HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR.

Case No: Arb App No.01/2024

Reserved on: 14.07.2026
Pronounced on:20.08.2026
Uploaded on: 21.08.2026

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

1. **Chairman, Lakes and Waterways Development Authority (LAWDA), Srinagar.**

2. **Executive Engineer, Civil Division, Segment No.1, LAWDA, Miskeen Bagh, Srinagar.**

3. **Financial Officer/Accounts Officer, LAWDA, Nishat Srinagar.**

……Petitioner(s)…..

Through: Mr. Iliyas Laway, GA.

v/s

1. **Ghulam Nabi Kraipak S/O Gulam Rasool, Kraipak, R/O Makdoom, Mandow, Srinagar.**

2. **J&K Bank Branch, S.R. Gunj, Srinagar through its Branch Manager.**

Through: Mr. Mir Suhail and Mr. Raja Jaffer Nazir, Advocate for R-1.
Mr. N.A.Dendru, Advocate for R-2.

…Respondent(s)…

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

PER OSWAL-J

1. This appeal is directed against judgment dated 16.06.2023 passed by learned Single Bench in A.A.No. 2/2014 whereby the application preferred under Section 34 of J&K Arbitration and Conciliation Act, 1997 as it was then in force, by the appellants for setting aside an arbitral award dated 07.12.2013 passed by the Sole Arbitrator Er. Zahoor Ahmad Chat, Executive Director, JKSPDC, has been dismissed.

Grounds of Challenge:

2. The impugned judgment is challenged, *inter alia*, on the following grounds:

   a. that it was a positive case of the appellants before the learned Single Judge that the award of learned Arbitrator is in conflict with public policy as the same is patently illegal and against the spirit of the contract, but the learned Single Judge, while passing the impugned judgment, has not appreciated said contention raised by the appellants;

   b. that the period of limitation prescribed for availing the remedy of arbitration is three years whereas in the present case the proceedings were initiated by the respondent No.1 in the year 2011 for a cause of action allegedly accrued in the year 2003, as such, the claim put forth by the respondent No.1 was barred by limitation in terms of Section 43 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997, but the learned Single Judge has not considered the issue so raised by the appellants;

c. that the learned single Judge has also not appreciated that there was no arbitration agreement existing between the parties, as such, the proceedings before the learned Arbitrator were non-est in the eyes of law;

d. that the learned single Judge has also not rightly appreciated the contention raised by the appellants that the time was essence of work contract and the respondent No.1 had failed to complete the work within stipulated and even over extended period and had ultimately left the work midway on 07.03.2002 which shows total delay of seven months and 12 days and despite various notices issued to the said respondent No.1 impressing upon him to complete the work left midway;

e. that the appellants had filed a counter claim for the recovery of an amount of **Rs.37.13 lacs** on account of penalty but the learned Arbitrator awarded only a meager amount of Rs.2.27 lacs as against claimed amount of **Rs.37.13 lacs** but the learned Single judge did not consider this very vital aspect of the case;

f. that the respondent No. 1 failed to execute the work to its logical conclusion in the face of which the relief granted by the learned Arbitrator amounts to a windfall profit;

g. that impugned award was passed purely on technicalities, resting on nothing more than mere surmises and conjectures;

h. that the award was also required to be set aside on the ground that as per the orders of the referral court, the award was to be passed within a period of **four months** but the same has been passed after a lapse of **two years** without seeking proper extension of the mandate from the referral court, but the learned Single Judge has not considered this aspect as well while passing the impugned judgment.

Factual Matrix:

3. Brief facts necessary for the disposal of this appeal are that pursuant to NIT No.2 of 5/2001 dated 11.05.2001 issued by the Executive Engineer, Civil Division Segment No.1 LAWDA Miskeen Bagh, Srinagar, the respondent No.1 was allotted work of "Mechanical Dredging/Desilting of Bed of Dal Lake near Shalimar Bridge to the required depth including all types of jobs of leads and lifts, carriages upto dumping site, dumping, leveling and dressing etc. as a complete job at the allotted work cost of **Rs. 19,38,850** vide order dated **21.06.2001.** The work was to be executed at the following rates:-

(i) Stones @Rs.5.00 lac only lump sum for complete job;

(ii) Rs. 175/- per cubic mtr for complete job.

4. As per the terms and conditions of the above noted NIT/allotment order, the work was to be completed within a period of one month from the date of its start, which was to be reckoned within three days after issuance of allotment order. In case of any delay, initially or during execution of the work, a penalty of Rs.1,000 per day was to be imposed upon the contractor besides recovering the extra costs involved in getting the work completed through some other agency.

