IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

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BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 4845 OF 2021 (GM-CPC)

BETWEEN:

M/S. ABHIRAM INFRA PROJECTS PRIVATE LIMITED,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956 AND HAVING ITS
REGISTERED OFFICE AT
FLAT NO.1A/4, 8-2-618/2/2,
R.K.RESIDENCY, ROAD NO.11,
BANJARA HILLS, HYDERABAD - 500 034.
(REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
MR.SUNKARA VENKATA RAMANA REDDY)

...PETITIONER

(BY SRI. SUNDARA RAMAN.M.V., ADVOCATE)

AND:

THE COMMISSIONER,
KARNATAKA SLUM DEVELOPMENT BOARD,
NO.55, ABHAYA COMPLEX,
RISALDAR STREET, SHESHADARIPURAM
BENGALURU - 560 020.
(REPRESENTED BY THE COMMISSIONER).

...RESPONDENT

(BY SRI. S.N.PRASHANTH CHANDRA., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 PRAYING TO-QUASH THE ORDER DATED:18.02.2021 VIDE ANNX-A PASSED IN COMMERCIAL EXECUTION PETITION NO.3835/2019 PASSED BY THE LXXXV ADDITIONAL CITY

CIVIL & SESSIONS JUDGE, BANGALORE AND DECLARE THAT THE CLARIFICATION DD 30.12.2019 VIDE ANXN-G ISSUED BY THE ARBITRAL TRIBUNAL IS NON-EST, ILLEGAL AND QUASH THE SAME.

THIS PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.07.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MS. JUSTICE TARA VITASTA GANJU** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV ORDER

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I. PREFACE

1. This petition has been filed under Article 227 of the Constitution of India, seeking to challenge an order dated 18.02.2021 (Annexure-A) passed in Execution Petition No.3835/2019 (hereinafter referred to as the "Impugned

Order") passed by the LXXXV Additional City Civil and Sessions Judge, Bangalore (hereinafter referred to as the 'Executing Court').

1.1 The following reliefs have been sought in the petition:

> *"a. Issue a writ in the nature of certiorari and quash the order dated 18.02.2021 (Annexure-A) passed in Commercial Execution Petition No.3835/2019 passed by the LXXXV Additional City Civil and Sessions Judge, Bangalore;*
>
> *b. Declare that the clarification dated 30.12.2019 (Annexure-G) issued by the Arbitral Tribunal is non-est, illegal and quash the same;*
>
> *c. Pass any such order in the facts and circumstances of the case in the interest of justice and equity."*

2. The petitioner/decree holder thus seeks to challenge two orders. One is passed by the Executing Court dated 18.02.2021, whereby the Executing Court has while adjudicating three memos filed – one by the petitioner/decree-holder dated 16.01.2020, and the other two filed by the respondent/judgment debtor dated 12.12.2019 and 16.01.2020, has modified the Award passed by Arbitral Tribunal dated 08.04.2019. The second challenge raised by the petitioner/decree-holder is to a

clarification/order passed by the Arbitral Tribunal on 30.12.2019.

3. This Court had allowed this petition *ex-parte,* by its order dated 31.03.2022. Against the order dated 31.03.2022, the respondent/judgment debtor filed a review petition which was numbered as R.P.No.519/2022. Subsequently, by an order dated 01.08.2022, the order dated 31.03.2022 was recalled and the writ petition was restored to file.

4. This Court had after briefly hearing the parties on 17.04.2026, passed the following Order:

> "1.The Impugned Order references a memo dated 16.01.2020 filed by the respondent/Judgment-debtor which has not been produced before this Court. In addition, reliance has been placed by the learned counsel for the petitioner/Decree-holder on the communication dated 30.12.2019 addressed to the petitioner/Decree-holder by the Arbitrator, which references an email sent to him by the respondent/Judgment-Debtor. This email has also not been produced before this Court.
>
> 2. Learned counsel for the respondent/Judgment-debtor submits that he does not have the email at present.
>
> 3. Let the respondent/Judgment-debtor place on record, along with an affidavit, both the email referred to in the communication of 30.12.2019 as well as the memo dated 16.01.2020 filed before the Executing Court. In addition, the respondent shall file a memo of upto date calculations of amounts paid by the respondent towards the Award.

> 4.Learned counsel for the respondent/Judgment-debtor submits that he requires two weeks' time to produce the same."

4.1 Pursuant to the order dated 17.04.2026, an affidavit dated 03.06.2026 was filed by the respondent/judgment debtor. Subsequently, a memo was filed by the respondent/judgment debtor asking the Court to disregard the affidavit of 03.06.2026, since it contains errors and another affidavit along with a Memo of Calculations has been filed by the respondent on 05.06.2026.

II. BRIEF FACTS:

5. The brief relevant facts necessary for this petition are that the petitioner/decree holder had entered into a contract for construction of Community Centres at thirteen locations (Phase-2) and work at the identified slums in Bangalore City for a total contract value of Rs.6,41,58,238/- with the respondent (hereinafter referred to as 'the Contract'). Due to disputes *inter se* the parties, the arbitration clause was invoked in terms of the contract and a sole arbitrator was appointed on 23.10.2017 for adjudication of the disputes.

5.1 By an Award dated 08.04.2019, the Arbitral Tribunal awarded a sum of Rs.63,97,750/- to the petitioner/decree holder along with interest at the rate of 15.80% per annum from 09.04.2016 till the date of realisation of amount (hereinafter referred to as "the Arbitral Award").

5.2 Since there was no challenge to the Arbitral Award and no payment was made by the respondent/judgment debtor, execution proceedings were filed by the petitioner/decree holder for realization of its dues being Execution Petition No.3835/2019 before the Trial Court.

5.3 Pursuant thereto, the respondent/judgment debtor paid Rs.63,97,750/- on 06.12.2019 and Rs.6,67,434/- was paid on 27.12.2019. Thus, a total sum of Rs.70,65,184/- has been paid by the respondent/judgment debtor to the petitioner/decree holder.

