SUPREME COURT OF INDIA *(D.B.)*

M P HOUSING BOARD
V/S
PROGRESSIVE WRITERS AND PUBLISHERS

Date of Decision: 20 March 2009

Citation: 2009 LawSuit(SC) 426

Hon'ble Judges: Lokeshwar Singh Panta, B Sudershan Reddy

Case Type: CIVIL APPEAL

Case No: 1746 OF 2009

Subject: Arbitration, Constitution

Head Note:

Arbitration Act, 1940 - Sec 23, 30, 39 - award of Arbitrator - misconduct - two building agreements between Board and depositors - disputes - Board initiated appropriate proceedings for setting aside award passed by Arbitrator - contending that arbitrator disregarded terms of contract and passed his award on events and circumstances which were irrelevant for interpreting terms of contract - Trial Court confirmed award and appeal thereagainst rejected by High Court - whether third building agreement dated 31.05.1980 stood automatically cancelled on account of non-compliance of terms thereunder by depositor and whether second agreement dated 4.05.1977 stood automatically revived - finding by arbitrator that Board had itself waived time clause and was willing to accept money from depositor even after 31.10.1980 as is evident from negotiations which continued between parties till year 1985-86 - time is not normally an essence of any agreement qua immovable properties and even there was an express covenant of time being an essence, overall agreement have to be looked at to determine whether time was essence - whether time is essence of contract would,

therefore, be a question of fact to be determined in each case and merely expression of stipulated time would not make time an essence of contract - finding arrived at by arbitrator in this regard is not even challenged by Board in proceedings initiated by it u/s. 30 of Act - no restatement that award of Arbitrator is ordinarily final and courts hearing applications u/s. 30 Act do not exercise any appellate jurisdiction - finding by arbitrator cannot be said to be perverse to give rise to legal misconduct deserving intervention - courts below rightly refused to interfere with award passed by arbitrator - it is not a case which warrants interference in exercise of jurisdiction under Art. 136 of Constitution of India - appeal dismissed.

Acts Referred:
Constitution of India Art 136
Arbitration Act, 1940 Sec 39, Sec 23, Sec 30

Final Decision: Appeal dismissed

Eq. Citations: 2009 (3) AWC 2618, 2009 (3) RCR(Civ) 471, 2009 (5) SCC 678, 2009 (2) Supreme 749, 2009 (2) ArbLR 145, 2009 (4) JT 219, 2009 AIR(SC) 1585, 2009 AIR(SCW) 2484, 2009 (2) ApexCJ 314, 2009 (2) CTC 843, 2009 (5) MadLJ 145, 2009 (4) Scale 119, 2009 (4) SCR 725, 2009 (5) SCJ 48, 2009 (4) MPJR 390, 2009 (3) CivCC 285

Advocates: L N Rao, Vibha Datta Makhija, C A Sundaram, Sushil Kumar Jain, Puneet Jain, Rohini Musa, Abhishek Gupta, Zafar Inayat, Anand Kannan, Archana Tiwari, Rajeev Mishra

Reference Cases:
Cases Cited in (+): **44**
Cases Referred in (+): **1**

Judgement Text:-

B Sudershan Reddy, J

[1] On February 18, 1975 the M.P. Housing Board (for short `the Board ) and Progressive Writers and Publishers, New Delhi (hereinafter called as the `depositor)

entered into an agreement whereunder the Board agreed to construct a building called the `Hitavada Press Complex on the land admeasuring 33932 sq. ft. situated at T.T. Nagar, Bhopal. The terms of agreement, inter-alia, provided that the Board would execute the construction of Hitavada Press Complex and charge 5% supervision charges of the actual expenditure on the project. The cost of construction was to be borne by the depositor. The depositor was required to place funds including supervision charges at the disposal of the Board in advance as agreed upon. The work was expected to be completed within 18-24 months. The possession of the land was handed over to the Board for the purposes of construction of building. In case of overrun of expenditure and funds, the revised estimates were to be submitted and the administrative approval of the depositor was required to be obtained. In the event of any dispute, the matter was required to be referred to the Secretary, Government of Madhya Pradesh for decision.

