Reserved On : 12/09/2025
Pronounced On : 23/09/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 18521 of 2017

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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SHAH ENTERPRISE
Versus
STATE OF GUJARAT

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Appearance:
LD.SR.ADV. MR B.S.PATEL WITH MR CHIRAG B PATEL(3679) for the Petitioner(s) No. 1
MR SHAILESH DESAI, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. Rule returnable forthwith. Learned AGP, Mr. Shailesh Desai, waives service of notice of rule on behalf of the respondent.

2. The present application is filed under Article 227 of the Constitution of India, seeking the following relief:-

> "(A) This Hon'ble Court may be pleased to issue a of writ and/or a writ in the certiorari nature of certiorari and/or an appropriate writ, order or direction to quash and set aside impugned order dated 12th June, 2017 qua not accepting the modification at Annexure-A to the petition and further be pleased to allow the applications at Exhibits 22 & 32 filed by the petitioner at Annexure-G & Annexure-

H to the petition in Arbitration Darkhast No. 359 of 2002;
(B) Pending the admission hearing and final disposal of this petition, Your Lordship may be pleased to direct the respondent to make the payments as per applications Exhibit 22 (Annexure-G to the petition) and 32 ((Annexure-H to the petition);

(C) Cost of this petition be awarded;

(D) Any other and further relief or reliefs to which this Hon'ble Court deems fit in the interest of justice may kindly be granted.

3. THE BRIEF FACTS OF THE CASE:

3.1. As per the petitioner's case, having received a work order from the respondent and having executed work in terms of the tender condition, amounts under different heads were due and payable from the respondent. Since there was an arbitration clause, arbitration proceeding was initiated.

3.2. The petitioner herein was the original claimant, who invoked arbitration to resolve the dispute with the respondent; thereby, a sole arbitrator was appointed.

3.3. After hearing the parties, the sole arbitrator, vide its award dated **31.05.2000**, passed an award in favour of the petitioner, thereby, granted different claims in favour of the petitioner.

3.4. As per the award, the total principal amount comes

to around Rs.80,47,100.30/-. The arbitrator also awarded 16% interest from 01.10.1997 till 31.05.2000 i.e., the date of the award. There is, as such, no mention of granting interest post-award by the learned arbitrator. The cost of arbitration was quantified at Rs.12,500/.

3.5. As the award was not satisfied by the respondent, the petitioner appears to have filed Arbitration Execution Petition No. 359 of 2002 before the concerned District Court, i.e., District Court, Bharuch (hereinafter referred to as "**the Court**").

3.6. It appears from bare reading of the execution petition that the petitioner claimed 18% interest on the principal sum + interest accrued thereon at the rate of 16% from 25.09.1997, and 01.10.1997, till 31.05.2000.

3.7. The respondent resisted the execution petition on all counts, including the institution of arbitration proceedings itself. Such a preliminary objections raised turned down by the Court vide its order dated 21.10.2005. While turning down the objection of the respondent, the Court directed the respondent

to pay Rs.80,46,920/-. It bifurcates it, Rs.79,93,930/- as per Claim No. 3A, 4B (i), 4B(ii), 4B(iii), 4B(iv), 5, 7, 8, 9, 10, and 1(A) and 1(B) with interest at the rate of 16% per annum from 25.09.1997 till realization, and interest at the rate of 16% per annum on Rs.53,000/- from 01.10.1997, till realization. The Court has also calculated interest at the rate of 16% till the date of passing of the order on 21.10.2005, i.e., Rs.1,03,19,835/- and Rs.68,281/-, respectively, with arbitration costs of Rs.12,500/-. Thus, directed respondent to deposit a sum of Rs. 1,84,35,046/ with Rs.12,500/- as the costs.

3.8. The respondent appears to have challenged the said order passed by the Court by filing a writ application, being Special Civil Application No. 628 of 2006, before this Court, which came to be dismissed on 01.08.2014. It may be noted here that the respondent has not questioned the order passed by the Court on 21.10.2005.

