Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5241 OF 2002

Steel Authority of India Ltd. …Appellant

Versus

Gupta Brother Steel Tubes Ltd. …Respondent

JUDGEMENT

R.M. Lodha, J.

Steel Authority of India Ltd. (SAIL) has preferred this appeal by special leave aggrieved by the judgment of High Court of Punjab and Haryana passed on May 15, 2001 whereby the learned Single Judge dismissed Revision Petition preferred by the present appellant against the judgment dated September 1,1999 passed by District Judge, Chandigarh affirming the judgment and order dated May 9, 1994 passed by

the Court of Sub-Judge, 1st Class, Chandigarh dismissing the objections preferred by the present appellant under Sections 30/33 of the Indian Arbitration Act, 1940 and the award dated September 7, 1993 given by the sole arbitrator was made rule of the Court.

2. Brief narration of facts is necessary before we embark upon the contentions raised on behalf of the appellant. On April 18, 1988, SAIL formulated a scheme entitled "Full Requirement Supply Scheme" (for short, 'the Scheme'). The said scheme is said to have been designed for meeting the full requirements of HR Coils/Skolps to the customers. Those who wanted to avail the said material as per the scheme were required to register the requirements with SAIL. The scheme further stipulated that those who wanted material over and above what was likely to be available from indigenous sources and were willing to accept imported HR Coils were required to register the requirements separately. The scheme was in operation in respect of two quarters, namely, (i) July to September, 1988 and (ii) October to December, 1988.

3. The case of the respondent is that pursuant to the terms of said scheme, they submitted an application for 1500 metric tones of imported material for the first quarter(July to September, 1988). It is also their case that they furnished the financial cover in terms of the said scheme.

4. On September 15, 1988, SAIL informed their inability to arrange for the import against the indent for reasons beyond its control.

5. The respondent, thereafter, indented for supply of 1500 metric tonnes of imported material for the second quarter (October to December, 1988). The indent was accepted by SAIL. The respondent furnished securities in terms of bank guarantee in lieu of irrevocable letter of credit and took physical delivery of the goods on March 7, 1989 and made payment for the same on February 15, 1989.

6. It appears that dispute/differences arose between the parties and the respondent lodged its claim to the appointing authority on March 11, 1989. Initially, one Shri K. Janardhana was appointed as Arbitrator but he resigned later on and in his place Shri K.P. Bhaumik was appointed arbitrator.

7. It may be noticed here that an application was made by the respondent before the arbitrator on September 12, 1991 for quantification of claims under the heads 'A', 'AA' and 'AAA' and thereby they made a total claim of Rs. 1,75,41,359/- alongwith interest @ 21 per cent against SAIL before the arbitrator.

8. The claimant – respondent in support of its claim produced oral as well as documentary evidence. In opposition, SAIL also produced oral as well as documentary evidence before the arbitrator.

9. The arbitrator seems to have had fifty sittings and after hearing the parties and taking into consideration the documentary as well as oral evidence passed an award on September 7, 1993. The award runs into almost 290 foolscap pages.

10. The objections to the award were filed by SAIL before Sub-Judge, Ist Class, Chandigarh raising diverse grounds, inter alia; that the arbitrator was biased in favour of the claimant; that he committed a jurisdictional error in adjudication of claims for the period from July to September, 1988 and granting claim in this regard when there was no pre-existing dispute; that the arbitrator

entertained claim in respect of future disputes i.e. disputes not existing at the time of reference; that he went into constitutional questions such as discrimination, etc. which he had no jurisdiction to decide; that he ignored the terms of contract and returned the findings contrary to the express terms thereof; that the arbitrator failed to call for material documents and gave the award which is perverse and based on no evidence and that he committed jurisdictional error by ignoring the express term of the contract, particularly Clause 7.2 and the provisions of the Contract Act.

11. The Sub-Judge, Ist Class, Chandigarh, after hearing the parties overruled the objections raised by SAIL and made the award rule of the Court on May 9, 1994. The Sub-Judge, Ist Class, Chandigarh directed that claimant shall be entitled to interest @ 12% per annum from the date of the judgment until realization.

12. SAIL challenged the judgment and order dated May 9, 1994 passed by the Sub-Judge, Ist Class, Chandigarh by filing an appeal before the District Judge, Chandigarh who by its decision dated September 1, 1999 dismissed the appeal.

13. SAIL preferred revision petition before the High Court of Punjab & Haryana against the aforesaid decisions. It is pertinent to notice here that before the High Court on behalf of SAIL, two contentions were raised, namely, (i) that the arbitrator had committed error of jurisdiction when he entered a time barred claim and (ii) that the Arbitrator had awarded damages to the claimant under category 'A', 'AA' and 'C' by exercising his power beyond Clause 7.2 of the agreement. It was thus submitted that the arbitrator committed misconduct by going beyond the terms of the contract (7.2) and violating the provisions of the Contract Act.

