

[2] In brief, the case of the appellants is that a loan of Rs.1,91,000/- was obtained by the appellants for purchase of a car from the respondent and the dispute had arisen between the parties. The appellants had filed Suit for declaration and injunction and the trial Court by order dated 25/3/1998 had referred the matter to the sole arbitrator. The parties had submitted their respective statement of claim and reply before the arbitrator and the arbitrator had passed the award dated 25/5/1999 of Rs.2,62,406/- along with interest @ 24% per annum with effect from 1/9/1998. Appellants had filed an application

before the Additional District Judge, Indore u/S.34 of the Act which was rejected by order dated 25/9/2004 against which the appellants had filed MA No.368/2005 which was allowed by order dated 15/5/2008 and the order dated 25/9/2004 passed by the Additional District Judge was set aside. The respondents had preferred SLP(C) No.23264/2008 and by order dated 11/2/2010 the matter was remitted back to the trial court for considering the application u/S.34 of the Act afresh. The learned Additional District Judge vide order dated 31/8/2010 had rejected the application against which an appeal being MA No.27/2010 was preferred by the appellants which was decided by order dated 16/4/2012 with a direction to the learned Additional District Judge to decide the issue No.1 afresh. Thereafter the matter has been considered and the learned Additional District Judge by the order dated 22/8/2013 has decided the issue No.1 against the appellants.

[3] Learned counsel for appellants submits that the arbitrator has committed an error in not adjusting the amount repaid by the appellants and that the charges for delayed payment have wrongly been levied which were not provided in the agreement. He has also submitted that the imposition of interest @ 24% is on the higher side.

[4] As against this, learned counsel for respondent has submitted that the arbitrator has passed a reasoned award elaborately dealing with all the issues and the amount repaid has duly been adjusted and interest as well as the charges for the delayed payment have been levied in accordance with the agreement.

[5] I have heard the learned counsel for parties and perused

the record.

[6] In the present case, the arbitrator has passed an elaborate and reasoned award by considering the claim made by the respondent under each head. The arbitrator has arrived at the balance amount payable by the appellants to the respondent after considering the evidence led by both the parties. Ex.P/10 which the appellants has referred during the course of his arguments is the ledger of the respondent company which discloses the account position and the payment made by the appellants from time to time. As per the detailed account Annexure P/10 the amount in question was outstanding during the relevant time. Though the appellant has raised an issue that while calculating the outstanding amount the repayment made by the appellants has not been considered, but he has failed to point out any cogent document disclosing the repayment done by the appellants, which has not been considered by the arbitrator. His further plea is about the charges which have been levied for the delayed payment. The arbitrator in the award considering the material has calculated the charges for the delayed payment. The fact that the instalments were not paid in time, has not been seriously disputed. The arbitration agreement itself provides for the payment of compensation on the amount payable under the agreement and remaining unpaid, therefore, the award of the arbitrator in respect of the amount payable for the delayed payment is in accordance with the agreement which needs no interference.

[7] The next issue raised by the appellants is in respect of the levy of interest @ 24% by the arbitrator.

[8] The counsel for respondent has referred to clause 4(c) of

the higher purchase agreement Ex.P/9 in support of his submission that interest @ 3% has been provided, but the said clause deals with the compensation @ 3% for the delayed payment and non payment. The arbitrator has awarded separate amount towards the delayed payment charges in para 11 of the award. No other express provision in the agreement has been pointed out to show that the the levy of interest @ 3% per month or 24% per annum was permissible. The Arbitrator has also not accepted the respondents plea to levy interest @ 3%. In such circumstances, the arbitrator ought to have levied interest @ market rate prevailing during the relevant time. The appellant himself in reply to the statement of claim dated 30/12/1998 before the arbitrator had admitted that the interest @ 14% is payable by the appellants on the balance amount.

[9] Considering the prevailing rate and the admission of the appellants, it is found just and proper to alter the award to a limited extent by levying interest @ 14% per annum instead of @ 24% per annum on the awarded amount as directed by the arbitrator.

[10] Keeping in view the aforesaid aspect of the matter, the appeal is allowed to the extent as indicated above.

(PRAKASH SHRIVASTAVA)
JUDGE

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