IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

C.M.A.NOS.234, 242, 243, 244, 245, 246, 247, 248, 249, 253, 257, 258 & 259 of 2025

Civil Miscellaneous Appeal No: 234/2025

Between:

M/s. Sunrise & Engineering Industries
Rep.by its Managing Partner Sri Myneni Veerababu,
S/o.Chenchaiah, Hindu, aged about 66 years,
Residing at D-6, Ville Royal Price Apartments,
Siripuram, Visakhapatnam-530017. …Appellant

AND

$ 1. Hindustan Shipyard Limited,
Gandhigram Visakhapatnam-530005
rep. by its Additional General Manager (Law)
Sri Batlanki Venkata Subbarao,
S/o. Ethirajulu, aged 58 years, R/o. Visakhapatnam.

2. A. Narasinga Rao, Sole Arbitrator,
R/o.Flat No.405, Annapurna Arcade,
Midhilapuri Road, Visakhapatnam. (R2 not necessary party) … Respondents

Date of Judgment pronounced on : 31-12-2025

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether the Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**
THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

*** C.M.A.NOS.234, 242, 243, 244, 245, 246, 247, 248, 249, 253, 257, 258 & 259 of 2025**

CIVIL MISCELLANEOUS APPEAL NO: 234/2025

% Dated: 31-12-2025

Between:

M/s. Sunrise & Engineering Industries
Rep.by its Managing Partner Sri Myneni Veerababu,
S/o.Chenchaiah, Hindu, aged about 66 years,
Residing at D-6, Ville Royal Price Apartments,
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R/o.Flat No.405, Annapurna Arcade,
Midhilapuri Road, Visakhapatnam. (R2 not necessary party) … Respondents

! Counsel for petitioner : Sri K. Srinivasa Rao

^Counsel for Respondents : Sri G. Ramesh Babu

<GIST:

>HEAD NOTE:

? Cases referred:

[1] AIR 1963 SC 1405
[2](1969) 2 SCC 554
[3] (2003) 5 SCC 705
[4](2024) 2 SCC 613
[5](2019) 20 SCC 1
[6](2015) 4 SCC 136
[7] AIR 1963 SC 1405

APHC010206362025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

WEDNESDAY,THE THRITY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

C.M.A.NOS.234, 242, 243, 244, 245, 246, 247, 248, 249, 253, 257, 258 & 259 OF 2025

CIVIL MISCELLANEOUS APPEAL NO: 234/2025

Between:

1. M/S. SUNRISE AND ENGINEERING INDUSTRIES, REP. BY ITS MANAGING PARTNER SRI MYNENI VEERABABU S/O CHENCHAIAH, HINDU , AGED ABOUT 66 YEARS RESIDING AT D-6, VILLE ROYAL PRICE APARTMENTS, SIRIPURAM VISAKHAPATNAM-530017

...APPELLANT

AND

1. HINDUSTAN SHIPYARD LIMITED, GANDHIGRAM VISAKHAPATNAM-530005 REP. BY ITS ADDITIONAL GENERAL MANAGER (LAW) SRI BATLANKI VENKATA SUBBA RAOS/O ETHIRAJULU AGED 58 YEARS R/O VISAKHAPATNAM
2. A NARASINGA RAO, SOLE ARBITRATOR R/O FLAT NO. 405, ANNAPURNA ARCADE MIDHILAPURI ROAD, VISAKHAPATNAM ..RESPONDENT/ RESPONDENT (R 2 NOT NECESSASARY PARTY) NO RELIEF SOUGHT AGAINST R2 HENCE R2 ARE NOT NECESSARY PARTIE)

...RESPONDENT(S):

Appeal Under Section_____against orders pleased to set aside the Decree and Judgment dated 03.01.2025 in ARB.OP.No. 257 of 2017 on the file of the XI Additional District Judge, Visakhapatnam

Counsel for the Appellant:

1. K SRINIVASA RAO

Counsel for the Respondent(S):

1. G RAMESH BABU

Date of Reserved : 09.12.2025

Date of Pronouncement : 31.12.2025

Date of Upload : 31.12.2025

The Court made the following Common Judgment:
(per Hon'ble Sri Justice R. Raghunandan Rao)

As all these appeals raise the same issues and arise out of awards passed by the same Arbitrator, they are being disposed of, by way of this common judgment.