14. The High Court was not persuaded by the two submissions made on behalf of the SAIL and dismissed Civil Revision Petition on May 15, 2001.

15. It is appropriate at this stage to reproduce the arbitration clause in the agreement and Clause 7.2. which is material for deciding this appeal.

"ARBITRATION CLAUSE:

> i) In the event of any question, dispute or difference arising under the conditions referred to above or any special conditions or Contract or in connection with this Contract (except as to any matters, the decision of which is specifically provided for in the conditions referred to above or the special conditions) the same shall be referred to the Sole Arbitration of the Chief Executive (by whatever name

he may be designated at the relevant time) of the Central Marketing Organisation, Steel Authority of India Ltd. (CMO/SAIL) for short) or his nominee. It will be no objection that the Arbitrator is a company's (CMO/SAIL) employee and/or that he had to deal with the matters to which the Contract relates or that in the course of his duties as a company's employees, he has expressed views on all or any of the matters in dispute or difference. The award of the Arbitrator shall be find and binding on the parties to this contract.

ii) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason or his award being set aside by the court for any reason, it shall be lawful for the Chief Executive of the Central Marketing Organisation, Steel Authority of India Ltd. to adopt/nominate another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

iii) It is further a term of his contract that no person other than the Chief Executive of the Central Marketing Organisation, Steel Authority of India Ltd. or his nominee as aforesaid, shall act as Arbitrator and that, if for any reason that is not possible, the Chief Executive of the Central Marketing Organisation, Steel Authority of India Ltd. shall have the right to nominate/appoint another person as second Arbitrator and if the second Arbitrator also fails to arbitrate for any reason, what so ever the matter is not to be referred to Arbitration to all.

iv) The arbitrator may from time to time, with the consent of all the parties to the contract enlarge the time for making the award.

v) Upon every and any such reference, the assessment of costs incidental to the reference and award respectively shall be in the discretion of the Arbitrator.

vi) Subject as aforesaid, the Arbitration Act, 1940 and the Rules thereunder and any statutory modifications thereof, for the time being proceedings under this clause.

vii) If the value of the claim in a reference exceeds Rs.1 lakh, the Arbitrator shall give reasoned award.

viii) The value of Arbitration shall be the place where the contract was concluded or at Calcutta, being the headquarters of the Central Marketing Organization, as it may be fixed by the Arbitrator at his discretion and the place so fixed by the Arbitrator shall be final and binding upon the parties to the contract.

ix) In this clause, the expression, the Chief Executive of the Central Marketing Organisation, Steel Authority of India Ltd. means the Chief Executive of the Central Marketing Organization (by whatever name he may be designated at the relevant time) for the time being and includes, if there be no Chief Executive, or the Chief Executive is on leave or he is absent from duty or is not available for any reason whatsoever, the officer looking after the duties of the Chief Executive of the Central Marketing Organisation whether in addition to his other "functions or otherwise".

Clause 7.2

"SAIL shall supply materials as described in the offer/work order(s)/Delivery order(s) issued by SAIL from time to time. SAIL, however, shall have a period of one month after expiry of the indicated quarter/quarters as grace period for the purpose of supply or supplies. In the event of SAIL's failure(s) to deliver the indicated quantities even after the expiry of the grace period, SAIL shall pay to the customer(s) compensation @0.25% (quarter per cent) per month or part thereof on the value of the materials of the supplies delayed beyond the quarter/quarters plus the grace period(s) subject to a maximum of 3% (three per cent) of the value of the delayed supplies. The value for this purpose shall be worked out on the same basis as mentioned in note (iii) to para 3.1 regarding calculation of Initial Financial Cover. The aforesaid compensation shall be paid within three months from the date of completion of order. In case an order is not executed within 12 months from the expiry date of the grace period, the order would be treated as closed after payment of applicable compensation, if and as due. Delay(s) caused in effecting supplies on account of or all of the *force majuere* conditions and/or on

account of the failure/non-observance of the required formalities by the customer(s) shall be accepted the SAIL shall not bear any liability for such period(s)."

16. With regard to the question relating to Clause 7.2 of General Terms and Conditions of the Contract, the arbitrator considered the matter thus:

"19.14 I have given my careful consideration to the arguments of the counsels for the parties. I find that the compensation was to be paid by the Respondent within a period of three months from the date of completion of the transaction. In case the order is not executed within 12 months from the expiry of the grace period, the same was treated as closed after payment of compensation as due. It is proved on record that no supply was made for July-September 1988 quarter against the duly registered indent demand placed by the claimant and within 15 days of the beginning of the quarter itself i.e. 15.7.1988, the Respondent intimated that the material will not be supplied to the claimant. The case, therefore, cannot fall within the ambit of the relevant terms contained in the compensation Clause reproduced above whereby, in case the order is not executed within 12 months after the expiry of the grace period the same was to be treated as closed and that too after payment of applicable compensation. Neither, it is a case of delayed supply (for July September 1988 quarter's booked).