5. Under the contract, the release of the final payment was strictly contingent upon the completion of the aforementioned works. Furthermore, the quantity of dredged material was required to be determined on the basis of the working cross-sections of the channel. For this purpose, the Authority was

obliged to adopt the cross-check mechanism prescribed under Clause 7 of the order dated 21.06.2001.

6. According to the entries in the appellants' Measurement Book and Works Register, respondent No. 1 commenced work on 27.06.2001 and completed it on 07.03.2002. This execution period spanned eight months and nine days, starkly contrasting with the one-month completion timeline stipulated in the NIT/allotment order. The respondent No. 1 contended that these relevant field records were prepared unilaterally by appellant Nos. 1 to 3, without any authentication by respondent No. 1 at the time of commencement, during execution, or upon completion of the work.

7. Respondent No. 1 was not paid for the work executed. Nearly 16 months after the closure of work at the site, the Assistant Executive Engineer, Intake Segment-III, issued a communication dated 15.07.2003, directing respondent No. 1 to sign a Works Register reflecting a bill of only ₹6,45,635/- against an allotted contractual cost of ₹19,38,850/-.

8. Respondent No. 1 refused to sign, contending that the records were framed unilaterally by the field engineers of the appellant Nos. 1 to 3. Subsequently, vide letter dated 19.08.2003, respondent No. 1 submitted an independent claim to appellant No. 1 totaling ₹21,39,720/-. This comprised ₹19,05,250/- for the main work, ₹97,470/- as interest on delayed payments, and ₹1,37,000/- for haulage charges. The appellants, however, did not approve the claim of the respondent No.1.

Cause of Action:

9. Aggrieved by the inaction of appellant Nos. 1 to 3 in releasing his outstanding contractual claims, the respondent No. 1 had first preferred a writ petition-OWP No. 654/2003. This petition was dismissed by the learned

Writ Court vide an order dated 03.11.2006 by granting liberty to the respondent No.1 to agitate the matter through an appropriate legal proceedings.

10. Challenging said writ court's order dated 03.11.2006, the respondent No. 1 filed an intra-court appeal LPA No. 177/2008, which too also dismissed vide an order dated 16.04.2010 with an observation that dismissal would not prevent the appellant therein (respondent No. 1 herein) from availing himself of any appropriate remedy available under the law.

11. Thereafter, the respondent No. 1 instituted a civil suit for recovery and permanent prohibitory injunction before the Court of the Principal District Judge, Srinagar, seeking a decree against the appellant Nos. 1 to 3 for an amount of **₹35,33,850/-.**

12. The suit, subsequently, came to be assigned to the Court of 4th Additional District Judge, Srinagar.

13. In suit proceedings, the appellant Nos. 1 to 3 volunteered filed an application invoking Clause 20 of PWD Form-25 (the Standard J&K Government PWD Contract Form) seeking reference of the dispute to arbitration.

14. Upon the respondent No. 1 consenting to the reference, the learned 4th Additional District Judge, Srinagar, vide an order dated 26.07.2011, allowed said application for reference and appointed Er. Zahoor Ahmad Chat as a sole arbitrator to adjudicate the dispute.

15. With said sole arbitrator acceding to the respondent No. 1's request to treat the plaint as his formal claim, the appellant Nos. 1 to 3 filed their written statement and counter-claim on 27.10.2011 followed by the respondent No. 1 submitting his rejoinder accompanied by evidentiary annexures and photographs.

16. Based on the pleadings submitted and exchanged by the parties, the arbitrator came to frame twenty-five issues.

17. Issue No. 1 as to whether the claim of the respondent No. 1 was barred by limitation was treated as a preliminary issue and was ultimately decided against the appellants.

18. The respondent No.1 then besides examining himself also examined Mr. Abdul Rasheed Cheatsaz, Mr. Ghulam Mohd Malla and Mr. Mehraj-ud-Din Lone in support of his claim whereas the appellants examined witnesses, namely Mr. Javid Hussain Qadri (the then JE LAWDA I/C of works), Mr. Ali Mohd Kachroo (the then AEE LAWDA I/C of work) and Mr. Om Parkash Attri (present I/C Executive Engineer of Work).