2. Respondent No.1 in all these cases is a Public Sector Undertaking, involved in the construction, fabrication and repairs of various kinds of vessels and other works. The 1st respondent had awarded sub-contracts to various sub-contractors for the aforesaid works. These contracts were awarded under separate work orders. All these work orders contained timelines within which the work was to be completed. In the event of failure to adhere to the timeline, all the contracts provided for liquidated damages to be levied @ 2% per week of delay up to a maximum of 20% of the contract value. The 1st respondent, on the ground that there was delay in all the aforesaid contracts, awarded to the appellants herein, had levied liquidated damages of 20% of the contract value and deducted the same in the bills of the appellants. Aggrieved by the said deduction of liquidated damages, the appellants sought reference to arbitration. A common arbitrator was appointed in all these cases.

3. The details of the claims made by the appellants and the awards passed by the learned Arbitrator are contained in the table set out below:

S.No	Name of the Petitioner	Arbitration case number and Date of Arbitral Award	Arbitration OP NO and date of order	CMA NO
1	Sun rise and engineering industries	001 of 2013 05/11/2016	ARB OP 257 of 2017 03/01/2025	234 of 2025
2	Swapna fabrications and constructions	003 of 2013 05/11/2016	ARB OP 2261 of 2017 03/01/2025	242 of 2025
3	Sri Srinivasa engineering Works	013 of 2013 05/11/2016	ARB OP 266 of 2017 03/01/2025	243 of 2025
4	Nest builders and engineers	012 of 2013 05/11/2016	ARB OP 259 of 2017 03/01/2025	244 of 2025
5	Nest builders and engineers	007 of 2013 05/11/2016	ARB OP 264 of 2017 03/01/2025	245 of 2025
6	Bharat steel fabrication works	015 of 2013 05/11/2016	ARB OP 256 of 2017 03/01/2025	246 of 2025
7	Sri Srinivasa engineering Works	014 of 2013 05/11/2016	ARB OP 255 of 2017 03/01/2025	247 of 2025
8	Swapna fabrications and constructions	010 of 2013 05/11/2016	ARB OP 262 of 2017 03/01/2025	248 of 2025
9	Bharat steel fabrication works	008 of 2013 05/11/2016	ARB OP 254 of 2017 03/01/2025	249 of 2025
10	Perfect People	009 of 2013 05/11/2016	ARB OP 263 of 2017 03/01/2025	253 of 2025
11	KIM Fabs	004 of 2013 05/11/2016	ARB OP 265 of 2017 03/01/2025	257 of 2025
12	Patel Engineering Works	006 of 2013 05/11/2016	ARB OP 258 of 2017 03/01/2025	258 of 2025
13	Sunrise Engineering Industries	005 of 2013 05/11/2016	ARB OP 260 of 2017 03/01/2025	259 of 2025

4. In all these claims, the case of the claimants can be placed under three heads.

i) The delay in the execution of the works entrusted to the appellants, were on account of the inaction as well as actions of the respondent herein including delay in providing clear facilities at ground level for works to be carried on, unrealistic work schedules, insufficient work area, not providing crane facility in needed times, delay in supply of consumables and processed elements, delay in clearing inter dependencies, delayed payments for completed works etc. The claimants contended that all these issues were brought to the notice of the respondents on a number of occasions and in relation to each of the works in particular. Thus, the delay in adherence to time schedule was not on account of claimants but only on account of the respondent.

ii) Similarly constituted contractors who had been awarded similar works had not been levied with liquidated damages and in some cases, revised schedules were also given with liquidated damage being reduced to 0.5% per week of delay subject to a maximum of 5% of the tender value.