19.15 In the instant case even otherwise, in this Clause is to be brought into play the cut off date would be 30th October, 1989 (i.e. July-September 1988 + one month grace period (October 1988) + 12 months i.e. upto 30th October, 1989 i.e. to say that after 30th October, 1989 in the event of non-supply, the order was to be treated as closed, but that too after the payment of applicable compensation i.e. 3%, as limited under Clause 7.2. In the instant case what has happened that on 15th July, 1988 itself the Respondent regretted inability to supply the material (vide C-5, C-7 and C-9) despite confirmed and duly registered demand (C-3) by the claimant. No reference of any compensation Clause (7.2) was made nor any cheque for

the amount of compensation at the given rate was sent nor the account of claimant was credited with the amount as per Clause 7.2. Obviously the case is a case of deliberate act of non-supply as 'reasons' beyond control as intimated in C-5, C-7 and C-9 have not been proved by the Respondent, inspite of rigorous cross-examination by the claimant's advocate and more than the ample time and opportunity, at the disposal of the Respondent. What has been contemplated in the compensation Clause is where the *force majuere* Clause is not invoked, there is complete lull or silence on the part of the parties and a period of 12 months expires after the expiry of grace period. In the instant case even the said date would have been 30.10.1989 and even then the Respondent should/must have paid the compensation as stipulated if they wanted to bring the case within the ambit of Clause 7.2, only thereafter the liability of Respondent would have extinguished.

19.16 There is thus, substance in the contention of the claimant that the compensation Clause as discussed hereinabove cannot be made applicable in the fact and circumstances duly proved on record. The alternate argument of the Claimant regarding unconscionability of the contract/particular term thereof vis-à-vis the present Clause 7.2 and relying on AIR 1986 SC 1571 need not be gone into. Under issue No.15, I have attempted to set out various clauses of document C-2, including the present Clause and giving a finding that the Scheme C-2 is in favour of the Respondent, but since the findings under the present issues are that the Clause, even otherwise, is not applicable in the case of non-supply of material for July-September, 1988 quarter I leave the matter to rest without going into the question of unconscionability."

17. The Sub-Judge, Ist Class, Chandigarh while dealing with the objections of the appellant with regard to Clause 7.2 considered the matter thus:

"51. If the above observations of the arbitrator are read carefully it would become clear that he never out stepped the confines of the contract, he has remained inside the parameters of the contract and has construed the clause 7.2

thereof. If he has committed any error in the construction of the contract, that is an error within his jurisdiction. Therefore, the authority of law in Associated Engineering Co. vs. Government of Andhra Pradesh (ibid) is of no help to the objector. In that case the error had arisen not by mis-reading or mis-construing or by mis-understanding the contract but by acting contrary of what was agreed. In that case the arbitrator had traveled outside the permissible territory not by construction of the contract but by merely looking at the same. It was held by Hon'ble Supreme Court that if the arbitrator remained inside the parameters of the contract and has construed the provisions of the contract, his award be interfered with unless he has given reasons for the award disclosing an error apparent on the fact of it. In the present case the arbitrator has reached the conclusion by interacting the contract. The conclusion cannot be termed as conscious disregard of the law or the provisions of the contract. The findings of the arbitrator that clause 7.2 of the scheme is not applicable on the facts and circumstances of the case is not perverse but based on reasoning. Similarly there is no error apparent on the face of record which would vitiate the award. In Sudarsan Trading Co. vs. Government of Kerala And Anr., AIR 1989 SC 890 (ibid) it was held that if on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court and that the court has no jurisdiction to substitute its own evaluation of the conclusions of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. It was further held that by purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract. Therefore, there is no substance in the contention of the objector that the arbitrator has exceeded his jurisdiction by traveling outside the bounds of the contract and by ignoring clause 7.2 of the terms and conditions.

52. The next objection of the objector is that the arbitrator not only ignored the provisions of Clause 7.2 of the contract but he also ignored the provisions of Section 74 of the Contract Act wherein it has been specified that if a sum named in the contract is the amount to be paid in case of breach, or if the contract conditions any other stipulation by way of penalty, the party complaining of the breach is only entitled to receive from the party who has broken the

contract a reasonable compensation not exceeding the amount so named. Learned counsel argued that the arbitrator knowingly went against this provision of law. He further argued that in Sir Chuni Lal V. Mehta & Sons vs. Century Spinning and Manufacturing Co. AIR 1962 SC 1314, the Apex Court has held that where the parties have deliberately specified the amount of liquidated damages, there can be no presumption that they at the same time intends to allow the party who had suffered by the breach to say good bye to the sums specified and claim instead a sum of money which was not ascertained at the date of breach. Learned counsel further argued that the arbitrator proceeded contrary to the settled principle of law that damages for breach of contract by seller by failure to deliver goods are confined to the difference between the contract price of the goods and the market price of the goods if the same are available in the market. Learned counsel pointed out that in the present case the claimant has specifically admitted that the goods were available in the market. It was, therefore, the duty of the claimant to purchase the said goods from the market and the SAIL could have only been made liable for the difference if any between the contractual price and market price.

