any such provision.
- 28.** In the light of the above discussion, we do not deem it appropriate under the facts and circumstances of the case to exercise our discretionary jurisdiction under Article 136 of the Constitution of India so as to interfere with the opinion expressed concurrently by the two courts below. Therefore, the Special Leave Petition is dismissed.

*Result of the case:* SLP dismissed.

*<sup>†</sup>Headnotes prepared by: Divya Pandey*