



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**COMMERCIAL ARBITRATION APPEAL NO. 2 OF 2022**

01. THE CHIEF ENGINEER AND  
CHIEF ADMINISTRATOR  
Command Area Development Authority,  
Garkheda Parisar, Aurangabad,  
Taluka & District: Aurangabad

02. THE SUPERINTENDING ENGINEER  
AND ADMINISTRATOR,  
Command Area Development Authority,  
Beed, District: Beed

03. THE EXECUTIVE ENGINEER,  
Jayakwadi Irrigation Division No.3,  
Beed, District: Beed .. Appellants  
(Original Respondents NO.2, 3 and 5)

**Versus**

01. HULE CONSTRUCTIONS PRIVATE LIMITED  
Through its Managing Director,  
Mr. Vishwanath Dagdoba Hule,  
Head Office at Ashwini, Shivaji Chowk, Patoda,  
Taluka Patoda, District: Beed

02. THE STATE OF MAHARASHTRA  
Water Resources Department,  
Through its Secretary,  
Mantralaya, Mumbai - 400032

03. THE COLLECTOR AND CHAIRMAN  
District Level Implementation Committee  
(DLIC) Beed  
Through Executive Engineer and Member Secretary  
Minor Irrigation Division  
Headquarter at Ambajogai,  
Distirct: Beed .. Respondents  
(Original Respondents No.1 & 4)

...  
 Advocate for Appellants : Mr. Amit A. Yadkikar  
 Advocate for Respondent No.1 : Mr. J. N. Singh  
 AGP for Respondent No.2: Mr. A. R. Kale

...

WITH

...  
**CIVIL APPLICATION NO. 10992 OF 2022**  
**IN**  
**CARBA/2/2022**

THE CHIEF ENGINEER AND CHIEF ADMINISTRATOR COMMAND  
 AREA DEVELOPMENT AUTHORITY AURANGABAD AND ORS  
VERSUS

HULE CONSTRUCTIONS PRIVATE LIMITED THR ITS MANAGING  
 DIRECTOR VISHWANATH DAGDOBA HULE AND ORS

...  
 Advocate for Applicants : Mr. Amit A. Yadkikar  
 Advocate for Non-applicant No.1 : Mr. J. N. Singh  
 AGP for Non-applicant / State: Mr. A. R. Kale

...

**CORAM** : **ARUN R. PEDNEKER &  
 VAISHALI PATIL-JADHAV, JJ.**

**Reserved on** : **19.01.2026**

**Pronounced on** : **29.01.2026**

**Judgment (Per Arun R. Pedneker, J.):**

1. By the present Commercial Arbitration Appeal, the Appellants are challenging the Award dated 02.02.2019, passed by the sole Arbitrator and the order dated 12.04.2022, passed by the learned District Judge in Commercial Civil Miscellaneous Application No.53 of 2019 under Section 34 of the Arbitration and

Conciliation Act, 1996, thereby, dismissing the application filed by the Appellants.

2. Heard Mr. Amit A. Yadkikar, learned counsel for the Appellants, Mr. J. N. Singh, learned counsel for Respondent No.1 and Mr. A. R. Kale, learned AGP for Respondent No.2.

**FACTS:**

3. Brief facts leading to the filing of this commercial appeal are noted below:-

The Appellant floated a tender for work of repair, renovation and restoration of 19 minor irrigation tanks in District Beed, Maharashtra. The estimated value of the work was Rs.29,55,47,811/-.

The offer of the respondent / claimant being the lowest i.e. 0.11% below the estimated cost was accepted and the claimant was called upon for negotiations and, ultimately, it was agreed that the cost shall be 0.50% below the estimated cost.

It is stated in the claim petition that there were further negotiations and the estimated costs of the work was accepted for Rs.29,40,70,072/- and, accordingly, after completing the necessary formalities, the agreement bearing no.B-1/23 was executed between the parties and work order dated 17.11.2006 came to be issued by the Executive Engineer Jayakwadi Irrigation Division

No.3 / Appellant No.3 herein to the claimant / Respondent No.1 herein. The same was to be completed by 16.11.2007.

