



ARBITRATION AND CONCILIATION

Union of India v. M/s Ambica Construction

AUTHOR Nivedita Iyengar

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Brief Facts of the Case

In the case of *Union of India v. M/s Ambica Construction*^[1], the Appellant had executed an agreement with the Respondent for fabrication of tie bars from M.S. Flats in CST-9 sleepers. The Respondent had completed its work under the said agreement, however certain differences arose between the parties regarding payment to be made to the Respondent. The dispute was referred for arbitration.

Issue before the Supreme Court

The Supreme Court, considered the question as to whether the Arbitrator has the power to award interest in a matter which is still under litigation (“Interest *Pendente Lite*”), when the contract expressly contains a bar on the grant of interest.

Decision of the Supreme Court

The Court held that where the agreement between the parties does not prohibit grant of interest the arbitrator shall have the power to award Interest *Pendente Lite*. In such a scenario, it is presumed that the interest was an implied term of the agreement between the parties and therefore when the parties refer the dispute to the arbitrator, he shall have the power to award interest. The Court also clarified that the implied terms in the contract would only grant the arbitrator with the power to use his discretion in awarding Interest *Pendente Lite*. The implied terms of the contract do not mandate the compulsory awarding of Interest *Pendente Lite*.

The Court further held that an Arbitrator will not have the power to award of Interest *Pendente Lite*, if the contract expressly bars the same. However, a statement in the contract barring interest on delayed payment will by itself not constitute an “express bar” on award of Interest *Pendente Lite*. The “express bar” on the powers of the Arbitrator will depend on various relevant aspects such as phraseology used in the agreement, clause conferring power relating to arbitration, nature of claim and dispute referred to Arbitrator and on what items power to award interest has been taken away and for which period.

^[1] *Special Leave Petition [C] No. 11114/2009*