6. Thereafter, a memo was filed on 12.12.2019 by the respondent/judgment debtor before the Executing Court stating that there was a typographical error in the Arbitral Award and the Arbitral Tribunal had erroneously directed

the respondent/judgment debtor to pay interest on the sums awarded from 09.04.2016 instead of 09.04.2019. The relevant extract of the Memo, dated 12.12.2019 is below:

> ***"MEMO***
>
> *In pursuance to the award dated 08.04.2019, the JDR has already paid Rs.63,97,750.00 (Rupees Sixty-Three lakhs Ninety Seven Thousand Seven Hundred and Fifty only) by cheque dated 25.11.2019; being the principal awarded amount.*
>
> ***In respect of the simple interest payable, there is a typographical error in the award directing the JDR to pay interest at the rate of 15.80% from 09.04.2016 instead of 09.04.2019.***
>
> *The JDR has addressed a communication dated* ***05.12.2019, to the learned Arbitrator in this regard for correction and sent the same copy to the DHR.*** *The balance amount shall be paid upon same being clarified by the learned Arbitrator.*
>
> *The copy of the cheque dated 25.11.2019 bearing No.463834, copy of the e-mail addressed to the learned Arbitrator dated 29.11.2019 and letter dated 29.11.2019 addressed to JDR herein is produced for kind perusal of this Hon'ble Court to meet the ends of justice."*
>
> [Emphasis Supplied]

6.1 Subsequently, another Memo was filed on 16.01.2020 by the respondent/judgment-debtor before the Executing Court, placing on record a cheque in the sum of Rs.6,67,434/-, towards interest payable to the petitioner/ decree-holder from 09.04.2019 upto date and a copy of the clarification issued by the Arbitral Tribunal dated 30.12.2019. It was stated in this memo that the Arbitral Tribunal had clarified that the petitioner/decree-holder was only entitled to interest from 09.04.2019 and not from 09.04.2016.

7. Objections were filed to this Memo by the petitioner/decree holder, wherein it was stated that the clarification issued by the sole Arbitrator/Arbitral Tribunal was non-est in law and contrary to the provisions of Sections 32 and 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Arbitration Act').

7.1 In addition, the petitioner/decree holder also filed a memo dated 16.01.2020 giving their calculation of the balance outstanding payable in terms of which an additional sum of Rs.38,13,514/- was payable.

III. IMPUGNED ORDER:

8. By the Impugned Order, the learned Executing Court on 18.02.2021, allowed the Memo dated 16.01.2020 filed by respondent/judgment debtor, and treating the Execution

Petition as satisfied, dismissed the Memo of Calculation filed by the petitioner/decree holder on 16.01.2020.

IV. CONTENTIONS OF THE PETITIONER/DECREE HOLDER:

9. Learned counsel for the petitioner/decree holder has submitted that the Executing Court could not interfere or modify the Arbitral Award under the garb of Section 152 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). Relying on the judgment of the Supreme Court in ***Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises Limited***[1]***,*** it was contended that the execution proceedings cannot be converted into a forum for reopening or modifying the decree. Reliance was also placed on the judgment of the Supreme Court in ***Darshan Singh Vs. State of Punjab***[2]*.*

9.1 Learned Counsel further contends that the Executing Court could not have gone beyond the decree. The Arbitral Award dated 08.04.2019 had awarded the

[1](1999) 1 SCC 558
[2] (2007) 14 SCC 262

petitioner/decree holder Rs.47,52,850/- along with a pre-award interest at Rs.16,44,900/- and simple further interest at 15.80% per annum from 09.04.2016 till realization. Since the Arbitral Award was not challenged by the respondent/judgment debtor in the proceedings under Section 34 of the Arbitration Act or under Section 33 of the Arbitration Act, the Arbitral Award was executable as a decree and the decree cannot be reopened or reinterpreted at the execution stage in this manner. Thus, it is contended that the Execution Court committed an error in interfering with the Arbitral Award, relying on the memo filed by the respondent/judgment debtor.

9.2 Secondly, it is contended that the provisions of Sections 32 and 33 of the Arbitration Act provide for corrections of computational, typographical errors in an Arbitral Award and this power vests exclusively in the Arbitral Tribunal to be exercised within 30 days. It is stated that the mandate of the Arbitral Tribunal terminates if such correction is not carried out within the period. Relying on the judgment of the Division Bench of the Delhi High Court in ***S.P.S.Rana Vs. MTNL and Ors.***[3], it is contended that the timeline cannot be extended by the Court, taking recourse to the Limitation Act, 1963. It is thus averred that the Arbitral Tribunal could not have issued any clarification after more than eight months of passing the Arbitral Award on 30.12.2019.

10. It is further contended that the Arbitration Act restricts interference by a Court except where specified. Ordinarily, the Courts refrain from interfering in arbitration matters and only intervene in exceptional circumstances. Reliance was also placed on the judgment of the Supreme Court in ***Bhaven Construction Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.***[4]

11. On merits, it is contended by the petitioner/decree holder that the Executing Court wrongly interpreted the term 'principal sum' to be taken while awarding interest and computed the interest on the principal amount of Rs.47,52,850/- instead of the Arbitral Award amount of

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[3] 2010 SCC OnLine Del 136
[4] (2022) 1 SCC 75

Rs.63,97,750/-, which is contrary to the provisions of Section 31 (7) of the Arbitration Act. Reliance was placed on the judgment of the Supreme Court in ***Hyder Consulting (UK) Limited Vs. Governor, State of Orissa***[5], to contend that the Supreme Court has held that the term 'sum' in Section 31(7)(b) of the Arbitration Act includes both the principal awarded and the pre-award interest awarded by the Arbitral Tribunal.

12. Reliance was also placed by the learned counsel for the petitioner/decree holder on the judgments of the Supreme Court in ***Mohan Lal Fatehpuria Vs. M/s Bharat Textiles***[6] and ***Sundaram Finance Limited, represented by J.Thilak, Senior Manager (Legal) Vs. Abdul Samad and another.***[7]

V. CONTENTIONS OF THE RESPONDENT/JUDGMENT DEBTOR:

13. Learned counsel for the respondent/judgment debtor on the other hand has contended that the Arbitral Tribunal

[5] (2015) 2 SCC 189
[6] (1999) 1 SCC 558
[7] (2018) 3 SCC 622

did not become *functus officio*, since all that was required was correction of a mistake which is clerical in nature. An Arbitral Tribunal is well within its power to make corrections to an award, especially if it is a typographical or clerical error and does not affect the merits of the case or amount to a review of the Arbitral Award.

14. It was further contended by the learned counsel that the Arbitrator can rectify his award if the mistake is at his own instance and to that extent, the doctrine of *functus officio* would not apply. Reliance was placed on Section 33 of the Arbitration Act in this behalf.