19. The sole arbitrator, after considering the evidence led by the parties, decided all the issues to pass an arbitral award dated 07.12.2013 by granting relief in the following manner:

a. Claimant's claim is partly allowed for item of removal of stones, restricted on the basis of work done quantity of 189 cum only as accepted by respondents @ Rs.182.48/- cum amounting to Rs.34,489/-(worked out on prorate basis). The earthwork excavation quantity (8030 cum, as claimed is allowed in full.

b. Counter claim filed by respondents for Rs.37.13 lacs on account of penalty, is also partly allowed for an amount of Rs.2,27,000/- for 227 days of delay @ Rs. 1,000/- per each day of delay and said penalty is imposed on Claimant for not completing the work in time.

c. The respondents 1 to 3 shall accordingly pay to the claimant the following amounts:-

i. Amount of work done for excavation/dredging/desilting for a quantity of 8030 cum @Rs.175- cum (allowed in full): **Rs.14,05,250**.

ii. Amount of work done on account of removal of stones (allowed for 189 cum only against 2740 cum: **Rs.00,34,489/-**

Total amount for work done (i+ii) = **Rs. 14,39,739/-**

iii. Deduct penalty for 227 days @ 1000/- per each day which comes to **Rs. 02,27,000**/-

Net payments due on 07.03.2002 (DOC)= **Rs.12,12,739/-**

iv. Simple interest on Rs.12,12,739/- @ 12% per year w.e.f. 01.04.2002 to 31.03.2012 (10 years) & @6% per year w.e.f. 01.04.2012 to 30.11.2013 (01 year and 08 months)

$= \frac{1212739 \times 10 \times 12}{100} + \frac{1212739 \times 20 \times 6}{100} =$ Rs.14,55,286+Rs.01,21,273/-

=**Rs.15,76,559/-**

v. Compensation for loss of business on Rs.12,12,739/- w.e.f. 01.04.2002 to 30.11.2013 (11 years and 08 months) @ 1.5 % per years.

$= \frac{1212739 \times 1.5 \times 140}{100 \times 12}$ =**Rs. 2,12,229**

Total amount payable to the claimant as on 30.11.2013 is = **Rs.30,01,527/-**

(Rupees Thirty Lacs, one thousand, five hundred and twenty seven only):"

20. Further, the respondent No.1 was held entitled to simple interest at the rate of 12% per annum in the event of failure on the part of the appellants to release the awarded sum of Rs. 30,01,527/- in favour of the respondent No.1-Claimant within period of next three months.

21. Being aggrieved by said arbitral award dated **07.12.2013**, the appellants filed A.A.No. 2/2014 under Section 34 of the J&K Arbitration and Conciliation

Act, 1997 thereby challenging said award on the grounds, *inter alia*, identical to those narrated hereinabove.

22. The respondent No. 1 filed his reply therein refuting the allegation that the contractual work was left incomplete. It stood asserted that subsequent civil suit of the respondent No.1 was filed in accordance with the liberty expressly granted by the writ Court and the Division Bench in very first rounds of litigation. The respondent No.1 further submitted that because sole arbitrator-Er. Zahoor Ahmad Chat was appointed pursuant to an application moved by the appellants themselves so the appellants could not be heard challenge the arbitrator's jurisdiction or plead that the proceedings are barred by limitation as after having elected to invoke the arbitration clause, the appellants are precluded from questioning its validity.

23. As the arbitral award was rendered after thoroughly examining and evaluating the factual aspects as to the executed work and the bills withheld by the appellants, the respondent No. 1 submitted that the arbitral award suffers from no infirmity and warrants no interference.

<u>Arguments</u>:

24. Learned counsel for the appellants has urged strongly that the claim of respondent No. 1 was hopelessly barred by limitation admitting of no adjudication on merits. It was argued that the sole arbitrator erred in deciding issue of limitation, as the respondent No. 1 had explicitly admitted that the cause of action had accrued in the year 2003, whereas the claim was submitted only in year 2011 and that the writ court had at no stage adjudicated this time barred contention of the appellants.

25. It is next contended that there was no valid arbitration agreement between the parties so the reference of dispute to arbitration was *ipso facto* bad in law. Learned counsel for the appellants urged that the arbitrator completely overlooked the fact that respondent No. 1 had abandoned the work midway which disentitled him to any relief and instead rendered him liable to pay ₹37.13 lakhs to the appellants on account of the delay. Finally, it was submitted that the impugned award is contrary to public policy, particularly as excessive interest was awarded for both the *pendente lite* and post-award periods.