[2] The cost of construction of the building was estimated at Rs. 28 lakhs out of which the depositor was required to deposit an amount of Rs. 14 lakhs at the outset and the balance thereafter. The initial amount of Rs. 14 lakhs was accordingly deposited by the depositor with the Board. However, the depositor failed to deposit the balance amount. In the meanwhile, the Board had paid the amounts from its own funds in order to complete the construction of the building. The depositor expressed its desire to retain only that portion of the building where the printing press was located including mezzanine floor along with two adjacent halls on the first floor and accordingly made a representation to the Board. The Board in its turn agreed to the suggestion and thereafter parties entered into the second building agreement dated May 4, 1977; under which it was expressly agreed between the parties that the depositor would transfer the total area of the land and building which was 33932 sq. ft. and the Board would in turn re-transfer 7437 sq.ft. of land along with hall having Press portion constructed thereon for which the depositor would pay Rs. 3.50 lakhs to the Board in 15 equal yearly installments. The Board agreed to grant a loan of Rs. 3.50 lakhs repayable with interest against an equitable mortgage of the Press building and the portion of the land thereon. Out of the said amount, Rs. 50,000/- was to be paid by the Board to Punjab and Sind Bank as per the instructions of the depositor. It was also agreed between the parties that the Board in order to acquire full ownership of the entire complex shall return the amount of Rs. 14 lakhs and for that purpose the original documents pledged by the depositor with the Punjab and Sind Bank were to be redeemed by the Board upon payment of Rs. 13.50 lakhs to the Bank. Upon fulfillment of the said conditions, the Board was entitled to complete the construction of the building in its possession and enjoy the same as the full owner.

[3] The Board in terms of the second building agreement had paid the agreed sum to the Bank and obtained the original title deeds of the part of the plot admeasuring 19319 sq. ft only. However, the title deeds of the residual area were not handed over to the Board. The construction was completed by the Board.

[4] For whatever be the reasons, the parties have entered into third building agreement on May 31, 1980. The recitals in the agreement disclose that certain complications and disputes arose between the parties after execution of the earlier two agreements resulting in litigation between the parties which were pending as on the date of third building agreement. In the third building agreement it is inter-alia stated that "on the request of the depositor vide their letter of May 1, 1980, expressing their desire to take the entire Complex building on the following terms and conditions and to end all litigation for all time to come, to which the Board agrees...." Under the said agreement, the depositor agreed to pay to the Board the total amount of cost incurred by the Board for construction of Complex undertaken by it under the first agreement of February 18, 1975, estimated at Rs. 73.50 lakhs including architectural fee, capitalised interest and supervision charges. The depositor was required to pay interest on the principal amount at the rate of 15% per annum from the date of completion of construction of the building (i.e. 01.01.1979) upto the date of payment. The depositor also agreed to repay the entire loan amount of Rs. 3.50 lakhs paid to it under the second agreement dated May 4, 1977 with interest at the rate of 10= % till the date of repayment.

[5] The dispute centers around the interpretation of Clause 4 of the agreement and it may be just and necessary to notice the same in its entirety.

> Clause 4: That the depositor agrees to pay the entire aforesaid amount of cost, loan and interest on execution of this agreement not later than 31st October, 1980, failing which this agreement shall be deemed to be cancelled.
>
> The agreement further provides that as soon as the aforesaid amounts are paid in full, the parties were required to take follow up action and withdraw all suits and appeals filed by the parties that were pending in courts and as well as before Property Administrator, M.P. Housing Board. The Board was required to hand over possession and the title deeds by duly declaring the depositor as the owner of the Complex. It was expressly provided that all such provisions of the previous two agreements which were inconsistent with

the third agreement shall be deemed to be ineffective.