Due to prolongation of work for about 3 years from the due date of completion, dispute arose and, accordingly, the claimant issued notice under Clause 30(1) of the General Conditions of Contract for settlement of disputes to Superintending Engineer on 16.02.2009. The Superintending Engineer failed to address the issue, as such, an appeal under Clause 30(2) of the General Conditions of Contract was preferred to the Chief Engineer on 01.10.2011 which was also not decided. Thereafter, under Clause 30 (3) of the General Conditions of Contract, further, appeal was filed before the Secretary, Water Resources Department, on 31.10.2011, which was also not addressed. As such, the contractor issued statutory notice under Section 80 of the CPC on 19.12.2011. Thereafter, Special Civil Suit No.26 of 2012 was filed in the court of Civil Judge Senior Division, Beed for recovery of the dues with interest. In the year 2016, Special Civil Suit No.26 of 2012 was transferred to the Commercial Court and registered as Special Civil Suit No.6 of 2016. On 24.08.2017, the Commercial Court with consent of the parties referred the dispute to arbitration as per Section 89 of the CPC.

The Appellants submits that only the Advocate for Appellants had consented for referring the claim to arbitration

without the consent of the party. However, the Appellants proceeded with the arbitration.

On 27.12.2017, original claimant filed statement of claim before the sole arbitrator and raised claims as under:

**a) claim no. 1** - For loss of Business profit at Rs. 695.59/- Lakhs contending that the claimant contractor anticipated business profit at 15% of the contract value, however because of absolute breach of contract on the part of the respondents the claimant could not earn the business profit as anticipated and would have earned if the contract work would have been allowed to be executed and completed. - Rejected

**b) Claim no. 2** - for Rs. 494.98/- lakhs towards loss of overhead, contending that because of breach of contract committed by the respondents the execution of the work was prolonged and the claimant was required to spent more amount towards over - head charges as specified in Annexure no. 2 - Partly allowed of Rs.67.35 Lakhs

**c) Claim no. 3** - for Rs. 621.82/-lakhs, the losses due to reduction in the productivity of men, machineries and equipments, contending that the claimant had deployed huge machinery on the work site and due to prorogation of work the claimant could not utilize the men, machinery and equipment to their optimum level and suffered huge losses. - partly allowed of Rs.335.20 Lakhs

*d) Claim no. 4 - for Rs. 335.95 lakhs the losses due to reduction in the productivity of the site staff and camping labourers which remained idle due to non availability of the work resulting in huge losses to the claimant.*

*- Partly*

*allowed of Rs.166.28 Lakhs*

*e) Claim, no. 5 - for Rs. 209.58 lakhs towards the loss of interest on account of delayed payment of work done under the running bills, on the contentions that the claimant submitted running bills regularly, however the Executive Engineer failed to make payment of running account bills in time which act amounts a breach of contract. Because of delayed payment the claimant who has borrowed huge loan could not repay the same and required to pay huge interest on the loan to the bank.*

*- Partly*

*allowed of Rs.167.66 Lakhs with interest of 12% per annum*

*f) Claim no. 6 - for Rs. 245.23 lakhs towards the price escalation This claim is preferred on the contention that as per terms and conditions of the contract, the claimant contractor entitled to get price escalation as the work was prolonged beyond the stipulated period, because of default on the part of the respondents, which amounts breach of terms and conditions of contract committed by the respondents.*

*- Allowed*

*of Rs.245.23 Lakhs*

**g) Claim no. 7** - for Rs. 907.23 lakhs is preferred towards revision of rates on the contention that because of breach or default on the part of the respondents the work was prolonged, hence the respondents are liable to revise the rates of the quantity of work executed beyond the stipulated period.

- Rejected

**h) Claim no. 8** - Interest on delayed refund of security deposit. It is contended that the claimant was entitled for refund of initial security deposit as well as fixed security deposit, however this refund was not made on demand but was made after institution of the suit, hence respondents are liable to pay interest for the period of delayed payment.

- Rejected

**i) Claim no. 9** - is for Rs. 72.82 lakhs, the amount of royalty charges which was deducted and recovered from the running bills, though there was no provision to pay or deduct royalty amount from the bills hence respondent are liable to refund the amount which has been illegally deducted.