14.1 Learned counsel for the respondent/judgment debtor referred to the provisions of Section 33(3) of the Arbitration Act to state that the Arbitral Tribunal may correct any error referred to it on its own initiative as well. It was thus contended that a typographical error had occurred in the Arbitral Award, which was rightly corrected by the Arbitral Tribunal.

15. The learned counsel for the respondent/judgment debtor also contended that so far as concerns the second prayer of the petitioner/decree holder seeking a declaration that the Clarification dated 30.12.2019, issued by the Arbitral Tribunal, is illegal and *non est*, the same would not fall within the domain of this Court, but would fall within the domain of Section 34(4) of the Arbitration Act. It was contended that the petitioner/decree holder has accepted the modified Arbitral Award, since it has not challenged the same before any Court.

16. Thus, the learned counsel for the respondent/ judgment debtor contended that an Arbitrator could rectify an Arbitral Award provided the reasoning arrived at is not altered and the modification/rectification is limited to a typographical or clerical error. The modification can even be done beyond a period of 30 days, and the remedy to the aggrieved party would be to challenge the same before it by filing a petition under Section 34 of the Arbitration Act. Thus, it was contended that the Impugned Order passed by the Executing Court does not call for any interference.

17. Learned counsel for the respondent/judgment debtor has relied on the judgments of the Supreme Court in ***State of Punjab Vs. Darshan Singh***[8] and ***North Delhi Municipal Corporation Vs. M/s S.A.Builders Ltd***[9] in support of his contentions.

VI. ANALYSIS AND FINDINGS:

18. In order to examine the contentions of the parties, it is apposite to set out the provisions of the Arbitration Act which are relevant for the purpose of this judgment. Section 31 of the Arbitration Act, provides for the form and contents of an Arbitral Award and Sub-section (7) of Section 31 provides for the interest on an Arbitral Award, in the following terms:

> ***"31. Form and contents of arbitral award.—***
> *(1) XXX*
> *(2) XXX*
> *(3) XXX*
> *(4) XXX*
> *(5) XXX*
> *(6) XXX*
> ***(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on***

[8] 2004(1) SCC 328
[9] 2024 INSC 988

the whole or any part of the money, 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.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—*The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)."*

[Emphasis Supplied]

18.1. Section 32 of the Arbitration Act sets out when proceedings can be terminated and states that the proceedings are terminated when, a final Arbitral Award is passed by the Arbitral Tribunal or when an order under Sub-section (2) is passed. Sub-section (3) of Section 32 provides that the mandate of the Tribunal shall terminate with the termination of arbitral proceedings subject, however to the provisions of Section 33 and Section 34 of the Arbitration Act, in the following terms:

*"32. **Termination of proceedings.—(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).***

(2) The arbitral tribunal shall issue an order for the *termination of the arbitral proceedings where—*

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the Proceedings has for any other reason become unnecessary or impossible.

<u>(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.</u>"

[Emphasis Supplied]

18.2 The procedure for correction of an Arbitral Award is provided for in Section 33 of the Arbitration Act, which specifically states that within 30 days from the receipt of an Arbitral Award, a party may, with notice to the other party, request the Arbitral Tribunal to correct any computational, clerical or typographical or such similar errors. Sub-section (1) of Section 33 also provides for an exception i.e., where another period of time has been agreed to by the parties. Sub-section 33(1)(a) of Arbitration Act is set out below:

"33. Correction and interpretation of award; additional award.—*(1)* ***<u>Within thirty days from the receipt of the arbitral award,</u> <u>unless another period of time has been agreed upon by the parties—</u>***

<u>(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical</u>

> ***<u>errors or any other errors of a similar nature occurring in the award;</u>***
>
> [Emphasis Supplied]

18.3 Sub-section (3) of Section 33 provides that a Tribunal may correct any error of the type referred to in clause 1(a) on its own initiative as well. However, even this provision gives an outer limit of 30 days within which the Tribunal may correct an Arbitral Award. Section 33(3) is set out below.

> ***"33. Correction and interpretation of award; additional award.***—
>
> *xxx xxx xxx*
>
> ***<u>(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award."</u>***
>
> [Emphasis Supplied]

18.4 Sub-section (4) of Section 34 of the Arbitration Act gives an opportunity to a party on an application for setting aside an Arbitral Award. It sets out that in a petition under Section 34, at the request of a party, the Court may adjourn the proceedings so that the Arbitral Tribunal may be given an opportunity to resume the arbitral proceedings or take other action which may eliminate the grounds for setting aside the Arbitral Award. Sub-section (4) of Section 34 is extracted below:

> ***"34. Application for setting aside arbitral award.***—
>
> *(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)*
>
> *(2) xxx*
>
> *(3) xxx*
>
> *(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, **adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."***
>
> [Emphasis Supplied]

19. From an analysis of the provisions extracted above, it is noticed that the Arbitration Act does provide for correction of an Arbitral Award, but only in the manner as is set forth under the Arbitration Act. It also provides that arbitral proceedings would terminate once the final Arbitral Award is given or, as is set out in Section 32(2) of the Arbitration Act, where the claimant withdraws his claim or the parties agree on termination or the Tribunal finds that the continuation of proceedings has become impossible or

unnecessary. It also provides that corrections may be carried out as is set forth under Section 33(1) and (3) of the Arbitration Act in the manner explained above, or where an Arbitral Award has been challenged under Section 34, on receipt of an application. However, all these provisions specify the filing of an application within a specified period of time and also of the procedure to be adopted for such a modification.

20. Undisputedly, in the present case, the mandate of the Arbitral Tribunal terminated, since an Arbitral Award was passed on 08.04.2019. It is also not disputed that no application under Section 33 of the Arbitration Act for correction of an Arbitral Award or for an additional Award was filed by the respondent/judgment debtor. However, it is clear from the affidavit dated 05.06.2026 filed by the respondent/judgment debtor before this Court that respondent chose instead to address an email to the Arbitral Tribunal. The date of email is not known since it is also stated in the affidavit that the email cannot be located by them.