[6] It is an admitted fact that the depositor did not comply with Clause 4 of the third agreement which required the payments to be made by 31st October, 1980. It is equally an admitted fact that the depositor made certain representations to the Board that they were willing to perform their part but were unable to do so for want of proper accounts and other details from the Board and thus required further time for payments of the amounts under the third agreement. Exchange of correspondence in that regard between the parties went on till 1986.

[7] Since the parties failed in arriving at any agreed settlement, the Board filed Suit No. 2A/87 before the court of IInd Additional Judge, Bhopal for permanent injunction seeking a restraint against the depositor from disturbing their possession of the land and building and also sought a further restraint order restraining the depositor from demolishing sheds constructed by the Board. The court granted a temporary injunction. The depositor filed Misc. First Appeal in the High Court challenging the order of temporary injunction granted by the trial court. The High Court vacated the temporary injunction order. The Board thereafter filed a comprehensive Civil Suit bearing RCS No. 8A/90 in the court of IInd Additional District Judge, Bhopal for declaration, Specific Performance of the Contract and Permanent Injunction. The learned trial court referred the disputes arising out of RCS No. 8A/90 (New No. 63-A/94) and Regular Civil Suit No. 2A/87 (New No. 16A/94) to the sole arbitrator Shri Justice K.K. Dubey (Retired) for determination of disputes. The said cases were registered before the arbitrator as Reference Case No. 1/95 and Reference Case No. 2/95. The arbitrator by his award dated September 23, 1998 granted the following reliefs:

> 1. The board shall give immediate possession of the building to the society. This should be done within a week of the award being made the rule of the Court.
>
> 2. The board shall be entitled to a sum of Rs. 37,70,309-87. Half of this amount shall be paid by the society as soon as the award is declared the rule of the court. The rest of the amount shall be paid in monthly installments of Rs. 2.4 lakhs from the monthly rental income of the building. If there is any shortfall in the realization of the rent, it shall be made good by the society. This amount shall be receivable by the board by the end of the month. In case of any default, the board shall be entitled @ 18% per annum capitalized

quarterly.

3. There shall be no interest payable to the board for the interim period, that is, after passing of this award and the decree of the court making this award the rule of the court.

4. As regards unrealized rent, the parties shall enter into an agreement to the effect assigning the rental debt to the board.

5. Both the parties shall take steps to withdraw all cases against each other before the court and before other authorities.

6. The relief of specific performance of the third agreement dated 31-5-80 as prayed by the society has been allowed subject to the relief under this award.

[8] Being aggrieved by the award passed by the arbitrator, the Board initiated appropriate proceedings for setting aside the award passed by the arbitrator. The trial court confirmed the award passed by the arbitrator against which the Board preferred appeals under Section 39 of the Arbitration Act, 1940 (for short `the Act). The High Court dismissed the appeals preferred by the Board. Hence the present Special Leave Petition.

[9] Leave granted.

[10] The present appeal is directed against the common judgment and order dated July 27, 2006 passed by the High Court of Madhya Pradesh judicature at Jabalpur whereby the High Court dismissed the appeals of the appellant filed under Section 39 of the Act.

[11] Shri L.N. Rao, learned senior counsel for the appellant submitted that the award of the arbitrator is vitiated and required to be set aside. The courts below have committed a grave error in confirming the award passed by the arbitrator. The arbitrator has committed gross misconduct which is apparent from the face of the record. The arbitrator disregarded the terms of the contract and passed his award on events and circumstances which were irrelevant for interpreting the terms of the contract. The award is based on conjectures and surmises. It was also submitted that the arbitrator

has exceeded his jurisdiction by framing and deciding issues which were not referred to him by either of the parties which reflects the predetermined mind of the arbitrator.

[12] Shri C.A. Sundaram, learned senior counsel appearing for the respondent submitted that the award does not suffer from any infirmities whatsoever requiring the interference of this Court in exercise of its jurisdiction under Article 136 of the Constitution of India. Learned senior counsel submitted that both the courts below concurrently found that the award passed by the arbitrator is just and reasonable and is not vitiated by any act of misconduct on the part of the arbitrator. The findings so recorded by the courts below by no stretch of imagination could be characterised as perverse and that being the position, there is no scope for any interference with the award.