3.9. The respondent carried the matter further before the Honorable Supreme Court, challenging the order passed by this Court in the aforesaid writ application. Having filed the Special

Leave Petition, being Special Leave Petition (C)- CC No. 6379 of 2015, which was dismissed by the Honorable Supreme Court on 13.04.2015.

3.10. The respondent, having not deposited any single amount till the time the Special Leave Petition was dismissed, the petitioner herein appears to have filed impugned applications below Exhibit 22 and Exhibit 32 on 08.02.2016, and 29.08.2016, respectively, in the execution application.

3.11. It is submitted by the petitioner that it would be entitled to receive interest at the rate of 18% on the sum payable as on the date of passing of the award by the sole arbitrator as per Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**the Act, 1996**").

3.12. It appears that the respondent defaulted having not deposited the amount as per the order dated 21.10.2005 at given point of time, thereby, contested both impugned applications filed by the petitioner.

3.13. After hearing the parties at length, the Court, vide

its common order dated 12.06.2017, partly allowed the impugned application filed below Exhibit 22 but rejected the Review Application filed below Exhibit 32 by the petitioner/decree holder.

4. Being aggrieved and dissatisfied with the aforesaid impugned common order passed by the Court, the present writ application came to be filed.

SUBMISSION OF THE PETITIONER - CLAIMANT

5. Learned Senior Counsel, Mr. B.S. Patel, would submit that the Court has committed a serious error of law while rejecting the Review Application filed below Exhibit 32 and so also committed a gross error in not allowing the impugned application filed below Exhibit 22 in toto. It is submitted that as per the settled legal position, the petitioner, being the decree holder, is entitled to get 18% interest on the sum payable as on the date of the award passed by the arbitrator, i.e., the principal sum + interest accrued thereon till the date of the award. It is further submitted that having not received

such amount though filed execution, entitled to receive it by way of filing impugned applications.

5.1. Learned Senior Counsel, Mr. Patel, would respectfully submit that the Court has erroneously observed that, having not challenged the order dated 21.10.2005, thereby not questioned it by the petitioner at a given point of time, it has waived its right to question it by way of any application, including review.

5.2. Learned Senior Counsel, Mr. Patel, would assiduously submit that there would not be any principle of waiver and estoppel coming into play, inasmuch as when there is an error apparent on the face of the record pointed out to the Court, it is required to exercise its power of review and to correct such an error apparent on the face of the record while passing the order dated 21.10.2005. It is respectfully submitted that as per Section 31 (7) (b) of the Act, 1996, as it stood prior to its amendment, would entitled the petitioner/decree holder/claimant to receive 18% interest on the sum directed to

be paid by the arbitrator's award. Having neither paid such sum by respondent as per law nor passed any appropriate order in this regard by the Court, it is required to correct its error, which is apparent on the face of the record.

5.3. Learned Senior Counsel, Mr. Patel, would submit that the Court, while partly allowing the impugned application below Exhibit 22, lost sight of the fact that after the passing of the order by the Court on 21.10.2005, execution was still pending, and as such, there was no occasion for the petitioner to point out such an error at a given point of time, inasmuch as the respondent, instead of complying, challenged it before this Court and before the Hon'ble Supreme Court. It is respectfully submitted that when the award passed by the arbitrator was not granting any interest post-award, as per the said provisions of the Act, 1996, the petitioner would be entitled to receive interest at the rate of 18% on the 'sum' post award till its realization. The sum as per S. 31 (7) (b) of the Act, 1996 would be the principal amount + interest @ 16% from period so granted by arbitrator on principle amount up to

the date of the award.

