

CASE NO.:
Appeal (civil) 2153 of 2006

PETITIONER:
M/S MUKAND LTD.

RESPONDENT:
HINDUSTAN PETROLEUM CORPORATION LTD.

DATE OF JUDGMENT: 21/04/2006

BENCH:
S.B. SINHA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No.3194 of 2005)

P.K. BALASUBRAMANYAN, J.

Leave granted.

1. This appeal arises out of an award made by the arbitrator on a reference made to him under the Arbitration Act, 1940 (for short "the Act"). Though there was controversy between the appellant and the respondent as to whether there existed an arbitration clause justifying reference to an arbitrator, ultimately, the appellant agreed to the appointment of one of the arbitrators suggested by the respondent clarifying that the appellant was agreeing to the appointment of the arbitrator "not under the alleged contract but outside the alleged contract to decide whether there is a concluded contract and in any event can you invoke the arbitration clause under the alleged contract". Thus, the dispute stood referred to a sole arbitrator. The sole arbitrator while making an award held that there had come into existence a valid contract between the parties; that there was an arbitration clause in the contract and proceeded to adjudicate the claim on merits and passed an award directing the appellant to pay a sum of Rs.1,26,67,529.10 and costs of Rs.75,600/- to the respondent on or before 31.07.1994 and failing payment, directed the appellant to pay interest at the rate of 11 per cent per annum on the sum of Rs.1,26,67,529.10 from 28.06.1994 till the date of payment. The award was pronounced on 27.06.1994.

2. The appellant moved the High Court of Bombay in its original civil jurisdiction seeking to have the award set aside in terms of Section 30 of the Act. A learned single Judge of the Bombay High Court rejected the objections of the appellant to the award except as regards the quantum. The single judge modified the award by reducing the amount payable by the respondent to the appellant to Rs.71,31,954.40 with costs of arbitration of Rs.75,600/-, with further interest at the rate of 11 per cent per annum from the date of the decree till payment or final realization. An appeal filed by the appellant before the Division Bench was dismissed by the Division Bench upholding the finding of the arbitrator that there had come into existence a concluded contract between the parties and that there was an arbitration clause based on which the disputes between the parties could be referred to

arbitration and consequently, the award was one rendered within jurisdiction. Feeling aggrieved thereby, this appeal by special leave has been filed by the appellant.

3. Learned senior counsel for the appellant challenged the decision of the High Court and that of the arbitrator that there had come into existence a concluded contract between the parties. He further contended that even if there was a concluded contract, there was no arbitration agreement in the contract or in the correspondence relating thereto. He also contended on merits that the arbitrator was not justified in awarding damages. Learned senior counsel for the respondent, on the other hand, submitted that the finding by the arbitrator that there had come into existence a concluded contract was based on an appreciation of the materials available and the circumstances obtaining and such a finding by the arbitrator was not amenable to correction in proceedings under Section 30 of the Act which conferred on the court only a circumscribed jurisdiction. Counsel submitted that the arbitrator had neither misconducted himself nor the proceedings. He also submitted that there was no error apparent on the face of the record justifying interference by this Court especially when the single judge and the Division Bench of the Bombay High Court have refused to interfere with the award subject to the modification of the quantum realizable by the respondent. The award could not also be said to be otherwise invalid.

4. We were taken elaborately through the materials by senior counsel for the appellant in an attempt to show that there was no concluded contract between the parties and there existed no arbitration clause. He attempted to argue that what the appellant had agreed to was to the appointment of an arbitrator to decide whether there was a concluded contract between the parties containing an arbitration clause and there is no consistent finding on this question by the arbitrator, the learned single Judge and by the Division Bench of the High Court and the approach and the reasoning of all the three had differed materially. Counsel for the respondent necessarily submitted that the question referred to arbitration was whether there was a concluded contract between the parties, whether there was an arbitration clause, and what was the amount, if any, due to the respondent from the appellant. He submitted that the findings on these aspects based on the materials was perfectly correct and that there was no occasion for interfering with the same.

5. We do not think it necessary to deal in detail with the materials placed before us by learned counsel for the appellant. During the course of the hearing when we took note of the nature of the transaction between the parties and the continuing and prospective business relationship between them, we put it to the counsel for the appellant that even if we accept his contention and hold that there was no arbitration agreement, that may not put an end to the dispute and the same would lead to the parties fighting another round of litigation for years to come, thus, further souring their commercial relationship. Ultimately, counsel for the appellant submitted that the appellant was really aggrieved by the award of future interest at 11 per cent per annum from the date of decree till the date of payment or realization by the learned single Judge. He pleaded that in the circumstances, post decree interest be reduced to six per cent per annum. Learned counsel for the respondent submitted that the conduct of the appellant did not justify any such reduction of

interest as sought for and considering the nature of the contract and the default on the part of the appellant, the rate of post decree interest awarded was justified. Having considered the rival submissions and having taken note of the circumstances and the transaction in question in the light of the correspondence between the parties and on an over all view of the situation, we are of the view that it would be appropriate to reduce the post decree interest awarded by the learned single Judge. We think that in the circumstances seven and a half per cent per annum would be the reasonable rate of interest that could be directed to be paid by the appellant to the respondent, for the period subsequent to the decree. Therefore, while we confirm the decision of the Division Bench upholding the modified award made by the learned single Judge, we reduce the interest awarded by the learned single Judge subsequent to the decree from eleven per cent per annum to seven and a half per cent per annum. In other words, we hold that the amount awarded by the learned single Judge in terms of paragraph 13 of his judgment would bear interest at the rate of seven and a half per cent per annum from the date of that decree (18.08.1998) till the date of final payment and/or realization plus costs of the arbitration proceedings as awarded therein. In the circumstances we direct the parties to bear their respective costs in this Court.

6. The appeal is disposed of on the above terms.