[13] Shorn of all the details and embellishments, the crucial question that arises for our consideration is whether the third building agreement dated May 31, 1980 stood automatically cancelled on account of non- compliance of the terms thereunder by the depositor and whether the second agreement dated May 4, 1977 stood automatically revived? In order to resolve the controversy it is just and necessary to make a detailed analysis of terms and conditions incorporated in the third building agreement dated May 31, 1980. The intention of the parties is to be gathered for determining the scope of the agreement. The third agreement as is evident from the recitals was entered into mainly for the purpose of arriving at terms for the payment of construction cost and other fees payable by the depositor to the Board. The depositor agreed to pay to the Board the total amount of `cost of Complex incurred by the Board for the construction pursuant to the first agreement dated February 18, 1975. The amount was quantified at Rs. 73.50 lakhs which included the architectural fees, capitalised interest and supervision charges etc. The said agreement does not speak about any transfer of land. There is no doubt that the depositor agreed to pay the entire amount of cost of construction, loan and interest payable to the Board on or before October 31, 1980. The question is whether non payment results in automatic cancellation of the third agreement? The nature and scope of the said agreement is entirely different from that of the earlier agreements of 18.02.1975 and 04.05.1977 executed by and between parties.

[14] Whether time is the essence of the agreement dated May 31, 1980:

> It is true that Clause 4 of the third agreement provides that the depositor to make all the payments on or before October 31, 1980 on the pain of cancellation of agreement. But the question is what are those amounts that

were required to be paid?

[15] The arbitrator in this regard upon consideration of the material available on record found that the depositor was under confusion and rightly so as to the amount of actual cost of construction. It was also found that the amount actually paid to the architect as his fees and the fees as the Board has included in the cost of construction was different. The duration of period of construction was also not clear from the records produced by the Board. Therefore, the depositor was not in a position to know the capitalised interest. It is an admitted fact that the Board had been realising rents from the lessees of the building. The same has not been taken into account and it is under those circumstances the depositor went on requesting the Board to provide the detailed accounts as regards the actual cost and also details as to the rent collected by the Board in order to enable them to pay the exact amount to the Board. The arbitrator found that despite such request the account books were not shown to them and in fact the account books were not maintained in terms of the first agreement. The arbitrator found that the Board always assured the depositor that it would provide the details as required after complete verification as regards the amounts of cost incurred by the Board for construction of the building. The arbitrator found that the Board has realised rents from the building which had not been set off against the amount of Rs. 73.50 lakhs shown in the agreement as cost of construction. The arbitrator after taking the sequence of events and correspondence between the parties even after 31st October, 1980 into consideration arrived at a conclusion that the figure of Rs. 73.50 lakhs as cost of construction was tentatively shown in the agreement.

[16] The arbitrator found that the Board had itself waived the time clause and was willing to accept money from the depositor even after 31st October, 1980 as is evident from the negotiations which continued between the parties till the year 1985-86. The arbitrator relied on documentary evidence made available by the parties in arriving at the conclusion that in the present case the time is not essence of the agreement.

[17] It is fairly well settled that the time is not normally an essence of any agreement qua immovable properties and even there was an express covenant of time being an essence, the overall agreement have to be looked at to determine whether the time was the essence. Whether the time is the essence of the contract would, therefore, be a question of fact to be determined in each case and merely expression of the stipulated time would not make time an essence of the contract. The finding arrived at by the arbitrator in this regard is not even challenged by the Board in the proceedings initiated

by it under Section 30 of the Act.