- Allowed

of Rs. 72.82 Lakhs

**j) Claim no. 10** - is for Rs. 14 lakhs which was the amount of additional security deposit illegally withheld. According to the claimant the total amount of security was of Rs. 298.18 lakhs and out of it Rs. 284.18 lakhs was refunded during pendency of the suit and Rs. 14 lakhs remained to be refunded.

- Rejected

**k) Claim no. 11** - is preferred for interest @ 15% p.a. on all the dues for which the claimant preferred the claims.

- Partly

**Allowed with interest at 12% per annum**

**1) Claim no. 12** - is for cost. According to the claimant, the claimant was unnecessary dragged in the court proceeding and arbitral proceeding hence entitled to claim cost of Rs. 50,00,000/- from the respondents.

- Partly allowed to Rs.20,00,000/-

The claims were opposed by the appellants primarily on the ground that the claims are time barred and that the contractor is not entitled for any claims being the defaulting party.

The issues framed by the arbitrator and the findings thereon are noted as under:

**Issues**

1) Whether the time was essence of contract? -No

2) Whether it is proved by the claimant that the respondents have committed fundamental and material breach of the contract during execution of the work? - Yes

3) Whether in terms of Contract (clause 38 of G.C.C.) the claimant is entitled to revision of rates? -No

4) Whether it is proved by claimant that the respondents failed to conduct survey of silt site and the work of removal of silt was delayed because of default on the part of the respondents? -Yes

5) Whether it is proved by claimant that the respondents failed to hand over work site within time to the claimant and the execution of work was delayed?

-Yes

6) Whether it is proved by the claimant that the respondents have not made payment of running bills in time and thus committed breach of terms of the contract?

-Yes

7) Whether respondents act to demand insurance cover for additional work was legal and valid in terms of the contract?

-No

8) Whether it is proved by the claimant that the respondents used to release water in canal without notice/intimation to the claimant and this act caused delay in execution of work as well as loss to the claimant?

-Yes

9) Whether the claimant is entitled to price escalation in terms of the contract/ and in terms of government Resolution?

-Yes

10) Whether the act of respondents to deduct amounts except statutory deductions from running bills is illegal?

-Yes, illegal and invalid

11) Whether the act of the Respondents to impose penalty or fine is justified?

-Not justified

12) Whether respondents authorities failed to take action and settle the dispute under clause no. 30 and it's Sub Clause of G.C.C.?

-Yes

13) Whether the respondents illegally retained the amount of additional deposits and security deposit? -  
Yes, but refund was made during pendency of the suit

14) *What amount the claimant is entitled for under claim no. 1 to 10?* -Claim Nos. 1,7,8 and 10 stands rejected, Claim nos. 2,3,4,5,6 and 9 are allowed, for total amount of Rs.10,54,54,600/-only

15) *Whether the Respondents prove that the claims are barred by limitation?* -No

16) *Whether the claimant waived his claims by not challenging the decision of Chief Engineer and Secretary under clause 30 of G.C.C?* -No

17) *Whether the claimant is entitled to interest as claimed vide claim no. 11 and at what rate?* -Yes @ 12%

18) *What order about cost?* -Yes Rs.20,00,000/-

The sole arbitrator passed the award on 02.02.2019 and allowed the claims partly. The arbitrator in all allowed 6 claims i.e. Claims no.2, 3, 4, 5, 6 and 9 for total amount of Rs.10,54,54,600/-. The appellants challenged the award by filing Civil Miscellaneous Application No.53 of 2019 under Section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge, Beed and later on the same was transmitted to the learned Commercial Court. The same was dismissed and, accordingly, the present Commercial Arbitration Appeal under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 is filed.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS HEREIN:**

4. **Mr. Amit A. Yadkikar**, learned counsel for the appellants primarily makes two fold submissions, that the award is contrary to the substantive provisions of law and the provisions of the Arbitration and Conciliation Act and against the terms of the contract.

The arbitral tribunal has not followed the terms and conditions prescribed under tender agreement and, thus, has acted beyond its jurisdiction and thereby the arbitral award is patently illegal and should be set aside.