5.4. Learned Senior Counsel, Mr. Patel, would further submit that a writ application so filed by the respondent challenging the order dated 21.10.2005, by the respondent, wherein, as such there was no occasion arose before this Court, and in fact, it was not adjudicated upon by this Court in regards to the issue germane in the review application and or present application. It is submitted that as regards the interest at the rate of 18% would be payable post award on aforesaid 'sum' and or amount so ordered was wrong etc., never pressed into service by respondent/petitioner as the case may be before this Court in earlier round of litigation.

5.5. Learned Senior Counsel, Mr. Patel, would further submit that the doctrine of merger would not be applicable, inasmuch as what was not argued and decided before this Court in the said writ application, the order dated 21.10.2005, though confirmed by this Court, would not disentitled the petitioner to receive the benefit as per the provisions of the

Act, 1996. It is submitted that doctrine of merger is not of universal principle and as such would not apply in writ jurisdiction inas much as earlier writ application having filed under Article 227 of the Constitution of India, as per settled legal position, no such principle of merger would apply to the facts of the present case.

5.6. Learned Senior Counsel, Mr. Patel, would submit that the Court has fallaciously observed that when this Court confirmed the order dated 21.10.2005, and it was confirmed up to the Hon'ble Supreme Court, it should not review the order dated 21.10.2005. It is submitted that the order dated 21.10.2005, was challenged by the respondent, questioning the legality and validity of the award passed by the arbitrator, and at that point of time, none of the parties to the litigation raised/agitated the issues as raised by way of impugned applications. So, in that view of the matter, it would not be appropriate to foreclose the right of the petitioner to receive the amount as per the provisions of the Act, 1996.

5.7. Learned Senior Counsel, Mr. Patel, would submit that the doctrine of merger would not be applicable in a case of a writ petition like the one filed by the respondent before this Court when challenged the order dated 21.10.2005. It is submitted that the doctrine of merger can be applied either in appeal or revision proceedings. It is submitted that when the point which was never raised and answered by this Court while dismissing the writ petition filed by the respondent, the claim of the petitioner cannot be put to rest on the basis of erroneous observation of the Executing Court, and so also under the wrong premise of the doctrine of merger.

5.8. Learned Senior Counsel, Mr. Patel, would further submit that there cannot be any waiver/estoppel against statutory provisions. It is submitted that since inception, in execution itself, the petitioner was claiming interest at the rate of 18% on the sum payable under the award, and as such, as per Section 31(7)(b) of the Act, 1996, is entitled to receive 18% interest post award periodon the sum, i.e., the principal amount + interest till the date of the award. Having not

passed such an order on 21.10.2005, by the Court, the impugned application filed below Exhibit 32, seeking review, requires to have been allowed in the interest of justice.

5.9. Lastly, Learned Senior Counsel, Mr. Patel, would submit that the petitioner, vide its affidavit dated 10.09.2025, filed in this matter, would state that if this Court grants relief in its favour by directing the respondent - State to pay the amount as per the execution proceeding and such amount will be paid by the respondent within the time stipulated by this Court, the petitioner undertakes that it will waive additional interest as claimed in the execution for any period between 21.10.2005 to 29.08.2016 (from date of earlier order till the day on which Exhibit 32 – Review Application filed by the petitioner/decree holder).

5.10. It is respectfully submitted that the present writ application was filed on 11.09.2017, but the execution application No.360 of 2002 was conditionally withdrawn on 03.11.2018, subject to the outcome of this present application.

5.11. To buttress his arguments, Learned Senior Counsel, Mr. Patel, would rely upon the follwing decisions:-

(i) Kunhayammed & Ors V/s State of Kerala & Anr, reported in (2000) 6 SCC 359 (Para: 28, 38, 40 and 44),

(ii) Sanjay Kumar Agarwal V/s State Tax Officer (I) and Anr, reported in (2024) 2 SCC 362 (Para: 10, 15 and 16),

(iii) Commissioner of Customs V/s Canon India Private Limited, reported in (2025) 4 SCC 509 (Para: 63, 64 and 70),

(iv) Hyder Consulting (UK) Limited V/s Governor, State of Orissa, reported in (2015) 2 SCC 189,

(v) Niyamat Ali Molla V/s Sonargon Housing Cooperative Society Ltd and Others, reported in (2007) 13 SCC 421 (Para: 18, 19 and 29),

(vi) Siddamsetty Infra Projects Pvt Ltd V/s Katta Sujatha Reddy and Others, reported in 2024 SCC Online SC 3214 (Para: 46 and 49),

5.12. Making the above submissions, Learned Senior Counsel, Mr. Patel, would request this Court to allow the present application.

