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M/S SHAHI AND ASSOCIATES

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 3559 of 2010)

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AUGUST 8, 2019

[ARUN MISHRA, S. ABDUL NAZEER AND
M. R. SHAH, JJ.]

C *Arbitration and Conciliation Act, 1996: s. 31(7)(b) – Reduction of rate of interest – Arbitral award along with interest payable in accordance with s. 31(7)(b), at the rate of 18% pa – District judge reduced the rate of interest on the sum awarded from 18% to 6% relying on para 7-A of s. 24 of the UP Amendment Act – Upheld by the High Court – On appeal, held: Section 31(7)(b) clearly states that unless otherwise specified, the awarded sum would carry an interest @ 18% pa – Para 7-A of s. 24 of the U.P. Amendment Act was an amendment to the First Schedule of Arbitration Act, 1940 – Since the Arbitration Act, 1940 has been repealed, the Schedule to the Arbitration Act, including the State amendment, also stands repealed – Thus, the provisions of Arbitration Act, 1940 including para 7-A of s. 24 would have no application to the proceedings commenced after coming into force of the Act of 1996 – On facts, though the agreement was earlier to the date of coming into force of the Act of 1996, the proceedings commenced on 27.10.1999 and were conducted in accordance with the Act of 1996, thus, para 7-A of s. 24 of the U.P. Amendment Act would not be applicable – High Court and the District Judge not justified in reducing the rate of interest by following the U.P. Amendment Act – Award of interest in accordance with s. 31(7)(b) is restored – Arbitration Act, 1940 – Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 – s. 24.*

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Allowing the appeal, the Court

HELD: 1.1 The Arbitration and Conciliation Act, 1996 has come into force with effect from 22.08.1996. Section 85 of the Act of 1996 expressly repeals the provisions of the Arbitration

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Act, 1940. Thus, the Act of 1996 would be applicable to all arbitral proceedings which have commenced on or after the said Act came into force. Para 7-A of Section 24 of the U.P. Amendment Act was an amendment to the First Schedule of Arbitration Act, 1940. This amendment was introduced by the U.P. Act No. 57 of 1976. Section 31(7)(b) of the Act of 1996, before its amendment by Act 3 of 2016, which has come into force with effect from 23.10.2015, is relevant for the purpose of this case, empowers the Arbitrator to award pre-award and post-award interest. Section 31(7)(b) clearly mandates that, in the event the Arbitrator does not give any specific directions as regards the rate of interest on the amount awarded, such amount 'shall' carry interest @ 18% p.a. from the date of award till the date of payment. Since the Arbitration Act, 1940 has been repealed by way of Section 85, the Schedule to the Arbitration Act, including the State amendment, also stands repealed. The only exception is provided in sub-section (2)(a) of Section 85 where a proceeding which had commenced when the Arbitration Act of 1940 was in force and continued even after coming into force of the Act of 1996, and all parties thereto agreed for application of the old Act of 1940. Therefore, the provisions of Arbitration Act, 1940 including the State amendment-para 7-A of Section 24 of U.P. Amendment Act will have no application to the proceedings commenced after coming into force of the Act of 1996. [Para 9-11][644-C-F; 645-B-D]

1.2 In the instant case, though the agreement was earlier to the date of coming into force of the Act of 1996, the proceedings admittedly commenced on 27.10.1999 and were conducted in accordance with the Act of 1996. If that be so, para 7-A of Section 24 has no application to the case at hand. Since the rate of interest granted by the Arbitrator is in accordance with Section 31(7)(b), the High Court and the District Judge were not justified in reducing the rate of interest by following the U.P. Amendment Act. The judgments of the High Court and the order of the District Judge are set aside only insofar as reduction of rate of interest is concerned. The interest awarded by the Arbitrator in accordance with s. 31(7)(b) of the 1996 Act is restored.[Para 12,13][645-E-G]

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3559
of 2010

From the Judgment and Order dated 05.12.2007 of the High Court of Judicature at Allahabad in First Appeal from Order No. 3728 of 2007

B Ms. Komal Mundhra, Saurabh Agrawal, Abhijit Sengupta, Advs. for the Appellant.

Ms. Aishwarya Bhati, AAG, Ashutosh Kumar Sharma, Rajeev Dubey, Vivek Sharma, Kamendra Mishra, Advs. for the Respondents.

C The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.

1. M/s. Shahi and Associates has filed this appeal impugning the common final judgment and order dated 05.12.2007 passed by the High Court of Judicature at Allahabad in F.A.F.O Nos. 3728 of 2007 and 947 of 2007, whereby the High Court has upheld the award of the Arbitrator. However, relying on para 7-A of Section 24 of the Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (for short ‘U.P. Amendment Act’), it has reduced the statutory interest to 6% p.a. from 18% p.a. as awarded by the Arbitrator. The appellant has questioned the reduction of the interest in this appeal.

2. The appellant is a registered partnership firm engaged in civil construction projects for the government of Uttar Pradesh. The appellant entered into an agreement dated 08.07.1993 with the Superintendent Engineer, Drainage Division, District Gonda, U.P. for work related to the Gola Pump House. Owing to certain disputes that arose between the parties with respect to the rate of payment for additional work under the agreement, the appellant served a notice invoking arbitration on the respondents and filed the claim petition on 11.09.1999. Shri B.M. Arora was appointed as the sole Arbitrator on 12.10.1999 and the proceedings commenced on 27.10.1999 under the Arbitration and Conciliation Act, 1996 (for short ‘the Act of 1996’).