It is further submitted that the work order came to be issued on 17.11.2006 and the stipulated time for completion of work was 12 months i.e. 16.11.2007. The work order reflects condition that the contractor shall not proceed with the work till the silt survey is completed and report is prepared by the authorities. This condition was to be followed by the contractor and, thereafter, the men and machinery shall be moved to the work site. The contractor has failed to intimate the mobilization of men and machinery which he was bound to do. The claim of the claimant that he has mobilized the machinery, material, equipments and men before the silt survey and started the work is without any evidence. The claimant has not submitted the report as per condition no.6 of the tender under which it was obligatory

on the part of the claimant to submit daily progress report to engineer in charge and was to specify skilled and unskilled labours engaged on site. The applicant had sent various letters intimating very slow work progress and directed to speed up the work. There was shortage of men and machinery and, as such, the contractor was directed to increase men and machinery. The de-silting was to be done once the survey is completed. As such, there was no occasion for the contractor to keep the machinery present and as per condition no.10 of the tender document the list of machinery possessed by him and also a list of machinery procured by him was to be submitted by the contractor. The contractor did not complete the work although various letters were given to him. The claim regarding release of the water in canal is frivolous. The claim petition is bereft of details of dates for release of water and for how many days water remained in the canal. So also, it cannot be said that in all the 19 canals, there was release of water. The allegations regarding delay in payment of running bills is not at fault of the applicant and the same is on the part of the claimant. As per clause 11 of tender document the claimant / contractor was required to submit the bill regularly for the work executed, however the contractor did not submit such bills, as such, there was no delay in making payments. After granting 12 months extension the work was still not completed. By letter dated

23.10.2008, fine of Rs.1,000/- per day was imposed on the contractor for delayed work.

5. Mr. Amit A. Yadkikar, learned counsel for the appellants relied upon the following Judgments:

- i) Sepco Electric Power Construction Corporation Vs GMR Kamala Energy Ltd. decided on 26.09.2025, 2025 INSC 1171: MANU/SC/1359/2025*
- ii) Union of India and Ors Vs Bharat Enterprises Decided on 23.03.2023, 2023 INSC 277: MANU/SC/0335/2023*
- iii) PSA Sical Terminals Pvt Ltd Vs The Board of Trustees of V.O. Chidambranar Port Trust and Others, Decided on 28.07.2021, 2021 INSC 365: MANU/SC/0485/2021*
- iv) Steel Authority of India Ltd Vs J.C. Budharaja, Decided on: 01.09.1999, 1999 INSC 375: MANU/SC/0542/1999*

6. Argument of the Appellants is primarily on the ground that there is no clause for escalation of price of material and labour provided in the contract. The contract specifically provides that there shall be no escalation of price for delay and, thus, the escalation of price of material and labour granted is thus erroneous, and, secondly, de-silting work was to be carried out after the work of survey, as such, there was no occasion to bring

labour and machinery to the site before the survey was conducted and, thirdly, the delay is attributable to the contractor.

**SUBMISSION ON BEHALF OF THE RESPONDENT HEREIN:**

7. Per contra, **Mr. J. N. Singh**, learned counsel appearing for the respondent has submitted that only Claims No.1, 4, 6 and 7 were partly allowed and reject the other claims and interest is granted at the rate of 12.10% . The appellants have neither challenged the the composition nor jurisdiction of the the arbitral tribunal as per Sections 12,13 and 16 of the Arbitration and Conciliation Act, 1996. The arbitrator has interpreted the contract and the correspondence between the parties and has considered the oral and documentary evidence and allowed the claims, as such, this court cannot travel into the work of re-assessing the evidence. The District Judge-2, Beed i.e. the Commercial Court has gone through the record and proceedings and passed the impugned order with detailed reasoning and confirmed the said award. The arbitrator was appointed with the consent of the parties.

**CONSIDERATION:**

8. The first issue raised is of consent to refer the dispute to arbitration. It is submitted that consent was given only by the Counsel and not by party. However, this objection to the constitution of the arbitral tribunal is not raised in defence

statement at the earliest under Section 16 of the Arbitration and Conciliation Act. The tribunal was not called upon to rule on its jurisdiction and the appellants have participated in the proceeding before the tribunal.