SUBMISSION OF THE RESPONDENT-STATE

6. *Per contra*, Learned AGP, Mr. Shailesh Desai, would

submit that the present application is misconceived on facts as well as on law, inasmuch as, having not challenged the order dated 21.10.2005, passed by the Court in the execution proceedings, at this stage, the petitioner cannot find fault with such order. It is submitted that after the passing of the award by the arbitrator, when execution proceeding filed by the petitioner, on adjudicating the objections, the Court partly allowed the relief claimed in the execution proceedings. It is further submitted that when such order of the Court partly allowing the relief in favour of the petitioner was not challenged by the petitioner before this Court, after about 11 years, having filed the impugned applications is nothing but a delay on the part of the petitioner to claim interest, which should not be granted.

6.1. Learned AGP, Mr. Desai, would submit that once the order dated 21.10.2005, was not questioned by the petitioner, later on, by way of seeking review, the petitioner cannot claim any more relief than awarded by the Trial Court in its favour.

6.2. Learned AGP would further submit that such order sought to be reviewed by the petitioner merged in the order passed by this Court when rejecting the writ application filed by the respondent on 01.08.2014, and so confirmed by the Honorable Supreme Court when dismissing the Special Leave Petition on 13.04.2015. It is submitted that as per the doctrine of merger, whenever a higher forum confirms/modifies/reverses an order passed by a lower Court, such order merges with the order passed by the higher forum. It is respectfully submitted that when such would be the position, especially this Court dismissed the writ application, having confirmed the order dated 21.10.2005, passed by the Court; such order merges in the order passed by this Court, which, thereafter, cannot be reviewed by the Court.

6.3. Learned AGP, Mr. Desai, would submit that there was delay of around 11 years in filing the Review Application, which was not satisfactorily explained. Rather, it appears that the petitioner waited for too long to file the impugned applications, which is not permissible in law. It is submitted

that the petitioner, though claiming interest at the rate of 18% for post award period, having claimed it in its execution petition, but having not so granted, it could have either challenged the order dated 21.10.2005 before this Court or sought its review at the given point of time. Having not done so, after this much time, the petitioner cannot be allowed to raise a grievance about non-receipt of interest at the rate of 18% as alleged.

6.4. Learned AGP would submit that there is no error, much less any gross error of law, committed by the Trial Court while rejecting the Review Application filed below Exhibit 32 and also partly allowing the impugned application filed below Exhibit 22. It is submitted that pursuant to the impugned order dated 12.06.2017, the respondent has already deposited the balance amount, and as such, as on date, there is nothing due and payable to the petitioner.

6.5. Learned AGP, Mr. Desai, would humbly submit to this Court that, considering the peculiar facts and

circumstances of the present case and also the principle of waiver, estoppel, and merger, the petitioner is not entitled to get any relief as prayed in the matter.

6.6. To buttress his arguments, Learned AGP, Mr. Desai, would rely upon the following decisions:-

(i) Kunhayammed & Ors V/s State of Kerala & Anr, reported in (2000) 6 SCC 359 (Para: 28, 38, 40 and 44),

(ii) Sanjay Kumar Agarwal V/s State Tax Officer (I) and Anr, reported in (2024) 2 SCC 362 (Para: 10, 15 and 16),

(iii) Mary Pushpam Vs. Telvi Curusumary and others, reported in 2024 (3) SCC 224 (Para 17 to 20),

(iv) N. Anantha Reddy Vs. Anshu Kathuria and ors., reported in (2013) 15 SCC 534 (Para -7 and 6),

(v) Kamlesh Verma Vs. Mayawati and others., reported in 2013 (8) SCC 320 (Para 12 to 20),

(vi) Yashwant Sinha and others. Vs. Central Bureau of Investigation through its Director and anr., 2019 (16) Scale 1, Para 74(40), 75 (41), 77(43), 81(47).

