

A NEPA LIMITED THROUGH ITS SENIOR MANAGER (LEGAL)

v.

MANOJ KUMAR AGRAWAL

(Civil Appeal No. 3984 of 2019)

B DECEMBER 08, 2022

**[SANJIV KHANNA AND SUDHANSHU DHULIA, JJ.]**

*Code of Civil Procedure, 1908 – Order XXI, Rule 1 – Arbitration and Conciliation Act, 1996 – ss. 34 and 37 – Interest on award – By award dated 14.04.2000, appellant was held liable to pay Rs. 14,49,300/- to respondent with interest @ rate of 18% per annum from date of award, till payment – Objections filed by appellant u/s.34 were dismissed – Appeal filed u/s.37 – High Court passed order whereby, on appellant depositing 50% of the awarded amount within 10 days from date of the order before executing court, the execution proceedings for the balance amount were to remain stayed – Respondent was entitled to withdraw the deposited amount after furnishing personal undertaking for restitution of the amount – Pursuant to the interim order, appellant deposited Rs.7,78,280/- – Respondent withdrew this amount after furnishing the personal undertaking on 08.11.2001 – Whether respondent entitled to interest @ the rate of 18% p.a. as per award on the principal amount of Rs. 14,49,300/- till decision of appeal u/s. 37 of the Act or interest @ the rate of 18% p.a. is payable on the net principal amount after set-off/adjustment of interest due on 08.11.2001 from Rs.7,78,280/- which was withdrawn by respondent on 08.11.2001 – High Court by impugned order held that in terms of Order XXI, Rule 1, sub-rules (4) and (5) of CPC, the appellant having failed to give notice for deposit of amount of Rs.7,78,280/-, the respondent would be entitled to interest @ the rate of 18% per annum, even on the sum of Rs. 7,78,280/-, which was withdrawn by him, till decision of the appeal under u/s. 37 – Held: When the deposited amount is withdrawn and gets credited in the account of the decree holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment debtor to issue notice of deposit – In absence of notice, the interest would cease to run from the date when the amount is transferred /credited in the account of the decree holder – If notice is issued, interest ceases to run from the date of service of notice.*

Allowing the appeal, the Court

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**HELD:** 1. It is accepted and admitted position that the respondent had withdrawn amount of Rs. 7, 78, 280/-, which had been deposited by the appellant, on 08.11.2001. In this background, the question of notice in terms of sub-rule (4) to Rule 1 to Order XXI of the CPC becomes irrelevant. [Para 14][450-E-A; 451-A]

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2. The legislative intent clearly, is that the interest would cease on the principal amount paid by the judgment debtor to the decree holder. Issue of notice is to enable the decree holder to withdraw the amount deposited. Therefore, when the deposited amount is withdrawn and gets credited in the account of the decree holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment debtor to issue notice of deposit. In absence of notice, the interest would cease to run from the date when the amount is transferred/credited in the account of the decree holder. If notice is issued, interest ceases to run from the date of service of notice. [Para 14][451-C-E]

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3. In the present case, Rs.7,78,280/- was deposited by the appellant on 05.11.2001. The stay, therefore, only operated for the balance amount. On the balance amount, certainly, the appellant would be liable to pay interest @ the rate of 18% per annum till the date of actual payment. However, on Rs.7,78,280/- paid, after adjusting /appropriating payment due on the interest accrued, on the balance principal amount paid to the respondent, interest would not be payable. [Para 21][453-C-E]

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*Gurpreet Singh v. Union of India* (2006) 8 SCC 457 : [2006] 7 Suppl. SCR 422-followed on.

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*P.S.L. Ramanathan Chettiar and Others. v. O.R.M.P.R.M. Ramanathan Chettiar* AIR 1968 SC 1047 : 1968 SCR 367 – distinguished.

*State of Rajasthan v. J.K.S Synthetics and Anr.* (2011) 12 SCC 518 : [ 2011] 10 SCR 993 ; *Raunaq International Limited v. I.V.R. Construction Limited and Others* (1999) 1 SCC 492 : [1998] 3 Suppl. SCR 421 and *Hyder Consulting (UK) Ltd. v. State of Orissa* (2015) 2 SCC 189 : [2014] 14 SCR 1029 - referred to.

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A	<u>Case Law Reference</u>		
	[2006] 7 Suppl. SCR 422	followed on	Para 14
	[1968] SCR 367	distinguished	Para 17
	[2011] 10 SCR 993	referred to	Para 22
B	[1998] 3 Suppl. SCR 421	referred to	Para 23
	[2014] 14 SCR 1029	referred to	Para 24

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3984 of 2019.