20.1 However, what is also not disputed by either party is that on 30.12.2019, the Arbitrator addressed a communication to both the petitioner/decree holder and the respondent/judgment debtor captioned *'Clarification on Arbitration Award dated 08.04.2019'*. It also states that the petitioner/decree holder has raised an objection referring to Section 33 and 34 of the Arbitration Act. However, the Arbitral Tribunal records in its communication that after having gone through the Arbitral Award, it is found that the awarded interest is already calculated upto 08.04.2019 and that there was a typographical mistake which has happened by oversight and thus, it is clarified that claim No.12 was to award simple interest from 09.04.2019 and not from 09.04.2016 till its realization. The Arbitrator also refers to Sections 33 and 34 of the Arbitration Act by stating that it would not come in his way since great injustice would be done to the respondent/Slum Development Board, which is a public Institution set up to cater to the needs of the poor slum dwellers. The communication also references some objections filed by the claimants, and states that the petitioner/decree holder would have received this communication. The communication/clarification is extracted below for ease of reference:

> *"Clarification on the Arbitration Award dated 08.04.2019*
> *BY*
> *A.Jaganathan,*
> *Sole Arbitrator*
> *BETWEEN*
> *M/s Abhiram, Infra projects Pvt.Ltd.,*
> *HYDERABAD-500034* ***CLAIMANT***
>
> ***And***
> *Karnataka Slum Development Board,*
> *Bengaluru-560020* ***RESPONDENT***
>
> *With reference to the award dated: 08.04.2019, the legal Adviser (Rtd. District Judge) of Karnataka Slum* ***Development Board brought to my notice through e-mail that in page No:53 of the Award, CLAIM NO:12 the further simple interest is awarded from 09.04.2016 till realization.*** *He quoted the relevant part of the award below*
>
> ***Claim No.12: Interest at 18% on the award amount up to payment***
>
> *"The awarded amount of Rs.63,97,750/- as per the above abstract of the awarded amount will carry a further simple interest at the rate of 15.80% (SBI PLR +2%) from 09.04.2016 till realization"*
>
> *xxx xxx xxx*
>
> *With reference to the said provisions of law I have applied my mind. I have carefully gone through the award.* ***I found that the legal adviser has rightly pointed out that for the awarded amount interest is already calculated upto 08.04.2019 as found at page no: 45*** *of the award and the interest is already included in the awarded amount of Rs.63,97,750/- and further simple interest awarded at the rate of 15.80% from 09.04.2016 till realization does not arise at all* ***and it is a typing mistake happened by oversight. In this context and situation the objection raised by the claimant does not stands on merits and Section 33 & 34 of the arbitration and conciliation Act does not comes in a***

> ***way to correct the typing mistake happened by oversight, otherwise which would cause great injustice to the respondent Slum Board, which is a public institution*** *under the State Government****, set up to cater the needs of the poor slum dwellers. It is to be mentioned that as on 09.04.2016 even the Arbitration Tribunal was not constituted. Hence, typographical error happened inadvertently in the award (claim no: 12) is clarified and the date of awarding further simple interest on the awarded amount of Rs. 63,97,750/- is from 09.04.2019 (not from 09.04.2016)*** *till realization. Accordingly, the future interest rate on the awarded amount is clarified and corrected. This may be treated as the part and parcel of the award dated: 08.04.2019."*
>
> [Emphasis Supplied]

21. It is also not disputed that the petitioner/decree holder had filed execution proceedings on 30.10.2019 wherein this clarification issued by the Arbitral Tribunal on 30.12.2019 had formed part of a Memo dated 16.01.2020. After examining this clarification, the learned Executing Court held that since Section 36 of the Arbitration Act gives discretion to a Court in the matter of enforcement of an Arbitral Award as in executing the decree, the Court has every power under Section 152 to correct typographical or arithmetic mistakes in calculation of interest. The learned Executing Court then proceeded to examine the Arbitral Award and found that since on the awarded amount,

interest has already been included, the question of calculating interest from 08.04.2016 does not arise and it should be calculated from 09.04.2019.

21.1 Accordingly, it was held by the Impugned Order that the awarded amount of Rs.47,52,850/- includes interest till 08.04.2019 and the decree holder is entitled for realisation of this awarded amount with further simple interest at the rate of 15.80% from 09.04.2019 till realisation.

22. This Court is unable to agree with the reasoning and findings of the Impugned Order, for the reasons as are explained below.

23. As stated above, the mandate of the Arbitrator would have terminated once the Arbitral Award was passed in accordance with the provisions of Section 32 of the Arbitration Act. The only right available with the parties, once such termination of mandate occurs, would be to file an application under Section 33(1) or Section 33(3) of the Arbitration Act, within a period of 30 days from the date of passing of the Arbitral Award for the correction or

modification of the Arbitration Award. Any extension of the period under Section 33(1) of the Arbitration Act could only be with the consent of the parties which concededly is not present.

24. The Division Bench of the Delhi High Court has in the judgment of ***S.P.S.Rana*** case, while examining whether the legislative intent under Section 33 of the Arbitration Act envisages that this power is directory or mandatory, has held, the time of 30 days cannot be extended, unless it has been agreed upon by the parties. It is also not disputed by the parties that no such application was made nor have the parties agreed to any such time extension. The relevant extract is below:

> *"6. The first question which arises for consideration is,* ***whether the time of 30 days provided under Section 33(1) of the Act, in the absence of any agreement between the parties of any other time, is extendable.***
>
> *xxx xxx xxx*
>
> *9.* ***Section 33 of the Act does not use the words "but not thereafter". However, the period of 30 days is subject to "unless another period of time has been agreed upon by the parties". In our view the said expression has to be read in the same manner as the expression "but not thereafter" was interpreted in M/s Popular Construction Co. (supra).*** *Also, Section 32 inter alia provides for termination of the arbitral proceedings by the final award.* ***Section 32 (3) lays***

> ***down that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings, subject inter alia to Section 33.*** *It will thus be seen that unless a case is covered by Section 33, the mandate of the Arbitral Tribunal is terminated.* ***Thus, unless an application/petition under Section 33(1) of the Act is preferred within 30 days of the making of the award, the mandate of the Arbitral Tribunal terminates. Once the mandate of the Arbitral Tribunal terminates, it is not possible to file the application / petition under Section 33 of the Act."***
>
> [Emphasis Supplied]

24.1 It was held in the ***S.P.S.Rana*** case that an Arbitrator becomes *functus officio* once he passes an Arbitral Award and any act done thereafter, cannot be held to be an act of the arbitrator since once an Arbitrator's mandate expires, there is no Arbitrator, in the following terms:

> *"10. The Supreme Court recently in Commissioner of Customs & Central Excise Vs. Hongo India (P) Ltd. (2009) 5 SCC 791 has held that it is well settled that it is the duty of the Court to respect the legislative intent and further that by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act. It was further held that the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act (with which the court was concerned in that case) relating to filing of reference application in the High Court. Similarly in Katari Suryanarayana Vs. Koppisetti Subba Rao MANU/SC/0545/2009, it was held that the extent or degree of leniency to be shown by a court depends on the nature of the application and the facts and circumstances of the case.* ***One of the main purposes for the re-enactment of the arbitration law was to allow adjudication of disputes by arbitration expeditiously. Seen in this light, it will be found that***