6.7. Making the above submissions, Learned Advocate, Mr. Desai, would request this Court to dismiss the present application.

7. No other and further submissions are being made by any of learned advocates appearing for the parties.

8. Heard learned advocates appearing for the respective parties at length.

POINTS FOR DETERMINATION

8.1. *Whether the order dated 21.10.2005, passed by the Court in Arbitration Execution Petition No. 359 of 2002, would merge in the judgment/order dated 01.08.2014, passed by this Court in Special Civil Application No. 628 of 2006 for all purposes?*

8.2. *Whether, in the facts and circumstances of the case, the impugned Review Application filed below Exhibit 32 was erroneously rejected by the Court vide its common order dated 12.06.2017, passed in Arbitration Execution Petition No. 359 of 2002?*

8.3. *Whether, in the facts and circumstances of the case, the Court committed any serious error of law and/or a jurisdictional error by not allowing the impugned applications*

filed below Exhibits 22 and 32 in Arbitration Execution Petition No. 359 of 2002?

ANALYSIS

9. The facts, which are narrated hereinabove, are not in dispute. It remained undisputed that while passing the award by the sole arbitrator, he did not award any post-award interest to the petitioner/claimant on the amount including interest thereon @ 16%. The arbitral award passed on 31.05.2000. The execution petition came to be filed by the petitioner, claiming the principal amount + interest at the rate of 16%, so awarded by the arbitrator from the date of the cause of action till the date of the award then interest 18% on such amount including interest amount.

10. It appears from bare reading of the execution petition filed on 27.11.2002 by the petitioner, wherein it claimed interest at the rate of 18% on such amount, i.e., the principal amount + interest @ 16% from date of cause of action till the date of the award. Nonetheless, while adjudicating the objections and also granting relief in favour of the petitioner,

the Court concerned, vide its order dated **21.10.2005**, partially allowed the claim of the petitioner made in the execution. As per the order dated **21.10.2005**, the Court, while granting relief in favour of the petitioner, observed as under:-

> *"(24) Thus, as discussed above at length, the judgment debtor fails to raise any objections against the award or during Arbitral proceedings held by the Sole arbitrator Shi.M. Patel. Hence, the award passed for the Sole arbitrator becomes final as per Sec. 35 of the Arbitration Act, 1996 and liable to force as final decree under Sec. 36 of the Arbitration Act, 1996. It is not say and submission about compliance. Hence, decree holder is entitled to recover Rs.80,46,920-00 as per Claim No. 3A, 4 B (i), 4 B (ii), 4 B (iii), 4 B (iv), 5, 7, 8, 9, 10, 1 (A) and 1 (B) with interest @ 16% p.a. on Rs.79,93,930-00 from 25.09.97 till realization and interest @ 16% p.a. on Rs.53,000-00 from 01.10.97 till realization. The date of order below this Execution petition is fixed as on 20.10.05. Hence, the interest @ 16% be calculated for 8 years 25 days and 8 years 19 days respectively comes to Rs.1,03,19,835-00 & Rs.68,281-00 respectively with Arbitration cost of Rs. 12,500-00."*

10.1 Thereafter, in its operative portion of said order, the Court has observed thus:-

> *"The State of Guiarat through Executive Engineer, **M.I.P.** division, Ankleshwar is hereby ordered to make deposit of Rs. 1,84,35,046-00 (including interest @ 16 % p.a. on principal amount till 20.10.2005) with Arbitration cost of Rs.12,500-00 before this Court within fifteen day.*
>
> *The Surity for Rs.85,000-00 is also hereby released."*

11. It appears from bare reading of the aforesaid order that the Court has not granted interest at the rate of **18%** post

award period on the sum payable as per the award, having so provided under Section 31 (7) (b) of the Act, 1996. As dispute and arbitration award prior to amendment of the Act, 1996, this Court concern with pre-amended Section 31 (7) (b) of the Act, 1996. Such provision (pre-amended) will be considered in the later part of the judgment.