C From the Judgment and Order dated 19.06.2017 of the High Court of Madhya Pradesh at Jabalpur in Civil Revision Petition No. 368 of 2012.

Sumeer Sodhi, Aman Nandrajog, Devashish Tiwari, Advs. for the Appellant.

D Respondent-in-person

The Judgment of the Court was delivered by

**SANJIV KHANNA, J.**

E 1. By award dated 14.04.2000, the appellant, M/s Nepa Limited, was held liable to pay Rs. 14,49,300/- to the respondent, Manoj Kumar Agrawal. The amount was towards refund of the balance security deposit, which was made by Manoj Kumar Agrawal in terms of the agreement dated 25.10.1996. The award had stipulated that Rs. 14,49,300/- would carry an interest @ the rate of 18% per annum from the date of the award, till payment.

F 2. It is an accepted case that the appellant paid an amount of Rs. 1,50,000/- to the respondent on 22.10.2001. It is also undisputed that this payment would be adjusted/set-off against the interest, and not from the principal amount of the award, i.e., Rs.14,49,300/-.

G 3. The objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996<sup>1</sup> were dismissed on 28.02.2001.

4. The appellant had thereupon preferred an appeal under Section 37 of the Act before the Division Bench of the High Court. On 30.10.2001,

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H <sup>1</sup> For short, the “Act”.

the Division Bench passed an order whereby, on the appellant depositing 50% of the awarded amount within ten days from the date of the order before the executing court, the execution proceedings for the balance amount were to remain stayed. The respondent was entitled to withdraw the deposited amount after furnishing personal undertaking for restitution of the amount if he is so directed, within three months from the date of the final disposal of the appeal. The direction/order attaching the properties of the appellant was to continue. A  
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5. Pursuant to the interim order, the appellant had deposited Rs. 7,78,280/- on 05.11.2001. On 08.11.2001, the respondent withdrew Rs.7,78,280/-, after furnishing personal undertaking in terms of the order dated 30.10.2001. C

6. The appeal preferred by the appellant under Section 37 of the Act was dismissed by the Division Bench on 02.02.2012.

7. It may be stated here that the respondent had also challenged the award by filing objections under Section 34 of the Act, which were dismissed. Thereupon, the respondent had filed an appeal under Section 37 of the Act which was also dismissed. It is stated by the respondent, who appears in-person, that both the appellant and the respondent had preferred a special leave petition before this Court, which were dismissed. D

8. Learned counsel appearing for the appellant accepts that the payment of Rs.7,78,280/-, which was withdrawn by the respondent on 08.11.2001, would be first adjusted/set-off against the interest element payable in terms of the decree, which in this case, is the award. The balance amount would be set off/adjusted towards the principal amount payable. To this extent also, there is no dispute. E

9. The dispute before us is whether the respondent is entitled to interest @ the rate of 18% as per the award on the principal amount of Rs. 14,49,300/- till the decision of the appeal under Section 37 of the Act on 02.02.2012, or interest @ the rate of 18% is payable on the net principal amount<sup>2</sup> after the set-off/adjustment of interest due on 08.11.2001 from Rs.7,78,280/- which was withdrawn by the respondent on 08.11.2001. F  
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<sup>2</sup> See paragraph 25 below. As per calculations made by the appellant *vide* Annexure 'A' to this judgment the net principal amount payable is Rs. 9,13,483/-. As per the calculations made by the respondent *vide* Annexure 'B' to this judgment the net principal amount payable is Rs.9,30,300/-. H

A 10. On 01.08.2012, the respondent had filed an application for recovery of amount of Rs. 3,97,382/- along with the interest. On 18.08.2012, the respondent had filed another application stating and claiming that he was entitled to interest on Rs.14,06,259/-, i.e., the principal amount awarded along with the 18% interest till the decision of the appeal under Section 37 of the Act, which was decided on 02.02.2012.<sup>3</sup>

B 11. The executing court *vide* order dated 05.10.2012 held that the respondent is entitled to decree in the sum of Rs. 3,97,382/- along with the interest @ the rate of 18% per annum.

C 12. The appellant paid an amount of Rs. 4,15,629/- on 31.10.2012. The payment was computed on the basis of the order passed by the executing court quantifying the decree amount as Rs. 3,97,382/- and included interest payable on the said amount.