26. *Per contra*, Mr. Mir Sohail, learned counsel appearing for the respondent No. 1, submitted that the scope of interference with an arbitral award under Section 34 of the J&K Arbitration and Conciliation Act, 1997 as it was then in reference is extremely circumscribed. He contended that the appellants have miserably failed to demonstrate, as to how the award passed by the arbitrator is contrary to Public Policy or suffers from any patent illegality warranting interference be it under section 34 or now under section 37 by this Court. Learned counsel has argued that having been granted liberty by the Division Bench of this Court to pursue appropriate remedies, the respondent No. 1 was entitled to the exclusion of the period spent in prosecuting the writ petition and the intra-court appeal. According to him, since those proceedings were pursued *bona fide* and with due diligence, the time consumed therein deserved to be excluded under Section 14 of J&K Limitation Act while computing the limitation period. It was also vehemently argued that the appellants themselves had invoked Clause 20 of PWD Form-25 and moved an application seeking reference of the dispute to arbitration. Consequently, having themselves actively sought the reference, the appellants are now precluded and estopped from questioning either the mandate or the jurisdiction of the learned Arbitrator to adjudicate upon the disputes

27. Heard learned counsel for the parties and perused the record meticulously.

ANALYSIS:

28. The appellants vehemently contend that the award passed by the arbitrator is contrary to Public Policy, as a time-barred claim was entertained and allowed. The appellants further submit that the learned single Bench failed to consider this vital aspect of the case.

29. However, upon perusing the impugned judgment, we find that the learned single Bench has observed that the dispute was referred to arbitration with the consent of both parties and that once the issues of jurisdiction and limitation were decided by the arbitrator, they attained finality and could not be reopened.

30. We may add that the learned single Bench ought to have examined whether the claim of the respondent No. 1 was barred by limitation, as it was the specific case of the appellants that the cause of action had arisen in the year 2003 and that the prescribed period of limitation expired in the year 2006. Since the arbitral proceedings were initiated only in the year 2011, after a delay of more than five years from the accrual of the cause of action, the claim was agitated to be barred by limitation.

31. A perusal of the record reveals that at page 18 of the impugned award, the arbitrator has observed that the issue as to whether the claim of the respondent No. 1 is barred by limitation stood concluded by an interim order dated 03.07.2012. Evidently, the learned arbitrator conflated the limitation prescribed for the commencement of arbitral proceedings with the limitation applicable to the substantive claim itself. The learned arbitrator further held that rejection of the claim on the ground of limitation would run contrary to the order of the civil court constituting the arbitral tribunal, particularly in view of the fact that the appellants had voluntarily entered into negotiations for an out-of-court settlement to which the respondent No. 1 had consented. On that reasoning, the learned arbitrator rejected the appellants' plea that the claim was barred by limitation.

32. Pertinently, the suit preferred by the respondent No. 1 was directed to be treated as a claim on his behalf at his own instance.

33. In the plaint, the respondent No. 1 stated that he had previously approached the writ court by filing OWP No. 654/2003 for the redressal of his grievances, but was unsuccessful. Subsequently, LPA No. 177/2008 was also preferred by him which was also dismissed, albeit with an observation that the dismissal would not preclude him from availing of any appropriate remedy available under law. Consequently, while filing the suit, the respondent No. 1 sought the exclusion of time spent in said prior suit proceedings before the High Court by invoking Section 14 of the J&K Limitation Act.

34. At this stage, it would be proper to take note of section 43 of the J&K Arbitration and Conciliation Act, 1997, which provides that the J&K Limitation Act shall apply to arbitration proceedings as it applies to proceedings before a court.

35. It is true, as pleaded by the appellants before the learned single Bench, that the period of limitation for filing an application was three (3) years under article 181 of the J&K Limitation Act, but in terms of section 43, the provisions of the Limitation Act have been made applicable to arbitration proceedings in the same manner as they apply to civil suits.

36. Once resort was had to article 181 by the appellants to disentitle the respondent No. 1 to the relief of recovery, section 14 of the J&K Limitation Act's mandate would inevitably come into play.

37. The respondent No.1 had specifically pleaded that he had initially approached the writ court by filing a writ petition and had thereafter preferred an intra-court appeal before the Division Bench. It was only upon failing to obtain relief in those proceedings, which had been instituted and prosecuted in good faith, that he instituted the civil suit. Consequently, the respondent No. 1 was entitled to the benefit of section 14 of the Limitation Act, permitting the exclusion of the period spent bona fide by and with due diligence in prosecuting the aforesaid proceedings.

38. Furthermore, it was at the instance of the appellants themselves that the dispute was referred to arbitration, following the respondent No. 1's consent to their prayer for an alternate forum. Having filed the application for the appointment of an arbitrator, the appellants cannot now be permitted to turn around and contend that the limitation period for commencing arbitration had expired or that the reference was incompetent. A party cannot be allowed to approbate and reprobate in this manner to defeat a reference they themselves initiated.