12. Being dissatisfied with the aforesaid order of the Court, the respondent questioned it by way of a writ application, being Special Civil Application No. 628 of 2006, which came to be rejected on 01.08.2014. It remained undisputed that the petitioner has not questioned the aforesaid order passed by the Court. It also remained undisputed that there was no occasion for this Court to examine as to whether the order passed by the Trial Court, granting relief in favour of the petitioner in regards to directing the respondent to pay the amount, was in accordance with law or not, as the respondent herein had questioned the legality and validity of the award, including the appointment of the arbitrator itself but never disputed the amount so ordered by the Court.

13. Such judgment/order passed by this Court was confirmed by the Hon'ble Supreme Court, having dismissed the Special Leave Petition filed vide its order dated 13.04.2015. It would be a case of petitioner that due to challenge of the order dated 21.10.2005 passed by the Court at instance of respondent, there was no reason for the petitioner to file review application at given point of time. Nonetheless, review application filed below Ex. 32 not rejected on ground of any delay.

14. So, in view of said peculiar facts and circumstances of the case, now, I would like to deal each point separately as follows.

POINT NO.I

15. The argument so canvassed by learned AGP as regards the doctrine of merger, and would submit accordingly that in view of the dismissal of the writ application filed by the respondent challenging the order dated 21.10.2005, by the Court in the execution proceeding, later in point of time, the

petitioner cannot seek review of the order dated 21.10.2005, and claim any more relief in the execution proceedings.

16. To appreciate such an argument, it is first required to see as to whether any adjudication in regards to the issue germane in the Review Application and so also, in this application, ever pressed into service by the respondent and/or the petitioner in the earlier round of litigation, i.e., Special Civil Application No. 628 of 2006.

16.1. The plain reading of the entire judgment/order passed by this Court on 01.08.2014 in Special Civil Application No. 628 of 2006, would not remotely suggest that at that point of time, either of the parties to the writ application ever questioned the legality and/or validity of the order dated 21.10.2005, passed by the Court in regards to the 'sum' directed to be paid by the respondent would or would not carry interest @ 18% post award period.

16.2. When such would be the position, this Court had no occasion to decide the question in regards to the

entitlement of the petitioner to receive interest at the rate of 18% after date of arbitral award on the sum due and payable as on the date of passing of the award, and so as to whether the claim made by the petitioner in the execution petition would be payable in accordance with law or not, and could have been granted as per the provisions of the Act, 1996?. No such issues either raised or answered in earlier round of litigation.

17. To buttress their respective arguments, both, the Learned Senior Counsel, Mr. Patel, as well as Learned AGP, have placed reliance upon the decision of the Honorable Apex Court in the case of ***Kunhayammed (Supra),*** wherein it has held in Para 44 as under:-

> "***44.*** *To sum up, our conclusions are:*
>
> *(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*
>
> *(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of*

prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate

> *jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.*
>
> *(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."*
>
> (emphasis supplied)

18. What is discernible from the ratio of the aforesaid decision would be that in a case where, there is any appeal or revision under statute, whereby a superior forum modifies, reverses, or affirms the decision on the issue before it, the decision of the subordinate forum merges in the decision of the superior forum.

19. It also clearly observed that the doctrine of merger is not a doctrine of universal or unlimited application. It would depend on the nature of jurisdiction exercised by the superior forum, and the content or subject matter of challenge laid or capable of being laid, shall be determinative factor for the applicability on the issue of merger.