D 13. Aggrieved, the respondent preferred a civil revision before the High Court of Madhya Pradesh at Jabalpur, which had been allowed by the impugned order dated 19.06.2017, *inter alia* holding that in terms of Order XXI, Rule 1, sub-rules (4) and (5)<sup>4</sup> of the Code of Civil Procedure, 1908<sup>5</sup>, the appellant having failed to give notice for deposit of amount of Rs. 7,78,280/-, the respondent would be entitled to interest @ the rate of 18% per annum, even on the sum of Rs. 7,78,280/-, which was withdrawn by him, till the decision of the appeal under Section 37 of the Act, on 02.02.2012.

E 14. In our opinion, the judgment of the High Court is unsustainable and contrary to the law. In the present case, it is accepted and admitted position that the respondent had withdrawn amount of Rs. 7,78,280/-, which had been deposited by the appellant, on 08.11.2001. In this

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<sup>3</sup> It appears that some payments were made by the appellants post dismissal of their appeal under Section 37 of the Act on 02.02.2012. Therefore, the figures mentioned do not tally with awarded amount etc.

<sup>4</sup> Order XXI – Execution of Decrees and Orders –

1. Modes of paying money under decree. –

G (4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).  
(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment.

H <sup>5</sup> For short, ‘CPC’

background, the question of notice in terms of sub-rule(4) to Rule 1 to Order XXI of the CPC becomes irrelevant. In *Gurpreet Singh v. Union of India*, (2006) 8 SCC 457, a five Judges Bench of this Court had examined Rule 1 to Order XXI of the CPC, post the substitution by Act No. 4 of 1976, and observed that the effect of the substitution is that upon deposit of the decretal amount in the court and giving notice thereof to the decree holder, there would be cessation of interest from the date of notice to the decree holder of such deposit. Rule 1 to Order XXI of the CPC also postulates payment by the judgment debtor to the decree holder by other specified modes, namely, by postal money order, bank or by payment evidenced in writing, in which case the interest ceases to run from the date money is tendered. The legislative intent clearly, is that the interest would cease on the principal amount paid by the judgment debtor to the decree holder. Issue of notice is to enable the decree holder to withdraw the amount deposited. Therefore, when the deposited amount is withdrawn and gets credited in the account of the decree holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment debtor to issue notice of deposit. In absence of notice, the interest would cease to run from the date when the amount is transferred/credited in the account of the decree holder. If notice is issued, interest ceases to run from the date of service of notice.

15. In the present case, order dated 30.10.2001 was passed in the presence of the parties including the respondent. Thereupon, the appellant had deposited Rs. 7,78,280/- before the executing court on 05.11.2001. The respondent had notice of the deposit and accordingly had withdrawn the said amount, i.e., Rs. 7,78,280/- on 08.11.2001.

16. The respondent, who appears in-person, has relied on the judgments of this Court in *P.S.L. Ramanathan Chettiar and Others. vs. O.R.M.P.R.M. Ramanathan Chettiar*, AIR 1968 SC 1047 and the decision dated 13.02.2020 in C.A. No. 3867 of 2010, *Delhi Development Authority through its Vice Chairman vs. Bhai Sardar Singh and Sons*, to submit that the order dated 30.10.2001 being conditional and the withdrawal of Rs. 7,78,280/- being in terms of the conditional order i.e., on furnishing of personal undertaking given by the respondent, the direction for payment of interest @ the rate of 18% on Rs.7,78,280/- would continue till the decision of the appeal under Section 37 of the Act on 02.02.2012. It is only then that the complete title and the payment got vested in the respondent.

- A 17. In our opinion, the submission made is fallacious and is contrary to law. In *Ramanathan* (supra), the amount which was deposited by the judgment-debtor was not withdrawn by the decree holder. The judgment in *Ramanathan* (supra) in paragraph 12 thereof, specifically states that “on principle, it appears to us that the facts of a judgment-debtor’s depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree holder can draw it out on furnishing security, does not pass title to the money to the decree holder. He can if he likes take the money out in terms of the order, but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing another security, say, immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order XXI Rule 1 of the CPC in satisfaction of the decree”. The aforesaid narration makes it clear that this was not a case in which the decree holder had withdrawn the money. The penultimate paragraph of this judgment records that the deposit made was not unconditional, and that the decree holder was not free to withdraw the amount whenever he likes even before the disposal of the appeal. In order to do so, he had to give security in terms of the order, which he did not furnish. It may be noted that this judgment is prior to the substitution of Rule 1 to Order XXI of the CPC by Act No. 104 of 1976 with effect from 1<sup>st</sup> February 1977.<sup>6</sup>
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- E 18. In the decision of this Court in *Delhi Development Authority* (supra), the money deposited by the Delhi Development Authority in the court was not withdrawn by the contractor Bhai Sardar Singh and Sons. In fact, an application was filed by Bhai Sardar Singh and Sons to permit them to withdraw the money, but they were not permitted to do so. In this background, it was held that the deposit was not payment in terms of Rule 1 to Order XXI of the CPC. Under the Arbitration Act, 1940, the award can be executed after the award is made Rule of the Court. Therefore, an award under the Arbitration Act, 1940 *per se* was not a decree of the Court. Under the provisions of the Act, i.e., the Act, 1996, an award is a decree of the Court and is executable, unless objections are filed under Section 34 of the Act.<sup>7</sup>
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<sup>6</sup> Whether the amendment has the effect of substitution of the principle enunciated in *Ramanathan*’s case (supra), need not be examined in this decision.