39. In this context, it would be apposite to take note of the judgment of the Hon'ble Supreme Court of India in **Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department**, reported in **(2008) 7 SCC 169**. The relevant paragraph is extracted as under:-

> **23.** At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a

court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

24. We may notice that in similar circumstances the Division Bench of this Court in *State of Goa* v. *Western Builders* [(2006) 6 SCC 239] has taken a similar view. As observed earlier the intention of the legislature in enacting Section 14 of the Act is to give relief to a litigant who had approached the wrong forum. No canon of construction of a statute is more firmly established than this that the purpose of interpretation is to give effect to the intention underlying the statute. The interpretation of Section 14 has to be liberal. The language of beneficial provision contained in Section 14 of the Limitation Act must be construed liberally so as to suppress the mischief and advance its object. Therefore, it is held that the provisions of Section 14 of the Limitation Act are applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

40. It would also be apposite to take note of the judgment of the Hon'ble Supreme Court of India in **Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)**. The relevant paragraph No. 25 is extracted hereunder::-

> "25. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with."

41. The expression "Public Policy" in context of Arbitration Act has been explained by the Hon'ble Supreme Court in India in **Associate Builders v. Delhi Development Authority**, reported in **(2015) 3 SCC 49** and the relevant paras are extracted as under**:**

> **"19.** When it came to construing the expression "the public policy of India" contained in Section 34(2)(*b*)(*ii*) of the Arbitration Act, 1996, this Court in *ONGC Ltd.* v. *Saw Pipes Ltd.* [(2003) 5 SCC 705 : AIR 2003 SC 2629] held : (SCC pp. 727-28 & 744-45, paras 31 & 74)
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> "*31*. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in *Renusagar case* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be-award could be set aside if it is contrary to:
>
> (*a*) fundamental policy of Indian law; or

(*b*) the interest of India; or
(*c*) justice or morality, or
(*d*) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

74. In the result, it is held that:

(*A*)(*1*) The court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:
(*i*) a party was under some incapacity, or
(*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
(*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(*iv*) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

(*2*) The court may set aside the award:

(*i*) (*a*) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,
(*b*) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act,
(*ii*) if the arbitral procedure was not in accordance with:
(*a*) the agreement of the parties, or
(*b*) failing such agreement, the arbitral procedure was not in accordance with Part I of the Act.
However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.
(*c*) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(*3*) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:
(*a*) fundamental policy of Indian law; or
(*b*) the interest of India; or

(*c*) justice or morality; or

(*d*) if it is patently illegal.

(*4*) It could be challenged:

(*a*) as provided under Section 13(5); and

(*b*) Section 16(6) of the Act.

(*B*)(*1*) The impugned award requires to be set aside mainly on the grounds:

(*i*) there is specific stipulation in the agreement that the time and date of delivery of the goods was of the essence of the contract;

(*ii*) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;

(*iii*) it was also explicitly understood that the agreed liquidated damages were genuine pre-estimate of damages;

(*iv*) on the request of the respondent to extend the time-limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;

(*v*) liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;

(*vi*) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable;

(*vii*) in certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care of by Sections 73 and 74 of the Contract Act and in the present case by specific terms of the contract."

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28. In a recent judgment, *ONGC Ltd.* v. *Western Geco International Ltd.* [(2014) 9 SCC 263], this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held :

"*35*. What then would constitute the 'fundamental policy of Indian law' is the question. The decision in *ONGC* [(2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression 'fundamental policy of Indian law', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The *first and foremost* is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a '*judicial approach*' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury* principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.”

29. It is clear that the juristic principle of a “judicial approach” demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

Interest of India

35. The next ground on which an award may be set aside is that it is contrary to the interest of India. Obviously, this concerns itself with India as a member of the world community in its relations with foreign powers. As at present advised, we need not dilate on this aspect as this ground may need to evolve on a case-by-case basis.

Justice

36. The third ground of public policy is, if an award is against justice or morality. These are two different concepts in law. An award can be said to be against justice only when it shocks the conscience of the court. An illustration of this can be given. A claimant is content with restricting his claim, let us say to Rs 30 lakhs in a statement of claim before the arbitrator and at no point does he seek to claim anything more. The arbitral award ultimately awards him Rs 45 lakhs without any acceptable reason or justification. Obviously, this would shock the conscience of the court and the arbitral award would be liable to be set aside on the ground that it is contrary to “justice”.

Morality

37. The other ground is of “morality”. Just as the expression “public policy” also occurs in Section 23 of the Contract Act, 1872 so does the expression “morality”. Two illustrations to the said section are interesting for they explain to us the scope of the expression “morality”:

“(*j*) *A*, who is *B*'s Mukhtar, promises to exercise his influence, as such, with *B* in favour of *C*, and *C* promises to pay 1000 rupees to *A*. The agreement is void, because it is immoral.

(*k*) *A* agrees to let her daughter to hire to *B* for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Penal Code, 1860.”