20. Having so noticed hereinabove that in the earlier round

of litigation, when the respondent - State preferred a writ application, which appears to have been filed under Article 226/227 of the Constitution of India, but as per the settled position of law, when an order impugned is passed by a Civil Court, it would only be questioned by way of an application under Article 227 of the Constitution of India, having supervisory jurisdiction over its subordinate Court. Such order passed by Civil Court is not amenable to writ jurisdiction under 226 of the Constitution of India. [See **Radheshaym and others vs. Chhabi Nath and others, reported in (2015) 5 SCC 423 (Para 27)].**

21. It is also required to be observed that order dated 01.08.2014 passed in Special Civil Application No.628 of 2006 by this Court, binds respondent so far as maintainability of arbitral award is concerned and to that extent, principle of merger stands applied. But for an issue, which is never germane before this Court in the aforesaid application, and not answered it, question of application of principle of merger would not arise.

22. In view of the aforesaid, when this Court had no occasion to deal with the issue, which germane in this matter, inasmuch as this Court had never opined about the amounts ordered by the Court vide its order dated 21.10.2005, was just and appropriate, thus, the doctrine of merger, would not be applicable in the case on hand as pressed into service by the learned AGP.

23. Thus, the order dated 21.10.2005, passed by the Court in Arbitration Execution Petition No. 359 of 2002, would not merge in the judgment/order dated 01.08.2014, passed by this Court in Special Civil Application No. 628 of 2006 for all purposes. *Hence, **Point No.I** is answered accordingly.*

POINT NO.II

24. The petitioner, having filed an application below Exhibit 22, thereby, requested the Executing Court to direct the respondent to pay the amount due and payable under the arbitration award. It has provided its calculation, so mentioned in Paragraph 4 of the impugned application at Exhibit 22. Thereafter, the impugned Review Application also came to be

filed below Exhibit 32, whereby it was pointed out to the Court that there was an error apparent on the face of the record when it directed the respondent to pay the amount vide its order dated 21.10.2005.

25. The petitioner has placed reliance upon Section 31(7)(b) and other provisions of the Act, 1996, and so also placed reliance upon the decision of the Full Bench of the Hon'ble Supreme Court in the case of ***Hyder (Supra)***. The Court, after dealing with the arguments canvassed by the parties, arrived at a conclusion that when the petitioner had not challenged the order dated 21.10.2005 passed by the Court, later in point of time, no review of such order could be maintainable inasmuch as, according to the Court, it cannot go behind its own order and cannot discuss or decide or relook into such points raised by the petitioner in its Review Application.

26. According to the Court, the petitioner waived his right to claim any more amount than ordered by the Court vide its order dated 21.10.2005. So, according to the Court, once such order dated 21.10.2005 was confirmed up to the Hon'ble

Supreme Court, there is no scope of interference in such order dated **21.10.2005** inasmuch as it cannot be recalled, modified or reviewed.

27. At this stage, it would be apt to refer the following two cited decisions of the Hon'ble Supreme Court, firstly, in the case of ***Canon India Private Limited (Supra)***, wherein the Full Bench of the Hon'ble Supreme Court held thus:-

> ***"63.*** *Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
> *(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made;*
> *(ii) Mistake or error apparent on the face of the record; or*
> *(iii) Any other sufficient reason.*
>
> ***64.*** *The words "any other sufficient reason" have been interpreted by the Privy Council in Chhajju Ram v. Neki [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144] and approved by this Court in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, (1954) 2 SCC 42] to mean a reason sufficient on grounds, at least analogous to those specified in the rule.*
>
> ***70. Thus, the decisions referred to above make it abundantly clear that when a court disposes of a case without due regard to a provision of law or when its attention was not invited to a provision of law, it may amount to an error analogous to one apparent on the face of record sufficient to bring the case within the purview of Order 47 Rule 1 of the Civil Procedure Code, 1908. In other words, if a court is oblivious to the relevant statutory***