[18] It is fairly well settled and needs no restatement that the award of the arbitrator is ordinarily final and the courts hearing applications under Section 30 the Act do not exercise any appellate jurisdiction. Reappraisal of evidence by the court is impermissible. In Ispat Engineering & Foundry Works, B.S. City, Bokaro v. Steel Authority of India, B.S. City, Bokaro , it is held:

> 4. Needless to record that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the court is not permissible. This Court in one of its latest decisions [Arosan Enterprises Ltd. v. Union of India upon consideration of decisions in Champsey Bhara & Co. v. Jivraj Balloo Spg. & Wvg. Co. Ltd. AIR 1923 PC 66, Union of India v. Bungo Steel Furniture (P) Ltd. , N. Chellappan v. Secy., Kerala SEB , Sudarsan Trading Co. v. Govt. of Kerala , State of Rajasthan v. Puri Construction Co. Ltd. as also in Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan has stated that reappraisal of evidence by the court is not permissible and as a matter of fact, exercise of power to reappraise the evidence is unknown to a proceeding under Section 30 of the Arbitration Act. This Court in Arosan Enterprises categorically stated that in the event of there being no reason in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, interference would still be not available unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. This Court went on to record that in the event, however, two views are possible on a question of law, the court would not be justified in interfering with the award of the arbitrator if the view taken recourse to is a possible view. The observations of Lord Dunedin in Champsey Bhara stand accepted and adopted by this Court in Bungo Steel Furniture to the effect that the court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out whether or not the arbitrator has committed an error of law. The court as a matter of fact, cannot substitute its own evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties.

[19] Interpretation of a contract, it is trite, is a matter for the arbitrator to determine. Even

in a case where the award contained reasons, the interference therewith would still be not available within the jurisdiction of the court unless, of course, the reasons are totally perverse or award is based on wrong proposition of law. An error apparent on the face of the records would not imply closed scrutiny of the merits of documents and materials on record. "Once it is found that the view of the arbitrator is a plausible one, the court will refrain itself from interfering." [see Sudarsan Trading Co. v. Govt. of Kerala and State of U.P. v. Allied Constructions].

[20] In the present case, on the material available and upon appreciating the same the arbitrator arrived at the finding that the time was not of the essence and the agreement subsisted even after 31stOctober, 1980. The finding cannot be said to be perverse to give rise to legal misconduct deserving intervention under Section 30 of the Act.

[21] In any event, even the time was the essence of the agreement, the same was not insisted upon by the parties in the present case. The material available on record disclose that even after October, 1980, parties continued negotiations as regards the actual amounts payable based on what the construction cost would be on reconciliation of accounts and the same would indicate that the parties were still working out their rights and obligations under the agreement. The parties would not have acted in such a manner had the agreement had come to an end. Be it noted that the Board never took any stand during the negotiations that the agreement stood cancelled or took any steps to terminate the same. It did not raise any objection contending that the cost of construction was quantified at Rs. 73.50 lakhs after negotiation and verification of the accounts by the parities to their satisfaction. It was not the case of the Board that the quantified amounts towards cost of construction of complex was non negotiable. It is under those circumstances the arbitrator accepted the case set out by the depositor that the Board was always assuring them to furnish the correct figure and the accounts of cost incurred by them but refused to do so. The arbitrator took into consideration variety of circumstances in arriving at the conclusion that the figure of Rs. 73.50 lakhs stipulated in the agreement was tentative and not a final figure. The arbitrator has fully discussed the issue as to how the non-payment of the amounts was on account of the Board s action in not furnishing the accounts even at the stage of arbitration and, therefore, held that the Board could not seek to wriggle out of 1980 agreement.

[22] The courts below found conclusions drawn and findings arrived at by the arbitrator that non payment of amounts by the depositor by 31st October, 1980 as provided for did not result in automatic cancellation of the agreement were plausible and accordingly refused to interfere in the matter. The courts below upheld the findings that the

depositor continued to be the owner of the property.

[23] The decision in Swarnam Ramachandran and Anr. v. Aravacode Chakungal Jayapalan , upon which reliance has been placed by the learned senior counsel, in our considered opinion, in no manner, supports the contention advanced before us. In the said decision the Court took the view that the time is presumed not to be of the essence of the contract relating to immovable property, but it is of the essence in contracts of reconveyance or renewal of lease. It is further held that whether time is of the essence is a question of fact and the real test is the intention of the parties. It depends upon the facts and circumstances of each case. In cases where notice is given making time of the essence, it is the duty of the court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. The intention can be ascertained from:

(i) the express words used in the contract;

(ii) the nature of the property which forms the subject matter of the contract;

(iii) The nature of the contract itself; and

(iv) The surrounding circumstances.