3. The sole Arbitrator passed an award on 24.12.2001, whereby the appellant was awarded a sum of Rs. 17, 86, 339/- (seventeen lakhs eighty six thousand three hundred thirty nine). The Arbitrator further

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held that the interest on the sum awarded would be payable in accordance with Section 31(7)(b) of the Act of 1996, i.e. 18% p.a. from the date of the award till the date of actual payment. The operative portion of the award is: A

“According to the above, the petitioner becomes entitled for receiving a total amount of Rs. 17,86,339.00 (Rs. Seventeen lac eighty six thousand three hundred thirty nine only) and the petitioner is hereby awarded the same. B

From the date of award to the actual date of payment an interest at the rate which is given in the provisions of section 31(7)(b) of the Arbitration and Conciliation Act, 1996 shall also be payable on Rs. 17,86,339.00 which is the amount of declared award. C

Both the parties would bear their own cost related with the arbitration.”

4. The respondents 1 and 2 being aggrieved by the aforesaid award filed civil miscellaneous case No. 5 of 2002 before the District Judge, Gorakpur, under Section 34 of the Act of 1996. The District Judge while upholding the sum awarded by the Arbitrator, reduced the rate of interest on the sum awarded from 18% p.a. to 6% p.a. by relying on para 7-A of Section 24 of the U.P. Amendment Act. D E

5. Being aggrieved by the aforesaid judgment dated 28.10.2006, both the parties filed F.A. F.O. Nos. 3728 of 2007 and 947 of 2007 before the High Court. The High Court by way of impugned common final judgment and order has dismissed both the appeals. In the course of the order, the High Court has observed that the District Judge has correctly reduced the rate of interest from 18% p.a. to 6% p.a. in view of para 7-A of Section 24 of the U.P Amendment Act. F

6. Learned counsel for the appellant submits that the arbitration proceedings were commenced on 27.10.1999 under the Act of 1996 and the provisions of Arbitration Act, 1940 will have no application to the proceedings between the parties. The U.P. Amendment Act was a State amendment which introduced para 7-A to the First Schedule of the Arbitration Act, 1940. Since the Arbitration Act, 1940, has been repealed under Section 85 of the Act of 1996, the Schedule to Arbitration Act, G

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A 1940 also stands repealed and para 7-A has become obsolete. Therefore, the Arbitrator has rightly awarded interest @ 18% p.a. under Section 31(7)(b) of the Act of 1996. The District Judge as also the High Court have wrongly relied upon the repealed provision and reduced a statutorily permissible interest rate.

B 7. On the other hand, learned Additional Advocate General appearing for the respondent-State has sought to justify the impugned judgment.

8. We have carefully considered the submissions of the learned counsel made at the Bar.

C 9. The Act of 1996 has come into force with effect from 22.08.1996. Section 85 of the Act of 1996 expressly repeals the provisions of the Arbitration Act, 1940. Thus, the Act of 1996 would be applicable to all arbitral proceedings which have commenced on or after the said Act came into force. Para 7-A of Section 24 of the U.P. Amendment Act was an amendment to the First Schedule of Arbitration Act, 1940. This amendment was introduced by the U.P. Act No. 57 of 1976. The provisions of the Arbitration Act, 1940 including the State amendment will have no application to the proceedings commenced after coming into force of the Act of 1996.

E 10. Section 31(7)(b) of the Act of 1996, before its amendment by Act 3 of 2016, which has come into force with effect from 23.10.2015, is relevant for the purpose of this case, empowers the Arbitrator to award pre-award and post-award interest. This Section clearly states that unless otherwise specified, the awarded sum would carry an interest @ 18% p.a, as extracted below:

F “31. Form and contents of arbitral award –

G (7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

H (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen

per centum per annum from the date of the award to the date of payment”. A

(Emphasis supplied)

11. Section 31(7)(b) of the Act of 1996 clearly mandates that, in the event the Arbitrator does not give any specific directions as regards the rate of interest on the amount awarded, such amount ‘shall’ carry interest @ 18% p.a. from the date of award till the date of payment. Since the Arbitration Act, 1940 has been repealed by way of Section 85 of the Act of 1996, the Schedule to the Arbitration Act, including the State amendment, also stands repealed. The only exception is provided in sub-section (2)(a) of Section 85 where a proceeding which had commenced when the Arbitration Act of 1940 was in force and continued even after coming into force of the Act of 1996, and all parties thereto agreed for application of the old Act of 1940. Therefore, the provisions of Arbitration Act, 1940 including the State amendment namely para 7-A of Section 24 of U.P. Amendment Act will have no application to the proceedings commenced after coming into force of the Act of 1996. B C D

12. In the instant case, though the agreement was earlier to the date of coming into force of the Act of 1996, the proceedings admittedly commenced on 27.10.1999 and were conducted in accordance with the Act of 1996. If that be so, para 7-A of Section 24 of the U.P. Amendment Act has no application to the case at hand. Since the rate of interest granted by the Arbitrator is in accordance with Section 31(7)(b) of the Act of 1996, the High Court and the District Judge were not justified in reducing the rate of interest by following the U.P. Amendment Act. E

13. The appeal, therefore, succeeds and it is accordingly allowed. The judgments of the High Court of Judicature at Allahabad dated 05.12.2007 in F.A.F.O Nos.3728 and 947 all of 2007 and the order of the District Judge, Gorakhpur in Misc. Case No.5 of 2002 dated 28.10.2006 are set aside only insofar as reduction of rate of interest is concerned. The interest awarded by the Arbitrator in accordance with Section 31(7)(b) of the Act of 1996 is restored. F G

14. There will be no order as to costs.