The Hon'ble Supreme Court in the case of **Narayan Prasad Lohia Vs. Nikunj Kumar Lohia and others, (2002) 3 SCC 585** has observed that objection to the constitution of the tribunal has to be raised as provided in Section 16 and if the same is not raised the same is deemed to have been waived.

The Hon'ble Supreme Court in the case of **Madhya Pradesh Rural Development Authority and another Vs. L. G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826** has observed that when no objection has been raised by the respondent under Section 16 at the appropriate stage within time stipulated the award could not have been annulled.

The Hon'ble Supreme Court in the case of **Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and another, (2007) 2 SCC 720**, while considering a case, where plea was raised as regards there being no arbitration clause in the agreement and the constitution of the arbitral tribunal was void, the court observed that the objection was not raised in the written statement before the arbitrator. The court did not permit the objection to be raised later after completion of arbitration proceeding. The Hon'ble

Supreme Court observed that the respondent had participated in the arbitration proceedings, as such, the respondent had not invoked Section 16 of the Arbitration Act and did not challenge the competence of the arbitral tribunal and the arbitral tribunal was not called upon to rule on its jurisdiction in such situation when the parties have accepted that there was an arbitration agreement, the respondent was not permitted later to contend that the clauses in the contract did not constitute arbitration agreement.

In the instant case, in the defence statement, the objection to the constitution of the arbitral tribunal being not raised under Section 16(2) of the Arbitration and Conciliation Act, the same cannot be permitted at this stage.

As regards the issue of limitation, the work is completed in 2009 and the suit is filed after exhausting the internal remedy provided in Clauses 30(1), 30(2) and 30(3) of the contract. Although, the dispute was raised in terms of above clauses before, the Superintending Engineer on 16.02.2009 and the Superintending Engineer by letter dated 01.10.2011 (Annexure-XXIII) had intimated to the Contractor giving him the final notice under Clause 30(1) of the General Conditions of Contract for settlement of various disputes, differences and claims arising out of captioned subject contract, however, there was no final settlement of claim. Thereafter, claim was raised before the appellate forum

i.e. to the Chief Engineer on 01.10.2011 and again further before the Secretary, Water Resource Department on 31.10.2011 under Clause 30(3) of the contract, which was not addressed i.e. formally accepted or rejected and, thus, statutory notice under Section 80 of the CPC is given on 19.12.2011 and the suit is filed in the year 2012 which is within limitation. The above facts are not disputed by the appellants, as such, no case is made out to dismiss the suit on limitation.

Considering the submissions of the parties, the next issue that arises for consideration is, whether the arbitrator has acted beyond jurisdiction and against the specific contractual provision.

#### LAW ON THE SUBJECT:

9. Before we deal with the issue raised i.e. whether the arbitrator has traveled beyond jurisdiction and against the provisions of the contract, it is necessary to examine the law on this subject. The Hon'ble Supreme Court in the case of ***Mc Dermott International v. Burn Standard Co. Ltd. , (2006) 11 SCC 181*** has held that the construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking

into consideration the conduct of the parties. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law.

10. The Hon'ble Supreme Court in the case of **National Highways Authority of India Vs. ITD Cementation Indian Ltd., (2015) 14 SCC 21** has held that the arbitral tribunal shall decide in accordance with the terms of the contract but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do. The arbitrator is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract.

11. Having observed the law as above with regard to the interference with the arbitral award, when the submission is that the arbitrator has traveled beyond the contract, we now proceed to deal with the contentions of the parties. The contention raised is that clause in the contract prohibit grant of escalated prices for delay in work. In this regard, relevant clauses of contract can be examined as under:

**CLAUSE 3B**

*b) To carry out the work or any part to the work departmentally debiting the contractor With the cost of the work, expenditure incurred on tools and plant and charges on additional supervisory staff including the cost of work charged establishment employed for getting unexecuted part of the work completed and crediting him with the value of the work done departmentally in all respects in the same manner and at the same rates as if it had been carried out by 'the contractor under the terms of his contract. The certificate of the Executive Engineer as to the costs and other allied expenses so incurred and as to the value of the work so done departmentally shall be final and conclusive against the contractor*