<sup>7</sup> Post substitution by Act No.3 of 2016 with retrospective effect from 23<sup>rd</sup> October 2015, the legal position has undergone change. Section 36 as it stood before the Amendment Act 3 of 2016 reads:

19. In the present case, objections under Section 34 of the Act were filed and dismissed on 28.02.2001. Thereupon, the award was executable. A

20. In *Delhi Development Authority(supra)*, on the aspect of liability of Delhi Development Authority to pay interest on the deposit made in court for failure to issue written notice, it was held that it was not necessary. The reason was that the decree holder was aware of the deposit made by the judgment debtor. Therefore, the decree holder cannot be permitted to urge and plead that he was served a notice of the deposit. Accordingly, the decree holder, it was held, was not entitled to interest post the decision, even when the judgment debtor had not served any formal notice as required under sub-rule (4) to Rule 1 to Order XXI of the CPC. B C

21. In the present case, the appellate court, on the appeal preferred under Section 37 of the Act did grant stay, subject to the condition that the appellant would deposit 50% of the amount. Rs. 7,78,280/- was deposited by the appellant on 05.11.2001. The stay, therefore, only operated for the balance amount. On the balance amount, certainly, the appellant would be liable to pay interest @ the rate of 18% per annum till the date of actual payment. However, on Rs.7,78,280/- paid, after adjusting/appropriating payment due on the interest accrued, on the balance principal amount paid to the respondent, interest would not be payable. D E

22. The respondent has relied on the principle that the interim order merges into the final order. In Civil Appeal No. 2417 of 2022, decided on 25.03.2022, titled *State of Uttar Pradesh through Secretary and Ors. v. Prem Chopra*, this Court had referred to an earlier decision in *State of Rajasthan v. J.K.S Synthetics and Anr.*, (2011) 12 SCC 518, wherein it has been observed that where a stay is granted by way of interim order on dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by him by virtue of the interim order. The aforesaid observations, in fact, support the appellant and not the respondent. The observations hold that the person liable to make payment F G

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“36. Enforcement. – Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.” H



A would have to pay the principal amount along with the interest which is specified in the contract or the statute as he had enjoyed benefit of the stay order. The interest is payable only on the amount that is not paid. It will be incongruous to hold that the person would be liable to pay interest even in respect of the amount, which has been paid and handed over to the decree holder.

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23. This Court in *Raunaq International Limited v. I.V.R. Construction Limited and Others*, (1999) 1 SCC 492, has observed that the parties, at whose instance, interim orders are obtained, should be made accountable for the consequences of the interim order. These observations obviously are relevant in the context of the present case to the extent that the appellant is liable to pay interest @ the rate of 18% per annum on the amount which was not paid to the respondent. However, the amount which was withdrawn and paid to the respondent, no interest liability would occur and would be payable.

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24. The respondent submits that the payment of Rs. 7,78,280/- being conditional, the respondent would have been under an obligation to refund the said amount in case the appellant had succeeded in the appeal under Section 37 of the Act, 1996. This argument does not impress, as in the event the appellant had succeeded in their appeal, the entire amount paid would have been refundable. The undertaking was not onerous, and was to operate only if the amount of Rs. 7,78,280/- was not refunded by the respondent. The respondent had obviously used and utilized the money. The appellant did not have any right on the money paid to the respondent, who could use it in a manner and way he wanted. There was no charge. Money is fungible and would have gotten mixed up with the other amounts available with the respondent. Right to restitution would not make the payment conditional. Interest has been jurisprudentially defined as the price paid for money borrowed, or retained, or not paid to the person to whom it is due, generally expressed as a percentage of amount in one year. It is in the nature of the compensation allowed by law or fixed by parties, for use or forbearance or damage for its detention.<sup>8</sup> In the context of the present case, interest would be the compensation payable by the appellant to the respondent, for the retention or deprivation of use of money. Therefore, once the money was paid to