53. To my mind, in view of my above finding, there is no substance in the contention of the objector that the arbitrator ignored the provisions of Section 74 of the Contract Act. Once the arbitrator held that clause 7.2 of the Contract was not applicable on the facts and circumstances, there can be no question of any liquidated damages. Resultantly it cannot be said that provisions of Section 74 of the Contract Act have been ignored. The authority of law in Chuni Lal V. Mehta (ibid) would have been applicable only if it was held that clause 7.2 of the Contract was applicable. In Hindustan Tea Co. vs. M/s K. Shashikant & Co. AIR 1987 SC 81, it was held that where a reasoned award is challenged on the ground that the arbitrator acted contrary to the provisions of Section 70 of the Contract Act, it would be not ground for settling aside the award. On the same analogy, even if the contention of the objector is accepted, the present award cannot be set aside merely on the ground that the arbitrator acted contrary to the provisions of Section 74 of the Contract Act. In the similar way the contention that the provisions of Sale of Goods Act were not followed is also devoid of any merit because the arbitrator gave due

weight to the respective contention of the parties and reached the conclusion which cannot be termed as absurd."

18. When the matter came to the District Judge in appeal, he after taking into consideration the findings recorded by the arbitrator and the Sub-Judge, Ist Class, Chandigarh, recorded his findings:

"18. On careful reading of these observations of the arbitrator, it would be clear that he never outstepped the parameters of the contract. He remained inside the Laxman Rekha of the contract and construed clause 7.2 thereof in a reasonable manner. If he has committed any error in the construction of the contract, it was error within his jurisdiction. Therefore, the authority reported as AIR 1992 SC 232 Associated Engineering Co. vs. Government of Andhra Pradesh does not help the Appellant. In that case, the error had arisen not by mis-reading or misconstruing or misunderstanding the contract, but by acting contrary to what was agreed. In that case, the arbitrator had traveled outside the permissible territory not by construction of the contract but by merely looking at the same. So it was held by Hon'ble Supreme Court that if the arbitrator remained inside the parameters of the contract, and has construed the provisions of the contract, his award cannot be interfered with, unless he has given reasons for the award disclosing an error apparent on the face of it. In the present case, the arbitrator does not appear to have showed any conscious disregard of the law or the provisions of the contract. So the findings of the arbitrator that the provisions of clause 7.2 of the scheme are not applicable to the facts and circumstances of the present case, cannot be said to be perverse. These are manifestly based on sound reasoning which cannot be said to be perverse. Surely there is no error apparent on the face of the record.

19. In AIR 1989 SC 890 Sudarsan Trading Co vs. Government of Kerala, it inter-alia ruled that if on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, then the award cannot be examined by

the Court, and the Court has got no jurisdiction to substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. It was further ruled ibid that by purporting to construe the contract, the Court cannot take upon itself the burden of saying that this was contrary to the contract. So the learned trial Court was justified in holding that the arbitrator had not exceeded his jurisdiction, nor he had traveled outside the bounds of the contract while interpreting clause 7.2 of the scheme.

20. Surely the quantum of damages is closely inter-related with the interpretation of clause 7.2 of the scheme. But as demonstrated above, the arbitrator concluded, and not perversely or unreasonably, that clause 7.2 of the scheme was not applicable to the facts of the case in hand. Therefore, it proceeded to examine the question of damages in paras 52 and 53 of the impugned judgment.

21. The contention of the learned counsel for the appellant is that not only has the arbitrator ignored the provisions of clause 7.2 of the contract, but he had also ignored the provisions of section 74 of the Contract Act wherein it has been stipulated that if a sum named in the contract is the amount to be paid in case of breach, or if the contract conditions or any other stipulation by way of penalty, the party complaining of the breach is only entitled to receive from the party who has broken the contract, a reasonable compensation not exceeding the amount so named. It is submitted by the Id. Counsel for the appellant that the arbitrator intentionally and knowingly went against the provisions of Section 74 of the Contract Act. Ld. Counsel for the appellant has also relied on AIR 1962 SC 1314 Sir Chuni Lal V. Mehta & Sons vs. Century Spinning and Manufacturing co. where it was inter-alia held that where the parties had deliberately specified the amount of liquidated damages, there can be no presumption that they at the same time intended to allow the party who had suffered by the breach to say good-bye to the sums specified and claim instead a sum of money which was not ascertained at the date of breach. He has further contended that the arbitrator proceeded contrary to the settled principle of law that damages for breach of contract by seller by failure to deliver goods are defined to the difference between the contract price of the goods and the market price of the goods if the same are available in the market. He has pointed out that in

the present case, the Respondent has specifically admitted that the goods were available in the market and therefore, it was the duty of the Respondent to purchase the said goods from the market and the SAIL could have been made liable for the difference, if any, between the contractual price and the market price.