iii) The quantum of liquidated damages @ 2% per week of delay subject to a maximum of 20% of the work is exorbitant, unconscionable, arbitrary, unjust, oppressive, illegal and unenforceable. This arbitrary conduct is further made out as similar works awarded by the respondent contained clause

stipulating liquidated damages @0.5% per week subject to a maximum of 10% of value.

iv) Though the contract contains a clause for liquidated damages, the respondent did not allege, at any point of time, that it had suffered any loss on account of alleged delay and deducted liquidated damages merely because such a clause was available in the tender document. Such deduction could not have been done without actual loss being suffered by the respondent and without such loss being brought to the notice of the appellants.

v) Once the respondent is at fault for delay, the liquidated damages clause could not have been applied mechanically. The respondent cannot levy liquidated damages as the respondent had acquiesced in the delay as no notice was given to the appellants that time was being extended subject to the liquidated damages clause.

5. The respondent filed counter affidavits, resisting the aforesaid claims. In the counter affidavit, the respondent claimed that the claimant having signed the contract, which included the liquidated damages clause, cannot challenge the same on the ground that the liquidated damages is exorbitant or the other grounds raised in the claim petition. The respondent contended that the delay in completion of the total work resulted in delay in delivery of the vessels due to which the owners of the vessels had levied liquidated damages on the respondent and as such, the respondent is entitled

to levy liquidated damages as per the terms of the contract. The fact that liquidated damages were refunded in some cases would only go to show that the respondent had acted fairly and such refunds were given where extension of time was considered well before submission of final invoices and wherever work orders were amended prior to submission of the 100% bills. As the appellants had failed to obtain extension of time before submission of final bills, the question of refunding the liquidated damages wound not arise. The contention that liquidated damages cannot be deducted as appellants were not put on notice is incorrect as the respondent was at liberty to deduct liquidated damages, in the event of delay in execution of the work and liquidated damages were imposed only after a technical committee had thoroughly analyzed the reasons for delay.

6. The learned Arbitrator on the basis of the said pleadings had framed the following issues:

1. Whether the LD clause is legal and valid or not?
2. Whether the 20% LD is exorbitant?
3. Whether the delay is attributable to the Claimant or respondent?
4. Whether the respondent is justified in imposing LD?
5. Whether the Claimant is entitled to seek refund of LD?
6. If so, whether they are entitled for interest for the said amount?
7. Whether the Claimant is entitled to costs of Arbitration?
8. Whether the claims are barred by limitation?

7. Thereafter, the learned Arbitrator considered the issues raised in the respective arbitral proceedings, and passed awards in favour of the appellants.

8. In the awards, the learned Arbitrator had recorded the submissions of the respondent. Apart from this, the learned Arbitrator had also marked the documents which had been marked as exhibits by the appellants as well as the respondent. These documents include letters by the appellants to the respondent regarding the delay in execution of the works as well as the extension of delivery given by the respondent. As far as the issues 1 and 2 are concerned, the learned Arbitrator held that the liquidated damages clause is legal. However, on the question of the quantum of liquidated damages, the learned Arbitrator while not accepting the description of the liquidated damages clause, as being inordinately exorbitant or in the nature of a penalty, had however held that the same may be exorbitant on the ground that the said liquidated damages were increased four times, and the said Liquidated damages were double, the liquidated damages stipulated in the previous contracts, awarded by the respondent. The learned Arbitrator also held that the amount levied would have to be reviewed taking other relevant factors in to consideration. As far as issues 3 and 4 are concerned, the learned Arbitrator held neither appellants nor the respondent were solely responsible for the delays and as such, implementation of the liquidated damages clause cannot be totally waived and a middle ground would have to be arrived at for a

fair solution. The learned Arbitrator relied upon the letters addressed by the appellants, which had been attached to the claim statements, to come to this conclusion. The learned Arbitrator for the purposes of arriving at reasonable compensation for delay had set out 20 factors to be taken into account for arriving at a reasonable compensation. On issue No.5, the learned Arbitrator upheld a part of the liquidated damages amount and directed refund of that part of the liquidated damages which was rejected by the learned Arbitrator.