**CLAUSE 6**

*If the contractor shall desire an extension of the completion of work on the ground of his having been unavoidably hindered in its or on any other ground he shall apply in writing to the Executive Engineer before the expiry of the period stipulated in the tender or before the expiration of 30 days from the date on which he was hindered as aforesaid or on which the cause for asking for extension occurred, whichever is earlier and the Executive Engineer may if in his opinion there was reasonable grounds for granting an extension, grant such extension as he thinks necessary or proper. The decision of the Executive Engineer in this matter shall be final.*

**CLAUSE 6(A)**

*In case of delay in handing over the land required for the work due to unforeseen causes the contractor shall not be entitled for any compensation whatsoever from Government on the ground that the machinery or labour was for certain period remained idle, contractor may however apply for extension of time limit which may be granted on the merit of the same.*

*The contractor will not have any claim in the case of delay by the Department of removal of trees or shifting arising, removing of telephone or electrical lines (overhead or underground) or other structure it any which may come in the way of work. However suitable extension can be granted to cover such delay.*

### **CLAUSE 38**

- 1) Quantities in respect of the several items shown in the tender are approximate and no revision in the tendered rate shall be permitted in respect any of the items so long as subject to any special provision contained in the specification prescribing a different percentage of permissible variation the quantity of the Item does not exceeds the tender quantity by more than 25 percent and so long as the value of the excess quantity beyond this limit at the rate of the item specified in the tender, is not more than Rs.5000.
- 2) The contractor shall, if ordered in writing by the Engineer so to do also carry out any quantities in excess of the mentioned in sub-clause [i] hereof on the same conditions as and in accordance with the specification in the tender and at the rates [ii] derived from the rates entered in the current schedule of rates and in the absence of such rates [ii] at the rate prevailing in the market the said rates being increased or decreased as the case may be by the percentage which the total tendered amount bears to the estimated Cost of the work as put to tender based upon the schedule of rates applicable to the year in which the tenders were invited for the purpose of operation of this clause, this cost shall be taken to be .....in words.
- 3) Claim arising out of reduction in the tender quantity of any item beyond 25 percent will be governed by the provision of clause 15 only when the amount of such reduction beyond 25 percent at the item specified in the tender is more than Rs.5000.

### **CLAUSE 40**

*No compensation shall be allowed for any delay caused in the starting of the work on account of acquisition of*

*land, or in the case of clearance of Works on account of any delay in according sanction to estimates.*

#### **CLAUSE 41**

*No compensation shall be allowed for any delay in the execution of the work on account of water, standing in borrow pits or compartments. The rates are inclusive for hard or cracked soil, excavation in mud, subsoil, water standing in borrow pits and no claim for an extra rate shall be entertained, unless otherwise expressly specified.*

#### **CLAUSE 45**

*Any contractor who does not accept conditions shall not be allowed to tender for works.*

12. From the aforesaid clauses of the contract, it would be gathered that the contract does not provide for escalatory price. Clause 6(A) particularly provides that the contractor shall not be entitled for any compensation on the ground that the machinery and labour for certain period remained idle. However, the contractor may be granted extension of time if applied and on merits. Clause 41 provides that no compensation shall be allowed for any delay in execution of work on account of water standing in borrow pits or compartments. Clause 38 provides that there shall be no revision in rates except when the prices exceed 25% of original value. Clause 45 also provides that the contractor also has to accept all the conditions.

