

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 21.04.2026

Pronounced on:30.04.2026

Uploaded on: 30.04.2026

*Whether the operative part
or full judgment is
pronounced: **Full***

**RP No.26/2024 in
CM(M) No.102/2023**

MANZOOR AHMAD GUNNA& ORS. ... PETITIONER(S)

*Through: - Mr. A. M. Dar, Sr. Advocate, with
Mr. Danish Majeed, Advocate.*

Vs.

UT OF J&K AND ANR. ...RESPONDENT(S)

Through: - Mr. Ilyas Nazir Laway, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The review petitioners have sought review of order/judgment dated 31.05.2024 passed by this Court in CM(M) No.102/2023 filed by the review petitioners against order dated 04.02.2023 passed by the learned Principal District Judge, Srinagar, whereby execution petition filed for execution of arbitral award that had been made rule of the court, has been disposed of as having been satisfied. Vide the judgment under review, this Court has upheld the order passed by the learned Executing Court by holding that the review petitioners are only entitled to claim interest on the principal sum awarded by the Arbitrator, as modified

by the judgment of the District Judge read with judgment of this Court. It has been further held that the component of *pendente lite* interest cannot form part of the principal sum and, as such, the Executing Court has rightly calculated the interest payable to the petitioners on the principal sum.

2) The first ground that has been raised by the review petitioners in support of their plea is that this Court, while passing the judgment under review, has relied upon Section 34 of the Civil Procedure Code, 1908 (hereinafter referred to as “the Central Code”) to conclude that interest should only be calculated on the principal sum whereas, in the instant case, J&K Civil Procedure Code, 1977 Svt. (hereinafter referred to as “the State Code”) was applicable. It has been contended that in Section 34 of the State Code, the term used is “aggregate sum” in contradiction to “principal sum” as used in the Central code. According to the review petitioners, “aggregate sum” would include pre-reference and *pendente lite* interest along with the “principal sum” for calculation of future interest. Thus, the aforesaid fundamental difference between the two Codes constitutes an error apparent on the face of the record necessitating a review to correct this misapplication of legal provision.

3) It has been contended that while passing the judgment under review, this Court has re-evaluated the legal and factual findings recorded by the Arbitrator. It has been further contended that the proceedings before the Arbitrator commenced in the year 1998 and the award was rendered on 08.08.2002 whereas this Court has recorded in para (2) of the judgment under review that the Arbitrator made his award on 13.11.1998 and this mis-statement of fact is an error apparent on the face of the record. It has also been contended that the provisions of the Jammu and Kashmir Arbitration Act, 1945, have been erroneously applied to the present case because the arbitration proceedings had commenced in the year 1998, when the J&K Arbitration & Conciliation Act, 1997, had come into force.

4) I have heard learned counsel for the parties and perused record of the case.

5) So far as legal position as regards scope of jurisdiction of this Court to review its judgments is concerned, the same is well settled. The High Court exercises its powers of review in terms of Rule 65 of the High Court Rules. As per the said Rule, an application for review can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the CPC. The said provision lays down that the power of review can

be exercised on the grounds when there is an error apparent on the face of the record or in a case where there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the review petitioner at the time when the order under review is passed. Power of review can also be exercised for any sufficient reason. The Courts have interpreted the expression “for any sufficient reason” as a reason which is akin to the aforesaid two reasons. In no other case, the Court can exercise its power of review.

6) Before dealing with the contentions of the review petitioners, it has to be ascertained as to whether it is the provisions of J&K Arbitration Act, 1945, or it is the provisions contained in J&K Arbitration and Conciliation Act, 1997, which are applicable to the present case, as this is one of the grounds raised by the review petitioners in the present case.

7) A perusal of the record would show that the review petitioners had approached this Court by filing a petition bearing No.28 of 1985 under Section 20 of J&K Arbitration Act, 1945, which came to be disposed of in terms of order dated 16th October, 1989, by virtue of which Shri Qazi Nizam-ud-Din, retired Chief Engineer, was appointed as

Arbitrator to settle the disputes *inter se* the parties. A number of developments took place and ultimately Shri A. W. Kraipak came to be appointed as Arbitrator on 18th September, 1995. The proceedings before the Arbitrator were stayed at the instance of one or the other party and ultimately Qazi Ghulam Rasool, retired Chief Engineer, came to be appointed as Arbitrator and he filed his award in a sealed cover before the District Judge, Srinagar, on 8th August, 2002, along with an application seeking extension in time for filing the award. Thus, the arbitration proceedings in the present case have clearly been held under the J&K Arbitration Act of 1945 and not under the J&K Arbitration and Conciliation Act of 1997. The contention of the review petitioners in this regard is wholly misconceived.