22. However, in para 53 of the impugned judgment, the learned Trial Court inter alia observed that once the arbitrator held that clause 7.2 of the contract was not applicable on the facts and circumstances of this case, there was no question of any liquidated damages and resultantly it cannot be said that the provisions of Section 74 of the Contract Act had been ignored. According to the learned trial Court, the authority of Chuni Lal V. Mehta case (ibid) would have been applicable only if it was held that clause 7.2 of the contract was applicable. It is further observed by it that in AIR 1987 SC 81 Hindustan Tea Co. vs. M/s K. Shashikant & Co., it was ruled that where a reasoned award is challenged on the ground that the arbitrator acted contrary to the provisions of Section 70 of the Contract Act, it could be no ground for setting aside the award. Therefore, on the same analogy, the learned trial Court was not unjustified in concluding that even if the contention of the Appellant is accepted, the present award cannot be set aside merely on the ground that the arbitrator acted contrary to the provisions of Section 74 of the Contract Act."

19. Learned single Judge of the High Court while dealing with the second contention (concerning clause 7.2) put forth before him on behalf of SAIL recorded finding thus:

" Thus, a reading of the above clause which has been relied upon by the learned counsel for the petitioner, makes it abundantly clear that this clause has only covered one exigency regarding the delivery or non-delivery or late delivery of the goods. This clause gives power to the Arbitrator to award compensation starting from 0.25% to the upper limit of 2.01%. This clause never debars the Arbitrator from entertaining the contract and consequential losses which had been suffered by the respondent on account of non-delivery or late delivery of the goods. If on account of

> the act of the petitioner, the respondent-firm had suffered huge losses to itself for the benefit of its customers, certainly it has a right to recover the same. Be that as it may, I am not to look at the merits of the case but I have to examine whether the Arbitrator had exceeded beyond the realm of arbitration clause or clauses of the contract. If he had not, the civil court will not impose its impression/judgment or opinion over the opinion of the arbitrator, but I had already held that the Arbitrator is the master of facts as well as of law. Even his erroneous interpretation of the contract so long as he acts within the contract, is not supposed to be interfered by the civil court much less by the High Court, in the exercise of its revisional jurisdiction."

20. Mr. Jagdeep Dhankar, learned senior Counsel for the appellant urged that the stipulation in Clause 7.2 is in consonance with Section 74 of the Indian Contract Act 1872 and in that clause compensation is provided in respect of supplies made beyond specified period; that the said clause provides for maximum cap of liquidated damages by way of compensation "to a maximum of three per cent of the value of the delayed supplies" and that Clause 7.2 is a complete answer to any breach of the contract for whatsoever reason and, therefore, under no situation the quantum of damages can exceed the stipulation in the liquidated damages clause. The learned senior Counsel would, thus, urge that the arbitrator exceeded his jurisdiction in disregarding well settled principle

that where the contract incorporates liquidated damages clause, for breach of contract under no circumstances the quantum of damages be awarded in excess of the cap provided therein. He strongly relied upon two Constitution Bench decisions of this Court in the case of *Sir Chunilal V. Mehta & Sons Ltd. vs. Century Spinning and Manufacturing Co., Ltd.*[1] *and Fateh Chand vs. Balkishan Dass*[2]. He also relied upon decisions of this Court in *Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.*[3] *and Tarapore & Co. vs. State of M.P.*[4].

21. In *Chunilal V. Mehta & Sons,* the Constitution Bench considered Section 74 of the Contract Act and held that right to claim liquidated damages is enforceable under Section 74 of the Contract Act and where such a right is found to exist, no question of ascertaining damages really arises. It was held that where parties have deliberately specified the amount of liquidated damages there can be no presumption that they, at the same time, intended to allow the party who has suffered by

[1] AIR 1962 SC 1314
[2] AIR 1963 SC 1405
[3] (2003) 5 SCC 705
[4] (1994) 3 SCC 521

the breach to give a go-by to the sum specified and claim instead a sum of money which was not ascertained or ascertainable at the date of the breach. While construing Clause 14 therein, the Court held that by providing for compensation in express terms, the right to claim damages under the general law is necessarily excluded.