> ***the period of 30 days provided for preferring the application under Section 33 of the Act is not extendable inasmuch as unless the application is so preferred, there is no Arbitrator thereafter.*** *We find that the same conclusion has been reached in UOI Vs. Saboo Minerals Pvt. Ltd. 106 (2003) DLT 92 and in Ircon International Ltd. Vs. Budhraja Mining & Constructions Ltd. MANU/DE/8647/2007 by Single Judges of this Court.*
>
> *11. That being the position,* ***the petition purportedly preferred by the petitioner under Section 33 of the Act was in fact no petition. Thus the order dated 18th December, 2007 of the Arbitrator holding the petition under Section 33 preferred after 30 days to be not maintainable and the Arbitrator having become functus officio cannot be said to have disposed of the said application.*** *The said order has to be read as an order only intimating that the application did not lie, the Arbitrator having become functus officio. The petitioner is thus not entitled to the benefit of the part of Section 34(3) providing for commencement of the period of three months for applying for setting aside of the order from the date of disposal of the application under Section 33; as such disposal has to be on an application preferred within 30 days provided under Section 33 (1) of the Act.* ***If the application under Section 33 is preferred after 30 days, the order of the Arbitral Tribunal to the effect that it cannot entertain the application, being functus officio, is not a "disposal" from which a fresh period of limitation would accrue.*** *If such interpretation were to be given, it will easily permit the unscrupulous litigants to, notwithstanding the expiry of the period of three months prescribed under Section 34(3) apply for setting aside of the award at any stage by merely prior thereto filing an application under Section 33 of the Act."*
>
> [Emphasis Supplied]

25. It is also a settled legal position that an Executing Court cannot go behind the terms of a decree unless such decree is a nullity or passed without jurisdiction. The option that is available to an aggrieved party is to challenge such

decree before the appropriate Court. The Supreme Court in ***Darshan Singh Vs. State of Punjab's*** case, has held as under:

> *"13. In support of his contention that **the executing court cannot go behind the terms of the decree passed by a court of competent jurisdiction, the learned counsel for the appellant placed strong reliance on the judgments in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman** [1970] 1 SCC 670] C.Gangacharan v. C.Narayanan [(2000) 1 SCC 459] and Bhawarlal Bhandari v. Universal Heavy mechanical Lifting Enterprises [(1999) I SCC 558]*
>
> *14. We shall now consider the above three judgments.*
>
> *15. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [(1970) 1 SCC 670] this Court in para 6 held the following: (SCC p. 672)*
>
> > ***"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."***
>
> *16. This Court held in Vasudev Dhanjibhai Modi Case [(1970) 1 SCC 670] **that the executing court cannot go behind the decree unless it is shown that it was passed by a court inherently lacking jurisdiction and thus was a nullity.** The aforesaid decision of this Court squarely applies to the facts of the present case. This is not a case in which the decree on the face of it was shown to be without jurisdiction. It is not the case of the respondent that the court which passed the decree was lacking inherent jurisdiction to pass such a decree.*
>
> *17. This Court in Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises [(1999) 1 SCC 558] and in C. Gangacharan v. C. Narayanan [(2000) 1 SCC 459] **has also taken the same view that the executing court cannot go behind the decree of a court of competent***

> ***jurisdiction except in the decrees void ab initio without jurisdiction**."*
>
> [Emphasis Supplied]

25.1 A similar view has been taken by the Supreme Court in ***Bhawarlal Bhandari's*** case while relying on the judgment in ***Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman***[10]. The relevant extract is set out below:

> *"9. The award dated 17-4-1985 was filed in the Court on 23-3-1989 by the arbitrator and the Court proceeded to deal with the question whether the award should be made the rule of the court or not. Notice was issued by the Court to the respondent to show cause as to why this award should not be made the rule of the court. There is no dispute that this notice was served on the respondent. Despite such service of notice, for reasons best known to the respondent, it did not think it fit to contest the proceedings nor did it file any objection under Section 30 of the Arbitration Act, 1940.* ***In the result, the Court passed an award decree on 2-6-1989 on account of the absence of any contest by the judgment-debtor. It is true that this award decree was sought to be executed years thereafter.*** *But the said delay on the part of the decree-holder in executing the decree within the permissible period for limitation in execution of such decree cannot give any sustainable right to the judgment-debtor to challenge the execution proceedings on that ground.* ***The contention of Shri Javali, learned Senior Counsel for the respondent that the award was a mock one and was not intended to be enforced cannot be sustained as that stage has gone for the respondent.*** *In execution proceedings, such a contention requiring the executing court to go behind the decree cannot be sustained. The question whether the award decree was filed by the arbitrator on his own or not was a mixed question of law and fact.* ***The Division Bench in the impugned judgment itself has noted that if the award was filed by the arbitrator suo-motu, then the***

[10] (1970) 1 SCC 670

> ***award decree cannot be said to be barred by limitation but if, on the other hand, the award was filed by the arbitrator at the instance of the appellant-decree-holder, then the question of limitation would arise.*** *The aforesaid observation of the Division Bench itself indicates that this is a mixed question of law and fact. That was an issue to be raised before the award was made a rule of the court. But such a plea can never make the decree a nullity especially when the respondent for reasons best known to it did not think it fit to file objections under Section 30 of the Arbitration Act, 1940.* ***It is well settled that the executing court cannot go behind the decree unless it is shown that it is passed by a court having inherent lack of jurisdiction, which would make it a nullity. In the case of Ittyavira Mathai v. Varkey Varkey [AIR 1964 SC 907 : (1964) 1 SCR 495] a Bench of*** *four learned Judges of this Court speaking through Mudholkar, J. observed that when the question of limitation was not raised before the trial court or before the High Court, it could not be raised for the first time before this Court even in the hierarchy of proceedings arising from the suit when such question of limitation raised before the Court was not a pure question of law but was a mixed question of law and fact.* ***In the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [(1970) 1 SCC 670 : (1971) 1 SCR 66] J.C. Shah,*** *J. speaking for a three-Judge Bench of this Court made the following pertinent observation in connection with the jurisdiction of the executing court, when called upon to execute the decree and on the question as to under what circumstances the executing court can go behind the decree sought to be executed..."*
>
> [Emphasis Supplied]

26. As stated above, concededly, no challenge to the Arbitral Award was undertaken by either party. The Executing Court, however, after examining the Arbitral Award, took upon itself the task of recalculating the interest awarded under the erroneous assumption that it had the

power under Section 36 of the Arbitration Act, as it was executing a decree. Thereafter, the learned Executing Court, after noting the contentions of the parties in the memo's filed, proceeds to re-examine the Arbitral Award on the aspect of interest awarded and gives a finding that there is nothing but an arithmetic mistake and the memo of calculation filed by the decree holder on 16.01.2020, is not correct and is liable to be rejected and passed the Impugned Order based on the memo filed by the respondent/Judgment Debtor.