9. The learned Arbitrator granted interest, under issue No.8, at the rate of 9%, and directed parties to bear their respective costs for arbitration and in issue No.8 held that the arbitral proceedings were within limitation.

10. These awards were challenged before the trial Court on the following grounds:

i) The learned Arbitrator, after holding that the liquidated damages clause is legal and valid, could not have modified the quantum of legal damages. Such a modification is beyond the jurisdiction of the learned Arbitrator and as against the provisions of Section 8(16)(3), 28(1)(A) and 28(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

ii) The learned Arbitrator could not have brought in his previous experience as the Former General Manager of the respondent to comment on the procedure and came up with his own analysis of the justification of the

respondent and missing liquidated damages and justification of the appellants seeking refund of such liquidated damages.

iii) The award is in conflict with public policy of India, the learned Arbitrator had gone beyond the contract and passed an award which is not based on any material.

iv) The learned Arbitrator had erroneously concluded that the details are attributable to both sides.

11. The appellants resisted the contentions of the respondent. The learned trial Judge, after considering the contentions raised by both sides had held that the learned Arbitrator, after holding that the liquidated damages clause is legal and valid could not have reviewed the said clause, especially on the ground that other contracts, of a similar nature awarded by the respondent, did not provide for such large liquidated damages. The learned trial Judge also held that the learned Arbitrator could not have gone into technical and logical assessment of the actual reasons for delay, once the learned Arbitrator had held that there were no letters by the Claimant to the respondent. The learned trial Judge while holding so, again held, in the same order, that the consideration of the letters addressed by the appellants to the respondent was flawed as the learned Arbitrator himself has taken the view that these letters were not sufficient to establish all reasons for delay. Curiously, the learned trial Judge also held that no evidence was found by the trial Judge that the respondent was responsible for undue delay in execution

of the work. On this basis, the learned trial Judge held that the award was violative of Section 34(2)(b)(i), and Section 28(3) of the Act. On that basis, the learned trial Judge set aside all the awards passed by the learned Arbitrator.

12. Aggrieved by these judgments, all dated 03.01.2025, the appellants have moved this Court, by way of the present set of appeals.

13. Sri K.V. Rama Murthy, the learned counsel appearing for the appellants would contend as follows:

i) The respondents could not have levied any liquidated damages, as the respondent had permitted extension of time for completion of the contracts without making such extension subject to the liquidated damages clause. Section 55 of the Contract Act clearly requires such a stipulation to be made, while accepting extension of time, for completing a contract. This aspect was ignored by both the learned Arbitrator as well as the trial Judge.

ii) The judgments in **Fateh Chand vs. Balakishan Das[1], Maula Bux vs. Union of India[2].,** and **Oil and Natural Gas Corporation Limited vs. Saw Pipes Limited[3],** delivered by the Hon'ble Supreme Court, clarified the position of law, that the liquidated damages clause, only fixes the outer limit of damages, and that the actual damages or loss would have to be demonstrated by the affected party, before the liquidated damages clause can

[1] **AIR 1963 SC 1405**
[2] **(1969) 2 SCC 554**
[3] **(2003) 5 SCC 705**

be applied. The learned Arbitrator, had applied this principle and had modulated the liquidated damages, to the extent it was reasonable and permissible.

iii) The aforesaid judgments, had also laid down the principle, that the liquidated damages clause, can be applied, without modification, only when it is demonstrated to the learned Arbitrator that such damages cannot be estimated. In the present case, the respondent had taken the specific stand that he had been mulcted with liquidated damages, on account of the delay in delivery of the vessels, to the owners. In such a situation, the question of application of the liquidated damages clause, without modification, does not arise.

iv) The finding of the learned trial Judge that there was no material before the learned Arbitrator, to hold that delay was attributable to both the appellants and respondent is incorrect. The learned Arbitrator, in his award, referred to the correspondence between the appellants and the respondent regarding the causes of delay and such letters had also been marked as exhibits by the learned Arbitrator.