22. Section 74 of the Indian Contract Act fell for consideration before the Constitution Bench again in the case of *Fateh Chand.* The Constitution Bench held thus:

> "8……..
> The Section is clearly an attempt to eliminate the sometime elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties: a stipulation in a contract *in terrorem* is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty.
>
> 9……..
>
> **10.** Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (*i*) where the contract names a sum to be paid in case of breach and (*ii*) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable

compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damage"; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.

11. Before turning to the question about the compensation which may be awarded to the plaintiff, it is necessary to consider whether Section 74 applies to stipulations for forfeiture of amounts deposited or paid under the contract. It was urged that the section deals in terms with the right to *receive* from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however, no warrant for the assumption made by some of the High Courts in India, that Section 74 applies only to cases where the, aggrieved party is seeking to receive some amount on breach of contract and not to cases where upon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty" comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum

only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture……"

23. In *Oil and Natural Gas Corporation Ltd.,* while dealing with the aspects of liquidated damages, this Court considered the aforesaid Constitution Bench decisions in *Chuni Lal V. Mehta & Sons and Fateh Chand* and after reference to relevant parts of Sections 73 and 74 of the Contract Act held thus:

> **"46.** From the aforesaid sections, it can be held that when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss which naturally arises in the usual course of things from such breach. These sections further contemplate that if parties knew when they made the contract that a particular loss is likely to result from such breach, they can agree for payment of such compensation. In such a case, there may not be any necessity of leading evidence for proving damages, unless the court arrives at the conclusion that no loss is likely to occur because of such breach. Further, in case where the court arrives at the conclusion that the term contemplating damages is by way of penalty, the court may grant reasonable compensation not exceeding the amount so named in the contract on proof of damages. However, when the terms of the contract are clear and unambiguous then its meaning is to be gathered only from the words used therein. In a case where agreement is executed by experts in the field, it would be difficult to hold that the intention of the parties was different from the language used therein. In such a case, it is for the party who contends that stipulated amount is not reasonable compensation, to prove the same."

24. In *Tarapore & Co.,* a two Judge Bench of this Court considered few decisions of this Court including the decisions

in the case of *M/s Sudarsan Trading Co. vs. Government of Kerala and Anr.*[5], *Associated Engineering Co. vs. Govt. of A.P.*[6] *and Managing Director, J&K Handicrafts, Jammu vs. Good Luck Carpets*[7] and held that where an arbitrator travels beyond a contract, the award would be without jurisdiction and the same would amount to misconduct and such award would become amenable for being set aside by a Court.

25. In *Sudarsan Trading Co.,* this Court held that an error by the arbitrator relatable to interpretation of the contract is not amenable to correction by courts.

26. It is not necessary to multiply the references. Suffice it to say that the legal position that emerges from the decisions of this Court can be summarised thus:

> (i) In a case where an arbitrator travels beyond the contract, the award would be without jurisdiction and would amount to legal misconduct and because of which the award would become amenable for being set aside by a Court.
>
> (ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award.

[5] (1989) 2 SCC 38
[6] (1991)4 SCC 93
[7] (1990) 4 SCC 740

(iii) If a specific question of law is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law does not make the award bad on its face.

(iv) An award contrary to substantive provision of law or against the terms of contract would be patently illegal.

(v) Where the parties have deliberately specified the amount of compensation in express terms, the party who has suffered by such breach can only claim the sum specified in the contract and not in excess thereof. In other words, no award of compensation in case of breach of contract, if named or specified in the contract, could be awarded in excess thereof.

(vi) If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award.

(vii) It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings.

27. Having noticed the legal position, we now turn to Clause 7.2 which can be analysed thus:

(i) SAIL shall supply materials as described in the offer/work order(s)/delivery order(s) issued from time to time.

(ii) SAIL shall have a period of one month as grace period for the purpose of supply or supplies after expiry of the indicated quarter(s).

(iii) SAIL shall pay to the customer(s) compensation @ 0.25 per cent per month or part thereof on the value of the materials of the supplies in the event of its failure(s) to deliver the indicated quantity even after the expiry of the grace period subject to maximum of three per cent of the value of the delayed supplies.

(iv) The compensation shall be paid within three months from the date of completion of order.

(v) In case the order is not executed within 12 months from the expiry of grace period, the order would be treated as closed after payment of applicable compensation.

(vi) SAIL shall not bear any liability for such period where delay caused in effect of supplies is on account of failure/non-observance of the required formalities by the customer.

28. The question that needs to be determined by us is whether the breaches alleged by the respondent are covered by the stipulations contained in Clause 7.2. If the answer is in affirmative, obviously compensation cannot be awarded beyond what is provided therein. On the other hand, if breaches are not covered by clause 7.2, cap provided therein with regard to liquidated damages will not be applicable at all.