26.1 The learned Executing Court goes on further to state that in terms of the discretion given to the Court under Section 30 of the Arbitration Act, the judgment debtor has made out a ground to record full satisfaction of the Arbitral Award as prayed in his memo dated 16.01.2020, since the respondent/judgment debtor has already paid Rs.70,65,184/- instead of Rs.68,98,384/-. Thus, the decree-holder himself has to pay Rs.1,66,800/- to the respondent/judgment-debtor. A direction is also passed in the Impugned Order that the decree-holder can refund the excess since it is public money.

26.2. In addition, the Executing Court also passes a direction to "correct" the Arbitral Award in accordance with the abstract of claims available in page 52 of the Arbitral Award. The relevant extract of the Impugned Order is below:

> "***The statute i.e., Sec. 36 of the Arbitration & Conciliation Act gives discretion to court in the matter of enforcement of award, as in executing a decree under the provisions of Code of Civil Procedure. When such being the case, this court has every power u/s 152 of CPC to correct the typographical or mathematical mistakes in calculation of interest****. It is not in dispute that the learned sole arbitrator has calculated the interest for the awarded amount as found at page No.45 of the award and the interest is already included* ***in the award amount of Rs.63,97,750/- till 8.4.2019. When such being the case, question of again calculating the interest from 8.4.2016 does not arise. Since interest has been calculated till 8.4.2019 the further interest arrived at 15.80% shall be calculated from 9.4.2019 in respect of amount awarded. This is nothing but arithmetical mistake. Under such circumstances the memo of calculation filed by the DHR on 16.1.2020 by calculating the interest from 9.4.2016 till 8.4.2019 is not at all correct and such memo of calculation is required to be rejected by this court. It is not in dispute that Decree Holder has acknowledged the cheque for Rs.63,97,750/- from the JDR and another cheque for Rs.6,67,434/- dated 27.12.2019.*** *The Decree Holder has received two cheques i.e., one cheque for Rs.63,97,750/- and another cheque for Rs.6,67,434/- and before this court on 16.1.2020, this second cheque amount has not been deducted in the memo of calculation*

filed on the same day i.e., 16.1.2020. ***Hence, in pursuance of the discretion given to this court in the matter of enforcement of award u/s 36 of the Act, this court clarifies that as per abstract of claims available at page-52 of the award, amount awarded is mentioned as Rs.47,52,850/- and interest is mentioned as Rs.16,44,990/- (sic Rs.16,44,900/-), The awarded total sum is mentioned as Rs.63,97,750/-.The awarded amount of Rs.47,52,850/- includes interest till 8.4.2019 and Decree Holder is entitled for realization of the said award amount along with further simple interest at the rate of 15.80% from 9.4.2019 till realization.*** *It is not in dispute that Decree Holder has received in all Rs.70,65,184/- from the DHR as on the date of filing of the memo of calculation i.e., 16.1.2020. The Decree Holder is entitled for further interest in respect of amount awarded mentioned in the abstract at page No.52 of the award i.e., Rs.47,52,850/- from 9.4.2019 till realization at the rate of 15.80%. Interest for one year @ 15.80% for Rs.47,52,850/- is Rs.7,50,950/-. Further, interest per month at the same rate will be Rs.62,580/-. Admittedly, Decree Holder has paid Rs.70,65,184/- as on 27.12.2019.* ***Hence, even if the interest is calculated from 9.4.2019 to 30.12.2019 for 8 months, the amount of interest payable to DHR is Rs.5,00,634/-. Hence, the total amount required to be paid by JDR is Rs.68,98,384/- including up to date interest i.e., up to 30.12.2019. Whereas JDR has paid Rs.70,65,184/- instead of Rs.68,98,384/-.*** *Hence, Decree Holder himself is due of Rs.1,66,800/- to the JDR.* ***The DHR himself can also calculate in accordance with calculation made above and refund the excess amount to the JDR. The amount involved with JDR Board being public money, the DHR being responsible citizen is under obligation to clear the excess amount received. Under such circumstances, the Judgment Debtor has made out a ground to dismiss the Execution Petition and to record full satisfaction of the award as prayed Further, the memo of in his memo dated 16.1.2020. calculation filed by the DHR being excess*** *and incorrect is required to be rejected. During these circumstances, this court opines that it is a fit case to exercise the discretion available to this court u/s 36(1) and 36(2) of the Act and also u/s 152 of CPC.* ***Accordingly, office to correct the award in accordance with the abstract of claims***

<u>available in page-52 of the award. Hence, I answer this Point in "Affirmative".”</u>

[Emphasis Supplied]

27. The Supreme Court has in the judgment of ***Sundaram Finance*** case has while examining how the provisions of Section 36 of the Arbitration Act would be applicable in the case of Arbitral Award, has held that the award is to be enforced in accordance with the provisions of the CPC, as if it were a decree. However, the Supreme Court clarified that an Arbitral Award by itself is not a decree of the Civil Court, as no decree is passed by a Civil Court. However, since the Arbitral Tribunal has no power to execute a decree, this power of enforcement has been specifically given in the Arbitration Act. The relevant extract of ***Sundaram Finance*** case is set out below:

> *“14. We would now like to refer to the provisions of the said Act, more specifically Section 36(1), which deals with the enforcement of the award:*
>
> > ***“36. Enforcement. –*** *(1) Where the time for making an application to set aside the arbitral award under section 34 has expired,* ***<u>then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 to 1908), in the same manner as if it were a decree of the court</u>****.”*
>
> *The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code*

> *in the same manner as if it were a decree.* ***It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the arbitral tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code.***"
>
> [Emphasis Supplied]

28. Thus, the action of Executing Court to act as a Civil Court to exercise its powers under Section 36 of the Arbitration Act, in the manner which it has been exercised which, as set out in the judgment of the Supreme Court in the ***Sundaram Finance*** case, cannot be sustained. Neither can a recalculation of the interest be carried out stating that the money is "public money" nor can the calculation in the Arbitral Award be modified as would be exercised by a Court under Section 34 of the Arbitration Act, a power not provided to the Executing Court.