42. Thus, we are of the considered view that denying respondent No. 1 the benefit of the exclusion of time, and consequently holding the substantive claim to be time-barred, would militate against the mandate provisions of the J&K Limitation Act and run contrary to Public Policy.

43. Likewise, holding the commencement of arbitral proceedings to be time-barred would oppose the principle of Estoppel when this is particularly true in face of fact that the arbitral proceedings were initiated at the self instance of the appellants. To hold otherwise would perpetuate a patent illegality and would, as such, be entirely contrary to Public Policy. Accordingly, this contention of the appellants is rejected.

44. Secondly, the appellants contended that in the absence of an arbitration agreement between the parties, the proceedings before the arbitrator were *non est* in the eyes of law.

45. However, upon perusing the response filed by the appellants to the Statement of Claim, we find no such objection raised in their Statement of defence or Counter-Claim before the arbitrator. Consequently, no issue was framed in this regard. Nonetheless, while deciding Issue No. 1 concerning whether the claim of respondent No. 1 was barred by limitation, the learned Arbitrator observed as under:

> "Accordingly, I reject the plea of the respondents 1 to 3 on the question of maintainability of the instant application on account of limitations and accept the plea of claimant to the effect that no arbitration agreement exists between the claimant and respondents 1 to 3."

46. Admittedly, the appellants moved the Court of 4th Additional District Judge, Srinagar, to refer the dispute to arbitration. With the express consent of the respondent No. 1, the Court acting upon this joint stance had appointed Er. Zahoor Ahmad Chat as the sole arbitrator via an order dated 26.07.2011. This procedure squarely aligns with section 89 of the Code of Civil Procedure, which facilitates out-of-court settlements. Once a court identifies elements of accommodation and with the parties' consensus, refers the matter to arbitration under this statutory framework, the provisions of the Arbitration and Conciliation Act come into instant play to govern the proceedings *in toto.*

47. It would be apposite to take note of the judgment of the Hon'ble Supreme Court of India in **Afcons Infrastructure Ltd. & another Vs. M/s Cherian Varkey Construction Co.(P) Ltd. and others**, 2010(8) SCC 24 and the relevant paras 23 and 24 of the judgment are extracted as under:-

> "**23**. Arbitration is an adjudicatory dispute resolution process by a private forum, governed by the provisions of the AC Act. The said Act makes it clear that there can be reference to arbitration only if there is an `arbitration agreement' between the parties. If there was a pre-existing arbitration agreement between the parties, in all probability, even before the suit reaches the stage governed by Order 10 of the Code, the matter would have stood referred to arbitration either by invoking Section 8 or Section 11 of the AC Act, and there would be no need to have recourse to arbitration under section 89 of the Code. **Section 89 therefore pre-supposes that there is no pre-existing arbitration agreement. Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under section 89 of the Code; and on such reference, the provisions of AC Act will apply to the arbitration, and as noticed in Salem Bar-I, the case will go outside the stream of the court permanently and will not come back to the court**.
>
> **24.** If there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under section 89 of the Code. This is evident from the provisions of AC Act. A court has no power, authority or jurisdiction to refer unwilling parties to arbitration, if there is no arbitration agreement. **This Court has consistently held that though section 89 of the Code mandates reference to ADR processes, reference to arbitration under section 89 of the Code could only be with the consent of both sides and not otherwise.**"

48. Grounded in the ratio of the Hon'ble Supreme Court's judgment cited above, we hold that when the appellants solicited an arbitral reference and the respondent No. 1 recorded his consent, their mutual consensus created a valid and binding arbitration agreement. The appellants cannot now challenge the existence of a mechanism they self requested. Consequently, this contention stands rejected.

49. Thirdly, the appellants contend that the award is liable to be set aside on the sole ground that it was passed after a lapse of two years without seeking an extension of time from the referral Court, despite the court's initial mandate requiring the award to be delivered within four months.

50. Learned Civil court, in terms of section 89 C.P.C, referred the matter to sole arbitrator and in terms of section 89 C.P.C, after a matter is referred to an arbitrator, the proceedings are to be governed by the Arbitration and Conciliation Act, 1997.

51. When the present matter was referred to learned Arbitrator and he passed the award, there was no provision obtaining in the J&K arbitration and conciliation Act, 1997, that mandated arbitrator to pass an award within the stipulated period, because Section 29-A of the Act of 1997 was enforced w.e.f. 1st October, 2018 which prescribed the time limit for an arbitrator to pass an award. As such, there is no force in this contention raised by the appellants and the same is also rejected.

52. Fourthly, it is contended by the appellants that neither the learned arbitrator nor the learned single Bench took due notice of the fact that the respondent No. 1 had failed to complete the work within the period stipulated in the contract.