v) The learned Arbitrator, apart from holding that the liquidated damages, contained in the liquidated damages clause required modification as loss was not properly shown had also observed that the liquidated damages would have to be modified as the delay was attributable to both sides.

vi) The Hon'ble Supreme Court in **Hindustan Construction Co. Ltd. Vs. National Highways Authority of India[4], Dyna Technologies Private Limited Vs. Crompton Greaves Limited**[5]., and **Kailash Nath Associates vs. Delhi Development Authority and Another**[6]., had held that adequacy of reasons would have to be viewed in a liberal manner especially when the learned Arbitrator is not a judicially trained person. The objections that were sought to be raised, on this ground would have to be rejected and the award would have to be upheld.

14. Sri G. Ramesh Babu, the learned counsel appearing for the respondent would reiterate the findings of the learned trial Judge and contend that the learned Arbitrator exceeded his jurisdiction in modifying the liquidated damages stipulated under the contract. He would further contend that the award lacked proper reasons inasmuch as the learned Arbitrator, after setting out the factors that would be taken into account for determining liquidated damages, had not set out, in the award, the manner in which such factors had been applied to each case and how the liquidated damages were reconciled. He would further submit that such modification either on the ground of liquidated damages being excessive or on the ground that both sides were responsible for the delay, is not within the jurisdiction of the learned Arbitrator.

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[4]**(2024) 2 SCC 613**
[5]**(2019) 20 SCC 1**
[6]**(2015) 4 SCC 136**

Consideration of the Court:

15. It is an admitted fact that the contract in question contained a provision of levy of liquidated damages @ 2% for a delay of every week subject to a maximum of 20% of the value of the contract. The learned Arbitrator, while holding that such a clause was legal and valid, modified the award of liquidated damages on the ground that the liquidated damages, stipulated under the said clause, were on the higher side and also on the ground that the delay was attributable to both sides.

16. This modification of the liquidated damages, is assailed essentially on the ground that the learned Arbitrator, being a creature of the contract itself, could not have meddled with the terms of the contract and could not have modified the terms of the contract. It was further contended that such actions of the learned Arbitrator had effectively breached Section 34(2)(b)(i), and Section 28(3) of the Act. Before going into these questions, it would be necessary to first notice the contention of Sri K.V. Rama Murthy, learned counsel for the appellants that there has been a violation of Section 55 of the Contract Act. Under this provision, any extension of time granted to the defaulting party, would preclude a claim for compensation for delay, in the performance of such contract, unless extension of time was granted with the caveat that the aggrieved party would be seeking compensation for delay in performance. In the present case, no such caveat was placed by the respondent. However, this aspect was not considered by the learned

Arbitrator and the same cannot be considered at this stage to support the award.

17. The arbitral award was challenged on the ground that it is violative of Section 8(16)(3), 28(1)(A) and 28(3) of the Act, 1996. There is no provision called Section 8(16)(3) and hence no issue arises on this ground. Section 28(1) (a) and 28(3) read as follows:

> **28. Rules applicable to substance of dispute**.—
>
> (1) Where the place of arbitration is situate in India,—
>
> (a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;
>
> (b)……..
>
> (2) ……
>
> (3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

Section 34(2) and 2(A) are the provisions which set out the grounds on which the award can be set aside. The said sections are read as follows:

> **34. Application for setting aside arbitral award.—**
>
> (2) An arbitral award may be set aside by the Court only if— 22 (a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—
>
> (i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

18. The respondent claimed that the awards of the learned Arbitrator, have to be set aside as the clause for liquidated damages, requires to be applied in toto and there can be no modification of the clause relating to liquidated damages. Such modification, amounts to violation of Section 74 of the Contract Act apart from changing the terms of the contract itself. The judgments of the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Limited vs. Saw Pipes Limited**, is sought to be applied for this purpose. The secondary argument, also appears to be that the learned Arbitrator, had not provided for adequate and clear reasons while passing the award and such an award would have to be set aside.