29. Insofar as booking of July-September, 1988 quarter by the respondent is concerned, it is an admitted position that the appellant (SAIL) declined the supply of materials i.e. 1500MT of 2mm thickness HR coils on the ground of 'reasons beyond control'. The arbitrator in the award observed that SAIL has admitted that the demand was validly registered by

the claimant; that material was available in abundance specially from domestic source and that supplies were made to others ignoring the claim of the present respondent. The arbitrator held that the intimation of the SAIL to the present respondent that the material will not be supplied to the claimant cannot fall within the ambit of Clause 7.2.

30. Although it has been strenuously urged on behalf of the appellant that stipulations contained in Clause 7.2 are comprehensive enough to include all types of breaches, on a careful consideration thereof, we are unable to accept the submission made on behalf of the appellant. Can it be said that SAIL intended to provide for liquidated damages in the contract even in a situation where they were unable to make supply of materials for the reasons beyond control or they declined to supply the materials on one ground or the other. The answer has to be plainly in the negative. It is well known that intention of the parties to an instrument has to be gathered from the terms thereof and that the contract must be construed having regard to the terms and conditions as well as nature thereof. Clause 7.2 that provides for compensation to the

respondent for failure to supply or delayed supply of the materials by SAIL was never intended to cover refusal to deliver the materials of the supplies on the part of the SAIL. Refusal to supply materials by SAIL resulting in breach is neither contemplated nor covered in Clause 7.2. There is no impediment nor we know of any obstacle for the parties to a contract to make provision of liquidated damages for specific breaches only leaving other types of breaches to be dealt with as unliquidated damages. We are not aware of any principle that once the provision of liquidated damages has been made in the contract, in the event of breach by one of the parties, such clause has to be read covering all types of breaches although parties may not have intended and provided for compensation in express terms for all types of breaches. It is not a question of giving restrictive or wider meaning to clause 7.2 but the question is what is intended by the parties by making a provision such as this and does such clause cover all situations of breaches by SAIL.

31. A careful consideration of clause 7.2 would show that it does not prescribe compensation for every type of

breach. To name a few, breaches such as: (i) supplies of materials not in conformity with the contract; (ii) defective materials of supplies; (iii) deficient or short supply; (iv) different materials of the supplies are apparently not covered by Clause 7.2. We have indicated these breaches by way of illustration only to make a point that the provision in the contract for damages vide clause 7.2 cannot be said to extend to all situations and all types of breaches. In substance and in form, the claim of damages by the respondent for the breaches of contract by SAIL is essentially distinct from the breaches contemplated by Clause 7.2. In this back-drop, if the High Court observed that Clause 7.2 is not panacea of all ills, it cannot be said that High Court fell into an error. Again, the view of the arbitrator that breach due to refusal on the part of SAIL to supply materials in July-September, 1988 quarter does not fall within the ambit of relevant terms contained in the compensation Clause (7.2), by no stretch of imagination can be said to be an absurd view. The arbitrator's view about non-applicability of Clause 7.2 for refusal to supply materials in July-September, 1988 quarter and delayed supply of

materials for October-December, 1988 quarter is founded on diverse grounds elaborately discussed in the award. Whether this is or is not a totally correct view is really immaterial but such view is a possible view that flows from reasonable construction of Clause 7.2. The view of the arbitrator being possible view on construction of Clause 7.2, and having not been found absurd or perverse or unreasonable by any of the three Courts, namely , Sub-Judge, District Judge and the High Court, we are afraid, no case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution.

32. Once the arbitrator has construed clause 7.2 in a particular manner, and such construction is not absurd and appears to be plausible, it is not open to the courts to interfere with the award of the arbitrator. Legal position is no more *res integra* that the arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on the ground that arbitrator has reached at a wrong conclusion. The courts do not interfere with the conclusion of the arbitrator even with regard to construction of a contract, if it is a possible view of the matter.

The words “no award shall be set aside” in Section 30 mandate the courts not to set aside the award on the ground other than those specified in Section 30. In a case such as this, where the arbitrator has given elaborate reasons that compensation clause 7.2 is not attracted for the breaches for which the compensation has been claimed by the respondent and such view of the arbitrator is a possible view, we are afraid in the circumstances award is not amenable to correction by the court.

33. The arbitrator having taken the view in respect of Clause 7.2 that claim of damages by the respondent of the breaches committed by the SAIL for refusal to supply materials in July-September, 1988 quarter and delayed supply of the materials for October-December, 1988 quarter did not fall within the ambit of that clause, his further view that Section 74 of the Contract Act has no application as the contract does not determine damages for the breaches in question cannot be said to be legally flawed. It is true that Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-determined. However, in the

absence of any agreement specifying damages for the breaches alleged by the respondent, Section 74, in the facts and circumstances, is not at all attracted. Seen thus, the two decisions of the Constitution Bench of this Court in *Chunilal V. Mehta & Sons* and *Fateh Chand* have no application to the fact situation of the present case.