[24] The onus to plead and prove that time was of the essence of the contract is on the person alleging it. In the present case, the Board never took the plea before initiating the legal proceedings that the time was of the essence of the contract. The arbitrator after taking all the relevant facts into consideration in the present case found that there was no justification in claiming to treat time as of the essence of the contract.

[25] Mr. Nageshwar Rao, learned senior counsel for the appellant submitted that amongst the issues submitted by the parties to the arbitrator there was no issue regarding the non-execution of the contract or with regard to whether the non-performance of the third agreement was due to non-supply of accounts by the Board. The contention was that the arbitrator himself framed a specific issue, being issue No. 13 to the effect whether the Board thwarted the fulfillment of the condition of the payment within the period of time by not supplying the proper accounts of the costs of the building, thus, denying the depositor the opportunity to deposit the amount. The

submission was that the arbitrator exceeded his jurisdiction in framing such an issue and thus committed grave legal misconduct. It was submitted that in the present case both the parties acted in accordance with the terms of the 1980 agreement and upon admitted failure of the depositor to pay the stipulated amounts within the agreed period, the contract stood automatically terminated and the 1977 contract automatically revived.

[26] We cannot accept the contention of the Board that no additional issue could have been framed by the arbitrator on his own for its decision. In a reference made under Section 23, arbitrator s power to determine the lis between the parties is much wider. The arbitrator has all the powers which the court itself would have in deciding the issues in the suit. The court s power to frame an additional issue if its is just and necessary for deciding the matter in dispute cannot be denied and so also of the arbitrator where disputes between the parties pending adjudication on suits have been referred to arbitrator for determination [See: Jugal Kishore Prabhatilal Sharma and Ors. v. Vijayendra Prabhatilal Sharma and Anr.].

[27] In the light of the settled legal principle, we are of the opinion that the arbitrator was not bound to adopt only the issues submitted by the parties but was well within his jurisdiction to frame such other issue or issues as may be just and necessary for the purpose of disposal of the reference made under Section 23 of the Act. We accordingly find no merit in the submissions made by the learned senior counsel that the arbitrator exceeded his jurisdiction and committed grave legal misconduct in framing said issue and determining the same.

[28] It is true that the arbitrator took judicial note of certain facts which were in the realm and conjectures and surmises to conclude that the second agreement 1977 was entered into under political pressure and depositor was compelled to execute the said agreement under such pressure. But the question is what is the effect of the same. In our considered opinion even this surmise and conjecture is ignored and not taken into consideration, the award of the arbitrator continues to be valid and binding on the parties. The findings recorded by the arbitrator that the specific performance of the second agreement is barred by limitation; that the agreement is itself unconscionable; that the agreement ceases to subsist after the 1980 agreement and was not revived are not based on the sole ground that the second agreement came to be executed under political pressure. There is enough material available on record to arrive at such conclusion as the one arrived at by the arbitrator. All the said conclusions were not arrived solely on the basis of conjectures and surmises. In Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. and Anr. , this Court held that "an

award of an arbitrator should be read reasonably as a whole to find out the implication and the meaning thereof. Even in a case where the arbitrator has to state reasons, the sufficiency of the reasons depends upon the facts and circumstances of the case. The Court, however, does not sit in appeal over the award and review the reasons. The court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon any legal proposition which is erroneous." The award under challenge is not the one which is based on no evidence.

[29] In Food Corporation v. Joginder Pal this Court reiterated the principle that an award of an arbitrator can only be interfered with or set aside or modified within four corners of the procedure provided by the Act. It is not misconduct on the part of an arbitrator to come to an erroneous decision, whether error is one of the fact or law, and whether or not his findings of fact are supported by evidence. In case of errors apparent on the face of the award it can only be set aside if in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award. Errors of law as such are not to be presumed.