8) It is correct that in para (2) of the judgment under review, the date of the award has been erroneously mentioned as 13.11.1998, though the award was made by the Arbitrator on 8th August, 2002. This appears to be a typographical error and to this extent the judgment under review is required to be corrected.

9) The main ground that has been urged by the review petitioners for seeking recall of the judgment under review is that this Court has erroneously applied the provisions of

Central Code instead of State Code to the present case. To this extent also, the contention of the review petitioners is correct.

10) While passing the judgment under review, this Court has taken note of the provisions contained in Section 34 of the Central Code which relates to award of interest. In the said Code the expression used is “principal sum adjudged” whereas Section 34 of the State Code, which also governs the field relating to award of interest by a civil court, contains the expression “aggregate sum so adjudged”. Thus, there is a marked distinction between the provisions contained in Section 34 of the Central Code and similar provision contained in State Code. While the future interest in terms of the central code is payable on principal sum, the future interest under the state code is payable on aggregate sum adjudged, which would include the principal sum along with interest from the date of suit to the date of decree, as also the interest on principal sum for any period prior to the institution of the suit.

11) The question that arises for determination is as to whether misapplication of the provisions of Code of Civil Procedure to the present case would make any difference to the conclusion that has been arrived at by virtue of the judgment under review.

12) In the above context, if we have a look at the judgment under review, the conclusion arrived at by this court, that review petitioners are entitled to interest on the principal sum awarded by the arbitrator and not on the principal sum awarded by the arbitrator along with interest that has accrued thereon is based on two grounds. The first ground takes strength from the provisions contained in section 34 of the Central Code, whereas the second ground is based upon the interpretation of provisions contained in Section 29 of the Arbitration Act 1940, which is in *pari-materia* with Section 29 of the J&K Arbitration Act 1945. This Court in para (14) of the judgment under review has after placing reliance upon the provisions of Section 34 of the Central Code observed that the position becomes clear when we read Section 29 of the Act of 1940 which provides for post-decree interest.

13) After quoting the aforesaid provision, this Court in para (15) of the judgment under review has held that expression “the principal sum as adjudged by the award and confirmed by the decree” used in Section 29 of the Act of 1940 is of great significance which represents the actual claim awarded in favour of a decree holder minus the interest. In para (16) of the judgment under review, this Court, after taking note of Section 31(7) of the Arbitration

and Conciliation Act, 1996, has compared it with the provisions contained in Arbitration Act, 1940, and held that there is a statutory provision in the Act of 1996 which provides for inclusion of interest component in the arbitral award, whereas there is no such provision in the Act of 1940.

14) In para (18) of the judgment under review, this Court, after taking note of the ratio laid down by Delhi High Court in the case of **Indian Oil Corporation Ltd vs. G. S. Jain & Associates** (EFA(SO) No.17 and 18/2010 decided on 07.09.2012), has made it clear that in a proceeding which is governed by the Act of 1940, it is not permissible to include interest component for the purpose of calculating the post-award interest and post-decree interest.

15) It is true that in **G.S. Jain's** case (supra), Delhi High Court has, while holding that post-decree interest is to be awarded only on the principal sum, also relied upon the provisions contained in section 34 of the Central Code, but in the said case, the Court has also based its conclusion upon the interpretation of Section 29 of the Act of 1940.

16) In view of the aforesaid discussion, while the contention of the review petitioners that reliance placed by this Court on the principles of Section 34 of the Central

Code is erroneous, yet the fact that the interpretation of Section 29 of the Arbitration Act of 1940, which is applicable to the present case, also leads us to the conclusion that post-decretal interest has to be paid on the principal sum as adjudicated by the award and confirmed by the decree, would not make any difference to the ultimate conclusion that has been arrived at by this Court in terms of the judgment under review. Thus, even if reliance placed by this Court upon the principles relating to grant of interest as governed by Section 34 of the Central Code is taken out of reckoning, still then, in view of the express provisions of Section 29 of the Arbitration Act of 1940, which is in *pari-materia* with Section 29 of the J&K Arbitration Act of 1945, the review petitioners are not entitled to claim interest on the component of interest granted by the Arbitrator for pre-reference period and the *pendente lite* interest.

17) Thus, even if this Court has, while passing the judgment under review, erroneously applied the provisions of Section 34 of the Central Code to the facts of the instant case, still then, in view of the specific provision of Section 29 of the Act of 1940 governing interest on awards, the ultimate conclusion drawn by this Court in terms of the judgment under review does not require any interference.