53. It is contended that the arbitrator committed a patent error in allowing the counter-claim of the appellants only to the extent of Rs. 2.27 lakhs as against the claim of Rs. 37.13 lakhs.

54. It emerges from the record that in terms of the allotment order, the work was required to be completed within a period of one month. The contract value was fixed at Rs. 5.00 lakhs as a lump sum towards the cost of stones and Rs. 175 per Cubic Metre for the execution of the remaining work, aggregating to a total contract value of Rs. **19,38,850/-**. After deducting the lump sum amount of Rs. 5.00 lakhs payable towards the cost of stones, the value of the remaining work comes to Rs. 14,38,850/-**,** which corresponds to approximately 8,222 cubic metres of work at the agreed rate of Rs. 175 per cubic metre**.**

55. The learned arbitrator observed that despite being afforded repeated opportunities the appellants failed to produce the original records before the arbitrator and instead relied predominantly upon photocopies, except for three original letters and the original handwritten estimate pertaining to the works executed.

56. The learned arbitrator has returned a categorical finding that the photocopies of crucial records, particularly the Measurement Book and the Works Register, contained alterations and reductions in the recorded quantities, which were in stark contrast to the corresponding records available in the custody of the appellants' own counsel.

57. In these circumstances, the learned arbitrator cannot be faulted in entertaining serious doubts regarding the authenticity and reliability of the photocopies produced by the appellants.

58. Furthermore, the records produced by the appellant No. 1 reflected 23.06.2001 as the date of commencement of the work and 07.03.2002 as the date of its completion.

59. Significant contradictions also emerged from the testimony of the appellants' own witnesses regarding the nomenclature employed in the official records. While the appellants' principal witness, the Executive Engineer in charge of the works, categorically deposed that the abbreviation "DOC" denoted the "date of completion," two other witnesses examined on behalf of the appellants stated during their cross-examination that the said abbreviation could signify the "date of completion**,"** the "date of closure," or even the "date of part completion." These inconsistent explanations furnished by the appellants' own witnesses materially undermined the credibility of their case.

60. Drawing upon his own extensive institutional expertise as the former Executive Director of the Jammu & Kashmir State Power Development Corporation (JKSPDC), the learned arbitrator took judicial notice of the established administrative practice wherein field Engineers across various Departments uniformly employ the abbreviations 'DOS' and 'DOC' to denote the 'date of start' and 'date of completion,' respectively. Accordingly, the arbitrator held that 'DOC' conclusively signified the date of completion. Notably, the appellants' own records corroborated this timeline, reflecting the 'DOC' as March 7, 2002.

61. Accordingly, the learned arbitrator observed and held that the contemporary records of the appellants failed to demonstrate, at any material stage, that the works had been left incomplete by respondent No.1. Had such a default occurred, it would have been contemporaneously recorded in the ordinary course of official business. The arbitrator further opined that no notice or formal intimation had ever been served by the appellants upon the respondent No.1 alleging non-completion of the contractual works.

62. Simultaneously, the learned Arbitrator observed that there was an established delay of 227 days in the execution of the works, which were contractually stipulated to be completed within a period of one month. Consequently, the learned arbitrator directed a deduction of ₹2.27 lakhs, calculated *pro rata* at the rate of ₹1,000/- per day of delay, from the gross amount payable by the appellants to the respondent No. 1.

63. The findings recorded and the view taken by the learned arbitrator can, by no stretch of imagination, be termed as perverse, arbitrary, or patent on the face of the record so as to warrant curial interference. Furthermore, a perusal of the award reveals a meticulous assessment of claims by the arbitrator. The learned arbitrator did not blindly allow the entire claim of **₹14,38,850/-** preferred towards excavation, dredging, and desilting works, but restricted the award to a quantified sum of ₹14,05,250/- under that head.

64. Similarly, as against the respondent No. 1's substantial claim of ₹5.00 lakhs on account of the removal of stones, the learned arbitrator allowed only a nominal sum of ₹34,489/-.

65. The respondent No. 1 had claimed an amount of ₹14,28,600/- towards bank interest allegedly incurred due to the unnecessary withholding of payment up to September 2009, and a further sum of ₹2,00,000/- as compensation for mental agony, hardship, and the consequent inability to undertake any other work. However, the learned arbitrator awarded only ₹2,12,229/- under this head. The compensation so awarded is neither exorbitant nor excessive; rather, it is reasonable and commensurate with the circumstances of the case. Accordingly, it does not warrant any interference by this Court.

66. In this view of the matter, it would be apposite to take note of the judgment of the Hon'ble Supreme Court of India in **Punjab State Civil Supplies Corporation Limited and another v. M/s Sanman Rice Mills and others**, **2024 INSC 742**. The relevant paragraphs **12 and 20** are extracted hereunder:

> "**12**. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been

taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

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20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court."