[30] Learned senior counsel for the appellant further contended that the arbitrator in the instant case has committed grave error in going beyond the terms of the contract admittedly entered into by and between the parties. The question is what is the legal misconduct committed by the arbitrator in the instant case? Whether the award by the arbitrator perpetrates gross miscarriage of justice? Is it reduced to mockery of a fair decision of the lis between the parties to the arbitration? The erroneous application of law constituting the very basis of the award and improper and incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held as legal misconduct rendering the award as invalid but at the same time the court could not reappraise the evidences intrinsically with a close scrutiny for finding out that the conclusion drawn from some facts, by the arbitrator is according to the understanding of the court, erroneous. Such exercise of power which can be exercised by an Appellate Court with power to reverse the finding of fact, is alien to the scope and ambit of challenge of an award under the Arbitration Act. [See: State of Rajasthan v. Puri Construction Co. Ltd. and Anr. . In the present case there is no erroneous application of law by the arbitrator or any improper and incorrect finding which is demonstrable on the face of the material on record.

[31] It was submitted that when there has been quantification of the costs of the construction of the building and incorporation of the same in the third agreement the

same could not be re-determined by the arbitrator by rewriting the terms of the agreement entered into between the parties. We find no merit in the submission. There is no dispute with the proposition that the intention of the parties is to be gathered from the words used in the agreement. If the words are clear, there is very little that the Court can do about it. In the present case, the parties entered into three agreements one after the another. The arbitrator while interpreting Clause 1 of the third building agreement whereunder the figure of Rs. 73.50 lakhs being the amount of cost of complex arrived at the conclusion that the figure has been given by the Board. The arbitrator upon appreciation of the material available on record found that the depositor repeatedly requested the Board to provide the details of accounts of the cost as also the rent realization in order to enable them to pay the exact amount to the Board. The arbitrator after taking all the relevant facts and circumstances into consideration found that determination as to the actual cost of the construction was absolutely imperative to determine the exact amount payable and found that the figure of 73.50 lakhs as stated in Clause 1 of the third agreement was only indicative. The arbitrator derived support from the numerous documents filed before him which revealed that the cost of construction was stipulated in Clause 1 of the agreement was tentative, the matter was kept open till 1990 for settlement of accounts. Interpretation of the terms of the agreement concerning the quantification of cost of construction in the present case, in our considered opinion, does not amount to rewriting the terms of the contract.

[32] The arbitrator having considered the overall situation and having arrived at a conclusion that the second building agreement was not enforceable held that the property would continue to vest with the depositor. But the arbitrator did not ignore the legitimate right of the Board to realize the amounts spent by it for putting up the construction. The arbitrator considered the matter and worked out a reasonable, just and fair solution and accordingly held that the depositor was bound to pay the amounts spent by the Board for construction whether or not they wanted such a construction to have come up or whether or not the Board could have expended monies to pay for the construction without the consent of the depositor as provided in the 1975 agreement.

[33] The arbitrator accordingly passed the award declaring that the Board shall be entitled to a sum of Rs. 37,70,309.85 and directed the depositor to pay half of the amount as soon as award is declared a Rule of the Court. The rest of the amount to be paid in monthly installments of 2.4 lakhs from the monthly rental income of the building. In case of any default the Board shall be entitled to interest @ 18% per annum capitalized quarterly. Relief granted by the arbitrator, in our considered view is fair and equitable one. The arbitrator awarded the amounts towards cost of construction plus

supervision and other charges payable to the Board together with a hefty interest @ 15% compound from the date of expenditure by the Board till the date of payment.

[34] In our considered opinion, there is nothing in the award requiring intervention by the courts. The courts below rightly refused to interfere with the award passed by the arbitrator. It is not a case which warrants our interference in exercise of jurisdiction under Article 136 of the Constitution of India.

[35] Appeal fails and is accordingly dismissed with no order as to costs.