34. The learned senior counsel for the appellant would urge that the arbitrator had no jurisdiction whatsoever to entertain the claim preferred on September 12, 1991 by way of an application indicating quantification of claims. The learned senior counsel submitted that the claimant preferred the claim of about Rs. 64 lacs to the designated authority on November 3, 1989 in terms of Clause 10 of the Scheme. The designated authority nominated initially one Shri K. Janardhana as an arbitrator but later on appointed Shri K.P. Bhaumik as Shri K. Janardhana submitted his resignation. Learned senior counsel submitted that the claim submitted on November 3, 1989, pertained to the first quarter and for the first time, after the arbitration proceedings had made substantial headway, the claimant preferred an application designated as

quantification of claims thereby trebling the original claim of Rs. 64 lacs to Rs.175 lacs and introducing the claim in respect of first quarter (July-September, 1988). He, thus, strenuously urged that arbitrator had no jurisdiction to address the fresh claims made on September 12, 1991.

35. We are not persuaded by the aforenoted submission of the learned senior counsel for the appellant for more than one reason. For one, the aforesaid argument was not at all canvassed before the High Court. A perusal of the judgment of the High Court would show that only two contentions were raised there, namely; (i) that arbitrator committed error of jurisdiction when he entered a time barred claim and (ii) that the arbitrator awarded damages to the claimant under category 'A', 'AA' and 'C' by exercising his power beyond Clause 7.2 of the agreement. We are afraid the appellant cannot be permitted to raise a contention before this Court in an appeal by special leave which was not raised before the High Court. This contention is not even indirectly or remotely connected with the plea of limitation that was canvassed before the High Court. For another, even

otherwise, we find no merit in the submission of the learned senior counsel that fresh claim was made by the respondent on September 12,1991. In the claim petition filed by the respondent, in paragraph 18, it has been stated that in view of non availability of certain details which are in possession of the respondent and otherwise, the claimant reserves its right to add, amend and/or modify the statement of claims. Consequent upon the right already reserved in paragraph 18 of the claim petition, the respondent quantified the claims, namely, 'A', 'AA', 'AAA' vide application dated September 12, 1991. We find no merit that by consideration of the claims as quantified vide application dated September 12, 1991, the arbitrator exceeded his jurisdiction.

36. The learned senior counsel for the appellant also urged that claim 'A' pertaining to difference in price has come to be determined by the arbitrator *de-hors* contract stipulations. In this regard the learned senior counsel referred to paragraph 20.21 and 20.22 of the award. We are afraid, this contention too, cannot be permitted to be raised before us since no such contention was raised before the High Court. There has to be

some sanctity and finality attached to the decision of the arbitrator and new plea cannot be allowed to be raised in an appeal under Article 136 which was not raised before the High Court.

37. The learned senior counsel for the appellant vehemently contended that the present case throws up the prescribed jurisdiction issue wherein the arbitrator had chosen to function only outside the confines of the contract and with total disregard of express stipulations and, therefore, this Court must interfere in the matter. He relied upon decisions of this Court in the case of *Rajasthan State Mines & Minerals Ltd. Vs. Eastern Engineering Enterprises & Anr.*[8], *Food Corporation of India vs. Chandu Construction & Anr.*[9], *Steel Authority of India Ltd. vs. J.C. Budharaja, Government & Mining Contractor*[10] *and Associated Engineering Co. vs. Govt. of Andhra Pradesh & Anr.*[6], *State of Jammu & Kashmir and Anr. vs. Dev Dutt Pandit*[11] .

[8] (1999) 9 SCC 283
[9] (2007) 4 SCC 697
[10] (1999) 8 SCC 122
[11] (1999) 7 SCC 339

38. We are afraid none of the decisions cited by the learned senior Counsel for the appellant has any application to the facts of the present case. The courts below have concurrently held that the arbitrator has gone into the issues of facts thoroughly, applied his mind to the pleadings, evidence before him and the terms of the contract and then passed duly considered award and no ground for setting aside the award within the four corners of Section 30 has been made out. We have no justifiable reason to take a different view. As noticed above, only two grounds were urged before the High Court in assailing the award, one of which relating to time barred claim was ultimately notessed before us and the only argument survived for consideration before us related to clause 7.2 of the contract. In what we have already discussed above, the view of the arbitrator in this regard is a possible view.

39. Consequently, appeal has no merit and must fail. The same is dismissed with no order as to costs.

.....J
(Tarun Chatterjee)

……..J
(R. M. Lodha)

New Delhi
September 9, 2009.