29. The Supreme Court in the ***Bhawarlal Bhandari*** case has also set out that execution proceedings cannot be converted into a forum for re-opening or modifying a decree, nor can objections be entertained which have the

effect of modifying the decree. The relevant extract is set out below:

> *"Points (i) & (ii)*
>
> *9. The award dated 17-4-1985 was filed in the Court on 23-3-1989 by the arbitrator and the Court proceeded to deal with the question whether the award should be made the rule of the court or not. Notice was issued by the Court to the respondent to show cause as to why this award should not be made the rule of the court. There is no dispute that this notice was served on the respondent. Despite such service of notice, for reasons best known to the respondent, it did not think it fit to contest the proceedings nor did it file any objection under Section 30 of the Arbitration Act, 1940. In the result, the Court passed an award decree on 2-6-1989 on account of the absence of any contest by the judgment-debtor. It is true that this award decree was sought to be executed years thereafter. But the said delay on the part of the decree-holder in executing the decree within the permissible period for limitation in execution of such decree cannot give any sustainable right to the judgment-debtor to challenge the execution proceedings on that ground. The contention of Shri Javali, learned Senior Counsel for the respondent that the award was a mock one and was not intended to be enforced cannot be sustained as that stage has gone for the respondent**. In execution proceedings, such a contention requiring the executing court to go behind the decree cannot be sustained. The question whether the award decree was filed by the arbitrator on his own or not was a mixed question of law and fact. The Division Bench in the impugned judgment itself has noted that if the award was filed by the arbitrator suo motu, then the award decree cannot be said to be barred by limitation but if, on the other hand, the award was filed by the arbitrator at the instance of the appellant-decree-holder, then the question of limitation would arise. The aforesaid observation of the Division Bench itself indicates that this is a mixed question of law and fact. That was an issue to be raised before the award was made a rule of the court. But such a plea can never make the decree a nullity especially when the respondent for reasons best known to it did not***

think it fit to file objections under Section 30 of the Arbitration Act, 1940. It is well settled that the executing court cannot go behind the decree unless it is shown that it is passed by a court having inherent lack of jurisdiction, which would make it a nullity. *In the case of Ittyavira Mathai v. Varkey Varkey [AIR 1964 SC 907 : (1964) 1 SCR 495] a Bench of four learned Judges of this Court speaking through Mudholkar, J. observed that when the question of limitation was not raised before the trial court or before the High Court, it could not be raised for the first time before this Court even in the hierarchy of proceedings arising from the suit when such question of limitation raised before the Court was not a pure question of law but was a mixed question of law and fact.* ***In the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman [(1970) 1 SCC 670 : (1971) 1 SCR 66] J.C. Shah, J. speaking for a three-Judge Bench of this Court made*** *the following pertinent observation in connection with the jurisdiction of the executing court, when called upon to execute the decree and on the question as to under what circumstances the executing court can go behind the decree sought to be executed. The observation at SCR p. 68 of the Report deserves to be extracted in extenso: (SCC pp. 672-73, paras 6-7)*

> *"6.* ***A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties****.*
>
> *7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution.* ***Again, when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record:*** *where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record*

*and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, **<u>the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.</u>** In Jnanendra Mohan Bhaduri v. Rabindra Nath Chakravarti [(1932) 60 IA 71 : AIR 1933 PC 61] the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction."*

[Emphasis Supplied]

30. So far as concerns the judgments which have been relied upon by the respondent/judgment debtor, the same do not come to the aid of the respondent/judgment debtor. The Supreme Court in the ***State of Punjab's*** case while discussing Section 152 of the CPC has held that the power under Section 152 of the CPC is confined to correcting clerical or arithmetical mistakes or errors arising from an accidental slip or omission and cannot be invoked to modify, alter or add to, the substantive terms of an order, or to pass an effective judicial order after a judgment has been rendered. It has been clarified by the Supreme Court that the provision cannot be used to correct all mistakes and

omissions, especially in relation to the merits of a case or to modify a decree. The relevant extract is set out below:

> *"12. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission.* ***The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin*** *to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it.* ***The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum,*** *subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be.* ***It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the lis pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or***

> ***order***. *Similar view was expressed by this Court in Dwaraka Das v. State of Madhya Pradesh and Anr. (1999 (3) SCC 500) and Jayalakshmi Coelho v. Oswald Joseph Coelho (2001 (4) SCC 181).*
>
> *13. The basis of the provision under Section 152 of the Code is founded on the maxim 'actus curiae neminem gravabit' i.e. an act of Court shall prejudice no man. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law", said Cresswell J. in Freeman v. Tranah (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified. In Master Construction Co. (P) Ltd. v. State of Orissa (AIR 1966 SC 1047) it was observed that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected.* ***To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes. The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case."***
>
> [Emphasis Supplied]

31. In the present case however, there is not an arithmetic correction of the Arbitral Award but an amendment in the period of pre award and *pendente lite* interest by the Arbitral Tribunal. This too after the mandate of the Arbitral Tribunal, as specified in the Arbitration Act has expired. The

Executing Court has in addition carried out an examination of the calculation of the interest period afresh, and has thus modified the Arbitral Award passed.

32. The Supreme Court in ***North Delhi Municipal Corporation***'s case has after setting out Section 33 of the Arbitration Act clarified that the 30 day window for parties to seek correction or interpretation is not an inflexible mandate, except where the other party has agreed for such an extension. However, the facts were that the specific directions were passed by the Single Judge as well as the Division Bench in petitions filed by the parties including a petition under Section 34 of the Arbitration Act and an execution petition. This is also clear from the factual matrix of this judgment. The relevant extract of the ***North Delhi Municipal Corporation's*** case reads as follows:

> *"8. Simultaneously,* ***appellant also filed before the Single Bench a petition under Section 34 of the 1996 Act challenging the award dated 16.12.1997. By order dated 08.01.2002, the petition of the appellant under Section 34 of the 1996 Act was dismissed.***
>
> ***9. Appellant then preferred an appeal under Section 37 of*** *the 1996 Act before the Division Bench assailing the order dated 08.01.2002 being FAO(OS) No. 89/2002.*

__The said appeal was, however, dismissed by the Division Bench__ of the High Court by the judgment and order dated 14.03.2002.