19. On the question of adequacy of reasons, the judgment of the Hon'ble Supreme Court in **Dyna Technologies Pvt. Ltd., vs. Crompton Greaves Ltd.,** is instructive. The Hon'ble Supreme Court, while considering the scope of review, of an award, under Section 34 of the Arbitration and Conciliation Act had held as follows:

> 34. It may be relevant to note Russell on Arbitration, 23rd Edn. (2007), wherein he notes that:
>
> "If the Court can deduce from the award and the materials before it, which may include extracts from evidence and the transcript of hearing, the thrust of the tribunal's reasoning then no irregularity will be found....Equally, the court should bear in mind that when considering awards produced by non-lawyer arbitrators, the court should look at the substance of such findings, rather than their form, and that one should approach a reading of the award in a fair, and not in an unduly literal way."
>
> 35. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a

fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

36. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

38. In case of absence of reasoning the utility has been provided under of Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilized in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.

20. In the present case, the learned Arbitrator while modifying the quantum of liquidated damages had given two reasons for such modification. Firstly, he held that the said rate of liquidated damages and the upper limit of such liquidated damages was close to being described as exorbitant and applied various factors, to arrive at a proper quantification of liquidated damages. Secondly, the learned Arbitrator having held that the delay had occurred on both sides had to appropriately modify the quantum of liquidated damages. The exercise of such quantification, was made by the learned Arbitrator, by applying such factors, as the learned arbitrator thought appropriate. As held by the Hon'ble Supreme Court, in the judgment, cited above, the scope of review, under Section 34 of the Act is to see whether the reasons, given in the award, are proper, intelligible and adequate. The reasons set out by the learned Arbitrator are intelligible and adequate. The question that remains is whether such reasons are proper reasons and whether such reasons take the award beyond the scope of arbitration.

21. The levy of liquidated damages is regulated by Section 74 of the Indian Contract Act which reads as follows:

> **74. Compensation for breach of contract where penalty stipulated for**.—
>
> When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract

> reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
>
> Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]
>
> Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the 2 [Central Government] or of any 3 [State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.
>
> Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

22. The contention of the respondent is that the liquidated damages, stipulated under the contracts, cannot be modified and the entire amount of liquidated damages has to be awarded. Any such modification is a modification of the contract itself and an arbitrator, appointed under the contract, cannot change the terms of the contract. The question that arises is whether the compensation fixed under the liquidated damages clause, in a contract, is sacrosanct and compensation has to be awarded, without any modification. Section 74 is usually read with Section 73 of the Contract Act which also provides for compensation in cases of breach of contract. The interplay between these provisions has been the subject matter of the decision of a Constitution Bench of the Hon'ble Supreme Court in the case of **Fateh Chand vs. Balakishan Das**[7]. In this case, the contract of sale for immovable

[7] **AIR 1963 SC 1405**

property was entered between the owner and the purchaser. The owner, on the ground that the purchaser had not paid the sale consideration, had cancelled the contract and forfeited the advance and part of the sale consideration received till that date, on the basis of a clause in the agreement of sale. The question of whether such forfeiture of part of the sale consideration, apart from the advance amount was permissible came up before the Hon'ble Supreme Court. A Constitution Bench of the Hon'ble Supreme Court went into this question and held that Section 74, while dispensing with proof of actual loss or damage, had held that only reasonable compensation, on the basis of the conditions existing on the date of the breach, could be permitted by the Court. In effect, the Constitution bench had held that the compensation fixed under the liquidated damages clause is the outer limit within which reasonable compensation, for actual loss, should be awarded.

23. The Hon'ble Supreme Court again came to consider the question of the scope of liquidated damages clause in the case of **Maula Bux vs. Union of India.** In this case, a bench of three learned Judges considered the situation where a contract for supply of potatoes and supply of poultry had been cancelled and certain amounts deposited with the Government were forfeited. The Hon'ble Supreme Court held in the following manner.