13. In the instant case, we find that the arbitrator has discussed all the clauses above in detail and, particularly, has observed that the work order was issued on 17.11.2006 and the contract period was for 12 months which was to expire on 16.11.2007. The work order was itself conditional and the silt survey was required to be completed by the department. However, the survey work was not completed at least till May-2007 and, thereafter, the rainy season commenced and it was not possible for the contractor to carry out the work of silt removal in the rainy season of four months. As such, out of contract period of 12 months, the silt survey was not done of 6 months and after six months sites of 9 tanks out of 19 tanks were made available by the end of May 2007 but within a period of one month of availability of site, rainy season had commenced and it was not possible for the contractor to complete the work of removal of silt from 9 tanks or from the canals. For this delay, the appellants herein are held responsible by the arbitrator. Since, the appellants herein are held responsible for the delay and they having committed breach of the contract, the arbitrator has proceeded to grant some of the claims partly. Once the breach of the contract is noticed at the instance of the appellants herein, the appellants cannot thus fall back upon the clause of contract which provides that there shall be no escalatory price for delayed work. It is well settled in the Judgment of the

Hon'ble Supreme Court in the case of **Assam State Electricity Board and Others v. Buildworth Private Limited, ( 2017 ) 8 SCC 146**, so also, in the case of **P.M. Paul v. Union of India, 1989 Supp (1) SCC 368**, that the escalation is a normal incident arising out of gap of time in this inflationary age in performing any contract. So also, the Hon'ble Supreme Court in the case of **K.N. Sathyapalan v. State of Kerala, (2007) 13 SCC 43** has observed that ordinarily, the parties would be bound by the terms agreed upon in the contract, but in the event one of the parties to the contract is unable to fulfil its obligations under the contract which has a direct bearing on the work to be executed by the other party, the arbitrator is vested with the authority to compensate the second party for the extra costs incurred by him as a result of the failure of the first party to live up to its obligations.

14. The arbitrator has also taken into consideration that there were certain running bills made for the period between March-2016 to July-2016, as such, it cannot be stated that there was absolutely no activity for that period.

15. The claim granted with respect to loss of overhead and reduction in productivity of men, machineries and equipments, cannot be interfered with by this court. The same is based on evidence before the arbitrator and extensive discussion is made by

the arbitrator on this aspect. The same is particularly examined by the District Court in an application under Section 34 of the Arbitration and Conciliation Act. The jurisdiction of this court under Section 37 of the Arbitration and Conciliation Act cannot exceed beyond the limit prescribed under Section 34 of the Arbitration and Conciliation Act. This court, while examining an order rejecting to set aside an Arbitral Award cannot examine the award on merits and has to confine itself to ascertaining, whether the court exercising jurisdiction under Section 34 has acted within the boundaries of that provisions [**C & C Constructions Limited Vs. Ircon International Limtied, (2025) 4 SCC 234**]. An arbitral award may be set aside on the ground of patent illegality only, when such illegality goes to the root of the matter, however, reappreciation of evidence is impossible under the guise of patent illegality [**Somdatt Builders - NCC - NEC (JV) Vs. National Highways Authority of India and others, (2025) 6 SCC 757**].

16. The primary contention of the appellants that the arbitrator could have not travelled beyond the terms of the contract, more particularly, that there can be no grant of escalatory price or any amount for idling of machinery and labour, cannot be accepted as there is breach of the contract by the appellants, as such, the liability is fixed by the arbitrator.

Notwithstanding the clauses in the contract, when the party has failed to standby it's part of the contract, it is not available for the defaulting party to insist upon implementation of the Clauses of the contract providing for no claim for idling of machinery or escalation of price. The argument raised is, thus, rejected. We find no error in the impugned order of the Commercial Court dismissing the application under Section 34. As such, Commercial Arbitration Appeal No.02 of 2022, stands dismissed. Interim relief granted in Civil Application No.10992 of 2022 is vacated and, consequently, the civil application also stands dismissed.

**[VAISHALI PATIL-JADHAV, J.]**

**[ARUN R. PEDNEKER, J.]**

17. At this juncture, learned counsel appearing for the Appellants seeks stay of this Judgment. He submits that 50% of the award amount is deposited and that the respondent may withdraw the said amount and, therefore, it is necessary to stay the operation of this Judgment.

18. Considering that the Arbitral Award and the remedy provided for setting aside the award under Section 34 of the Arbitration and Conciliation Act, 1996 are against the Appellants,

so also, the Commercial Arbitration Appeal being dismissed today, no case is made out for stay of this Judgment.

**[VAISHALI PATIL-JADHAV, J.]**

marathe

**[ARUN R. PEDNEKER, J.]**