10. Being aggrieved by the order dated 14.03.2002, __appellant filed a special leave petition before this Court__ being SLP(C) No. 7474/2002. Though this Court had initially issued notice and granted limited stay qua execution of the award vis-à- vis claim Nos. 22, 25 and 26, __the said special leave petition was subsequently dismissed by this Court on 03.02.2012.__

11. Reverting back to the execution petition filed by the respondent, learned Single Judge vide the order dated 26.08.2004 after framing the issue as above expressed the view that post-award interest under Section 31(7) of the 1996 Act affects a large volume of litigation before the court. __Therefore, in order to avoid proliferation of litigation and unnecessary appeals, learned Single Judge referred the matter to the Division Bench to clarify the position in this regard.__

12. When the matter was placed before the Division Bench__, respondent sought leave to approach the learned Arbitrator for seeking the clarification as to whether the interest awarded in the award under Section 31(7)(a) of the 1996 Act or not? Division Bench vide the order dated 03.01.2005 granted such permission to the respondent with the clarification that the permission so granted should not be understood to contain any expression of the opinion of the Division Bench about payment of interest under Section 31(7)(b) of the 1996 Act”__

xxx xxx xxx

“45. Let us now turn to Section 33 of the 1996 Act which provides for correction and interpretation of award; additional award. Section 33 reads as under:

> ***33. Correction and interpretation of award; additional award.—(1)** Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—*

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

xxx xxx xxx

45.1. As ***per sub-Section (1), within 30 days from the date of receipt of the arbitral award, a party with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award.*** *Further, if the parties agree, a party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award****. The period of 30 days contemplated under sub-Section (1) may stand extended to another period of time if agreed upon by the parties****.* ***Therefore, ordinarily the time limit for correction of errors or for interpretation of a specific point or part of the award is 30 days from the date of receipt of the arbitral award.*** *However, the limitation of 30 days can be waived for another period of time, if agreed upon by the parties. Question for consideration is what would be the contours of the expression unless another period of time has been agreed upon by the parties, as appearing in sub-Section (1) of Section 33.*

45.2. Sub-Section (7) of Section 33 clarifies that correction or interpretation of arbitral award or passing of additional arbitral award would attract Section 31 of the 1996 Act as discussed supra. Therefore, the language of sub-Section (1) of Section 33 makes it abundantly clear that the period of 30 days as provided in Section 33(1) is not an inflexible period. If the parties agree, the said period can be extended.

45.3. There is no dispute to the proposition of law laid down in Harshad Chiman Lal Modi (supra), relied upon by the appellant, that where a court has no

jurisdiction over the subject matter of the suit by reason of any limitation imposed by the statute, charter or commission, it cannot take up the cause or matter; an order passed by the court having no such jurisdiction is a nullity. Question is whether such a proposition would have any application to the facts and circumstances of the present case. As we have seen, there was no embargo on the Arbitral Tribunal to exercise jurisdiction over the subject matter. The only limitation was that the correction and/or interpretation of the award should be done within 30 days from the date of receipt of the arbitral award unless another period of time has been agreed upon by the parties. Therefore, the expression unless another period of time has been agreed upon by the parties assumes critical significance."

[Emphasis Supplied]

33. Undisputably, in the present case, there is no such agreement between the parties neither have any steps been undertaken, as contemplated under the provisions of Sections 32, 33 or 34 of the Arbitration Act, by either party.

34. In any event, the learned Executing Court has undertaken and re-calculated the Arbitral Award based on an interpretation thereof, to re-calculate the period of interest. Such an action cannot be sustained in view of the settled legal position.

35. So far as it concerns the second prayer of the petitioner/decree holder in the writ petition to declare the

clarification as issued by the learned Arbitral Tribunal on 30.12.2019 as *non est*, illegal and quash the same, we are in agreement with the learned counsel for the respondent/judgment debtor that the same is beyond the ambit of a petition under Article 227 of the Constitution of India, such as the present one.

36. It is a settled legal position that ordinarily Courts should refrain from interfering in matters which are governed by the Arbitration Act. In ***Bhaven Construction***, the Supreme Court was considering the scope of interference by the High Court under Articles 226/227 of the Constitution with the arbitral process. The respondent had challenged an order of the Arbitral Tribunal despite the availability of a statutory remedy under Section 34 of the Arbitration Act. The Supreme Court held that the Arbitration Act is a self-contained code and, having regard to Section 5 thereof, judicial intervention in matters governed by the Arbitration Act must remain within its statutory framework. It was further held that, although the constitutional jurisdiction under Article 227 remains available, the High

Court ought to be extremely circumspect in exercising the same, and interference should be restricted to cases where the Impugned Order is patently lacking in inherent jurisdiction. The relevant extract of ***Bhaven Construction*** case is set out below:

> *"12. **<u>We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences.</u>** One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under*
>
> > *"5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*
>
> *(Emphasis Supplied)*
>
> *The non obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.*
>
> *13. **<u>The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.</u>***
>
> *xxx xxx xxx*
>
> *17. Thereafter, Respondent 1 chose **<u>to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Articles 226/227 of the Indian Constitution.</u>** In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phase of Section 34 reads as*

> *"**34. Application for setting aside arbitral award**.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)".*
>
> *(Emphasis Supplied)*

The use of term "only" as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.

xxx xxx xxx

18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. *In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)*

> *"11. We have considered the respective arguments/ submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . **However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency /instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.**"*

[Emphasis Supplied]

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. *This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.*

19. In this context we may observe Deep Industries Ltd. v. ONGC [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] , ***wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under :*** *(SCC p. 714, paras 16-17)*

> ***"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part.*** *Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].*
>
> ***17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act.*** *In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act,* ***yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted***

to orders that are passed which are patently lacking in inherent jurisdiction."

[Emphasis Supplied]

VII. CONCLUSION:

37. In view of the aforegoing discussions, this Court finds that the Executing Court went beyond its mandate in passing the Impugned Order.

38. Accordingly, the petition is ***allowed.*** The Impugned Order is set aside. The parties are left to bear their own costs. All pending applications stand closed.

39. The parties shall appear before the Executing Court for further proceedings on **14.09.2026.**

Sd/-
(TARA VITASTA GANJU)
JUDGE

YN/JJ
List No.: 1 Sl No.: 1