Accordingly, this contention of the appellants is also rejected.

67. Lastly, it was contended that the quantum awarded is antithetical to Public Policy, inasmuch as the interest granted by the learned arbitrator runs contrary to the statutory mandate of Section 31(7) of the Arbitration and Conciliation Act, 1997.

68. It is uncontroverted that the arbitral proceedings were conducted under the J&K Act of 1997. Notably, sub-section (7) of Section 31 of the Act of 1997 was amended by an Amendment Act No. 6 of 2010 whereby arbitral tribunal stood vested with a discretion to award interest at such rate, not exceeding 6% per annum, as it deems reasonable, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

69. Upon queries being put by this Court to the learned counsel for the respondent No.1 during the hearing on 14.07.2026, he fairly conceded that in terms of the judgment of the Hon'ble Supreme Court of India in **Gayatri Balasamy v. ISG Novasoft Technologies Limited**, **2025 INSC 605,** the impugned award may be modified to the limited extent of restricting awardable interest to 6% per annum, applicable across the pre-reference, *pendente lite*, and post-award periods.

70. In the present case, the learned arbitrator awarded interest at rate of 12% per annum for the period from **01.04.2002** to **31.03.2012** and thereafter at the rate of 6% per annum for the period from **01.04.2012** to **30.11.2013.**

71. In terms of Section 31(7) of the Arbitration and Conciliation Act, 1997, as amended, the learned arbitrator could have awarded interest only at a rate not exceeding 6% per annum for the period between the date on which the cause of action arose and the date on which the award is made and as conceded by the learned counsel for the respondent No.1 that the interest may be reduced to 6% per annum, we deem it proper to modify the award passed by the learned arbitrator accordingly.

72. In **Gayatri Balasamy v. ISG Novasoft Technologies Limited**, **2025 INSC 605**, the Constitution Bench of the Hon'ble Supreme Court has held that the Court possesses a limited power to modify an arbitral award where the valid and invalid parts thereof are clearly severable.

73. Since the invalid portion of the award in the present case relates only to the rate of interest and is clearly severable from the rest of the award, we deem it appropriate to modify the interest component of the award passed by the learned Arbitrator as under:-

(i) Amount of work done for excavation/dredging/desilting for a quantity of 8030 cubic mtr @Rs.175/-cum : Rs.14,05,250/-

(ii) Amount of work done on account of removal of stones: 34,489/-

Total :Rs.14,39,739/-

(iii) Deduct penalty for 227 days @ 1000/- per each day which would come to : Rs.2,27,000/-

Net payment due o1n 07.03.2002 : **Rs.12,12,739/-**

(iv) Simple interest on Rs.12,12,739 @6 % pa instead of 12% pa. w.e.f. 01.04.2002 to 30.11.2013 (11 years 8 months) would come to:

: **Rs. 8,48,917/-**

(v) Compensation for loss of business on Rs.12,12,739/- w.e.f. 01.04.2002 to 30.11.2013 (11 years and 08 months) @ 1.5 % per years.

$=\frac{1212739 \times 1.5 \times 140}{100 \times 12}$:**Rs. 2,12,229/-**

Now total amount payable to the respondent No.1 would come to as Rs.12,12,739+Rs.8,48,917 +2,12,229 : **Rs. 22,73,885/-**

74. So far as the post-award interest is concerned, the same is also reduced to 6% per annum from 30.11.2013 till the payment of amount of **Rs. 22,73,885.00.**

75. We have carefully examined the judgment passed by the learned single Bench. As already noticed hereinabove, the learned single Bench has not considered various material aspects of the case. However, having regard to the fact that the dispute is quite old, we did not deem it fit to remit the matter to the learned single Bench for fresh consideration. Since the entire record necessary for adjudication of the controversy being available before us, we deemed it appropriate in the interest of justice and to avoid further delay to examine and determine the merits of the rival claims in the present appeal itself.

76. Accordingly, for the reasons recorded hereinabove, the present appeal is partly allowed. The impugned judgment of the learned single Bench and the arbitral award stand modified to the extent indicated hereinabove.

77. The amount payable in terms of the modified award shall be released in favour of the respondent No. 1, after due verification of his identity by the Registry and upon his identification by the learned counsel appearing on his behalf. The balance amount, if any, lying deposited shall be released in favour of the appellants by way of account payee cheque(s). There shall be no order as to costs.

78. Disposed of as above along with connected CM(s), if any.

(Rahul Bharti)
Judge

(Rajnesh Oswal)
Judge

Jammu
20.08.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable**?** **Yes.**