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H <sup>8</sup> *Hyder Consulting (UK) Ltd. v. State of Orissa*, (2015) 2 SCC 189, as quoted in Webster's Third New International Dictionary and Corpus Juris Secundum.

the respondent, interest as compensation for deprivation of use of money will not arise.<sup>9</sup> A

25. In view of the aforesaid reasons, we allow the present appeal and set aside the impugned order dated 19.06.2017, whereby the appellant had been directed to pay interest @ the rate of 18% per annum on Rs.14,49,300/- from the date of the award till the date of decision of the appeal under Section 37 of the Act on 02.02.2012. We hold that the appellant would be liable to pay interest @ the rate of 18% on Rs.9,13,483.00/9,30,300.00<sup>10</sup> (the exact amount to be calculated and determined by the executing court) with effect from 08.11.2001 till the payment was/is made. B C

26. Learned counsel for the appellant has submitted that they have made over-payment and our attention is drawn to annexure (P-12), which shows that they have paid total amount of Rs. 56,70,096/-. We would not like to go into the said aspect, as this would relate to computation and calculations. The appellant is entitled to invoke Section 144 of the CPC and take recourse to appropriate remedies available to him in law, in case over-payment had been made to the respondent. D

27. The appeal is allowed in the aforesaid terms.

28. Pending application(s), if any, shall stand disposed of.

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9 We have not examined and decided the issue either way – whether interest would be payable on the amount withdrawn in case withdrawal is on conditions like furnishing bank guarantee etc.

10 We have taken the figures from the calculations made by appellant – M/s Nepa Limited, which is enclosed as Annexure ‘A’ and by Manoj Kumar Agarwal – respondent, which is enclosed as Annexure ‘B’ to this judgment. As per the appellant, the principal amount due and payable is Rs.9,13,483/-. However, as per the respondent, the principal amount due and payable is Rs. 9,30,300/-. The difference is only Rs.17,000/-, *albeit*, the correct computation would be made by the executing court.

A

**Annexure ‘A’****Sheet of Calculation of Interest by NEPA Limited Through its Senior Manager (Legal) – Appellant**

B

S. No.	Particular	Amount (in INR)	
A.	Principal Amount as per the Award dated 14.04.2000	14,49,300/-	
B.	Rate of Interest @18%	For an year: 2,60,874	Per day 714.72
C.	Interest till 22.10.2001	3,96,313	
D.	Amount paid on 22.10.2001 (@ pg 175)	(1,50,000)	
E.	Balance Interest	2,46,313 (C-D)	
D.	F.	Interest till 08.11.2001 (Date of withdrawal of 50% Awarded amount by the Respondent)	12,150
	G.	Total	2,58,463 (E+F)
	H.	50% of Amount deposited on 08.11.2001	7,78,280
E.	I.	Adjusted towards interest	(2,58,640)
	J.	Adjusted towards principal	5,19,817 (H-I)
	K.	New Principal as on 08.11.2001	9,13,483

NEPA LIMITED THROUGH ITS SENIOR MANAGER (LEGAL) 457  
v. MANOJ KUMAR AGRAWAL [SANJIV KHANNA, J.]

**Annexure 'B'** A

**Sheet of Calculation of Interest by Manoj Kumar Agrawal – Respondent**

S. No.	Particular	Amount (in INR)	
A.	Principal Amount as per the Award dated 14.04.2000	14,49,300/-	B
B.	Rate of Interest @18%	-	
C.	Interest till 22.10.2001	3,97,028	C
D.	Amount paid on 22.10.2001 (@ pg 175)	(1,50,000)	
E.	Balance Interest	2,47,028 (C-D)	
F.	Interest till 08.11.2001 (Date of withdrawal of 50% Awarded amount by the Respondent)	12,150	D
G.	Total	2,59,178 (E+F)	
H.	50% of Amount deposited on 08.11.2001	7,78,280	
I.	Adjusted towards interest	(2,59,178)	
J.	Adjusted towards principal	5,19,102 (H-I)	E
K.	New Principal as on 08.11.2001	9,30,300	

Bibhuti Bhushan Bose  
(Assisted by : Preetam Bharti, LCRA)

Appeal allowed.