> **6.** Counsel for the Union, however, urged that in the present case Rs 10,000 in respect of the potato contract and Rs 8500 in respect of the poultry contract were genuine pre-estimates of damages which the Union was likely to suffer as a result of breach of contract, and the plaintiff was not entitled to any relief against forfeiture. Reliance in support of this contention was placed upon the expression (used in Section 74 of the Contract Act), "the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation". It is true that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree, and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. But the expression "whether or not actual damage or loss is proved to have been caused thereby" is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him.

24. Thereafter, a Division Bench of the Hon'ble Supreme Court, on the scope of a clause, for liquidated damages, in the case of **Oil and Natural Gas Corporation Limited vs. Saw Pipes Limited, held** in the following manner:

> **68.** From the aforesaid discussions, it can be held that:
>
> (*1*) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.
>
> (*2*) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is

> unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.
>
> (*3*) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.
>
> (*4*) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.

25. There has been a view that that the judgment of the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Limited vs. Saw Pipes Limited** case had broken new ground in relation to the scope of liquidated damages clause, under Section 74 of the Contract Act. A view has gained ground that, once delay or breach of contract is demonstrated, compensation as fixed, in the liquidated damages clause, has to be awarded, without looking into whether there was any loss to the affected party or not. This view does not appear to be correct. An article, by Justice M. Jagannadha Rao, Former Judge, Supreme Court of India and former Chairman, Law Commission of India published in (2013) 1 SCC (J) demonstrates that there is no such inherent contradiction between these three judgments. The relevant extracts of this article would clarify the said issue.

“(c) The two-Judge Bench did not intend to go against the principles laid down by the larger Benches in Fateh Chand 140 and Maula Bux 141,

(i) A reading of Saw Pipes 142 shows that the learned Judges referred to and extracted the relevant passages from Fateh Chand and Maula Bux144 and in fact, the Propositions (3) and (4) are virtually picked up from Maula Bux (p. 559 of SCC) [except for the omission of the words "It is true that" from Maula Bux at p. 559 of SCC in Proposition].

(ii) Therefore, one has to proceed on the basis that the principles laid down in Fateh Chand and Maula Bux were nowhere intended to be deviated from by the two-Judge Bench (nor could they have been, in view of the earlier decisions having been rendered by a five-Judge and three-Judge Benches respectively).

(d) There are two aspects in Saw Pipes that are to be noted in Propositions (3) and Proposition (4).

(i) Firstly, there is an inadvertent omission of the words, "It is true that", in Proposition (3) of Saw Pipes (before the words "in every case of breach of contract") (at p. 742, para 68) which words were used in Maula Bux (at p. 554 of SCC), and

(ii) Secondly, there is an inadvertent separation of Proposition (4) from Proposition (3), which has given a wrong impression that, under Proposition (3) the amount fixed by the parties may be payable even if no legal injury or no loss or damage, is sustained.

That these are inadvertent is clear from the following:

(i) If one reads Maula Bux (at p. 559 of SCC) starting with the words "It is true that" and compares it with Proposition (3) in Saw Pipes, it would be clear that in Proposition (3), the said words, "it is true that" were inadvertently omitted.

(ii) It will also be clear that the subsequent sentence starting with "in case of breach of some contracts" has been inadvertently disconnected from Proposition (3) and incorporated as a separate Proposition (4).

(iii) If the words, "It is true that" used in Maula Bux (at p. 559 of SCC, para 6) are properly understood, it will be clear that the Supreme Court was stating that "in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss, thereby indicating that though such an exercise on the part of the innocent party, may not be necessary in every

case, it may still be necessary in some cases. In the above case of Maula Bux, that was what was sought to be explained in the immediate later sentences by referring to different classes of contracts.

(iv) If Proposition (3) is read in isolation from Proposition (4), it gives an impression that the agreed amount of damages will have to be paid even if, ex post, enquiry by the court reveals a lesser amount of damages suffered or even if no damages are suffered. But, if the Propositions (3) and (4) are not separated and if Proposition (4) is merged in Proposition (3) at the end, it will be clear that the above said clause in the section needs to be interpreted in a disjunctive manner to cover two different classes of contracts, one in which it is possible to ascertain, ex post, the money value of the legal injury and another in which it is not possible to ascertain the money value of the legal injury.

(e) On the factual matrix in Saw Pipes 156, it is clear that it belongs to the class of contracts where damages in terms of money cannot be ascertained on account of the delay in performance resulting in the legal injury.

(i) On the facts of Saw Pipes, the Supreme Court came to the conclusion that there was legal injury on account of the delay in performance and that the case belonged to a class of contracts where the damages on account of delay could not be ascertained, even ex post. The Supreme Court gave two examples as given below, and stated that the case was similar to the position in those two examples.

(ii) **One example relates to cotton bales and the other to roads and bridges**: As explained earlier, these two examples relating to cotton bales and roads and bridges were given by the Court, (see paras 64 and 67 of SCC) as cases where the damage or harm done on account of delay in performance could not ascertained, ex post.

(iii) The Court then stated in para 67, "**similarly in the present case**" (see p. 742), thereby treating the case in Saw Pipes158 as one in which damages could not be ascertained and therefore, the damages fixed by the parties should have been awarded by the arbitrator;

(iv) In fact, as pointed out earlier, the **Malaysian Federal Court in Johor Coastal Development** explained **Saw Pipes** as a case where the loss or damages could not be evaluated in terms of money.

26. This Court cannot explain this principle better than the learned author, of the above article and would adopt this view as the correct interpretation of the judgment in **SAW PIPES VS. ONGC**. The liquidated damages mentioned in a clause, of such nature, in a contract, is to be awarded, in toto, without any modification, when it is not possible to evaluate the loss or damages in terms of money. Where such evaluation is possible, it would only be the actual loss that would have to be compensated.

27. In the present case, the respondent, had, in his counter, filed before the learned Arbitrator, stated that the owners of the vessels, had levied damages against the respondent, on account of the delay in the delivery of the vessels. In view of this clear admission, by the respondent, that its losses had been quantified, the question of application of the clause for liquidated damages, without modification, would not arise. In such circumstances, it cannot be said that the learned Arbitrator could not have modified the damages payable, under the liquidated damages clause. The learned Arbitrator cannot be termed to have exceeded his jurisdiction as such modification is permissible. Even if such modification was impermissible, on the ground that the entire amount liquidated damages, stipulated in the liquidated damages clause, has to be awarded, the additional reasoning given by the learned Arbitrator would still remain. A finding has been given by the learned Arbitrator that the delay, in execution of the contract, was not solely attributable to the appellants and that the delay was attributable to both the

appellants as well as the respondent. Section 74 of the Contract Act, would come into play, only when the delay is solely on account of the appellants. Once, the delay is partly attributable to the respondent, it would not be permissible to apply the clause for liquidated damages and it would be the responsibility of the learned Arbitrator to ascertain the extent of delay which is attributable to the respondent and compensation would have to be modified accordingly. The 20 factors, mentioned by the learned Arbitrator in his award, point out to such ascertainment.

28. The view of the learned Trial Judge, that the learned Arbitrator had attributed delay on the part of the respondent, without any material, is incorrect. As can be seen from the fact that the learned arbitrator had specifically referred to the letters of the claimants in this regard and had also marked them as exhibits. Once, the learned Arbitrator had arrived at a finding that some part of the delay is attributable to the respondent, the consequence of reduction of damages, stipulated under the liquidated damages clause would have to be applied.

29. In that view of the matter, this Court does not find any reason to set aside the Award and accordingly, these Civil Miscellaneous Appeals are allowed setting aside the judgment of the trial Court, in the arbitration petitions and upholding the awards passed by the learned Arbitrator.

No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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R. RAGHUNANDAN RAO, J

_____
T.C.D. SEKHAR, J

RJS

THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HON'BLE SRI JUSTICE T.C.D. SEKHAR

C.M.A.NOS.234, 242, 243, 244, 245, 246, 247, 248, 249, 253, 257, 258 & 259 OF 2025

(per Hon'ble Sri Justice R Raghunandan Rao)

31.12.2025

RJS