> ***provisions, the judgment would in fact be per incuriam. In such circumstances, a judgment rendered in ignorance of the applicable law must be reviewed."***
>
> (emphasis supplied)

28. As such, learned AGP Mr. Desai also placed reliance upon certain decisions of the Hon'ble Supreme Court on the scope and power of review and interference by this Court while exercising its review jurisdiction, but the same would not be applicable to the facts of the case inasmuch as if the case of the petitioner falls in line with the category defined in the case of *Canon India Private Limited (supra)*, if it is apparent from the record itself that the order dated 21.10.2005 passed by the Court was in ignorance of Section 31(7)(b) of the Act, 1996, such order having been passed in ignorance of law, requires to be reviewed.

29. So, I do not want to burden this judgment by discussing those sighted decisions by the learned AGP except to observe that there is a well-defined scope of interference when it exercises review jurisdiction. It is settled that under garb of review, entire matter cannot be permitted to reopen and long

drawn arguments and additional points which would left out initially, cannot be allowed to pressed into service.

30. Now, coming back to the facts at hand, it remained undisputed between the parties that while passing the award by the sole arbitrator on 31.05.2000, the sole arbitrator not passed any order as regards post-award interest to be paid by the respondent. When such would be the fact, a question arises as to whether the petitioner, having claimed an arbitral award, would be entitled to receive any post-award interest?; if Yes, on what 'Sum'.

31. At this stage, it would be profitable to first read Section 31 (7)(a) and (b) of the Act, 1996, which stood prior to its amendment dated 23.10.2015, as the arbitral award was passed on 31.05.2000, which reads as under:-

> *" **31. Form and contents of arbitral award.-***
>
> *(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 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 eighteen per centum per annum from the date of the award to the date of payment.....****"*
>
> *(emphasis supplied)*

32. As per the aforesaid provision, the petitioner would be entitled to receive 18% interest on the sum directed to be paid by an arbitral award after the date of the award till the date of actual payment. What would constitute the 'sum' on which interest would carry @ of 18% per annum as per Section 31(7)(b) of the Act, 1996, is already answered by the Hon'ble Supreme Court in the case of ***Hyder (Supra)***.

33. It would be apt to refer to some of the observations and conclusions made by the majority member (2:1) of the Full Bench of the Hon'ble Supreme Court in the case of ***Hyder (Supra)***, wherein, after analysing the effect of Section 31(7)(b) of the Act, 1996 (which stood prior to its amendment dated 23.10.2015), it held thus:-

> ***"10.*** *In this view of the matter,* ***it is clear that the interest, the sum directed to be paid by the arbitral award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest pendente lite.***
> ***13.*** *Thus, it is apparent that vide clause (a) of sub-section*

(7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

***14.** In fact this is a case where the language of sub-section (7) clauses (a) and (b) is so plain and unambiguous that no question of construction of a statutory provision arises. **The language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum directed to be paid by the arbitral award**.*

***21.** In the result, I am of the view that S.L. Arora case [State of Haryana v. S.L. Arora and Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language.*

***30.** Therefore, **I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made**.*

***31.** Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Clause (b) uses the words "arbitral award" and not the "Arbitral Tribunal". The*

> *arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". **Interest under clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under clause (a).***
>
> ***33.** My aforesaid interpretation of Section 31(7) of the Act is based on three golden rules of interpretation as explained by Justice G.P. Singh in Principles of Statutory Interpretation (13th Edn., 2012) where the learned author has said that while interpreting any statute, language of the provision should be read as it is and the intention of the legislature should be gathered primarily from the language used in the provision meaning thereby that attention should be paid to what has been said as also to what has not been said; second, in selecting out of different interpretations "the court will adopt that which is just, reasonable, and sensible rather than that which is none of those things"; and third, when the words of the statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequence (see pp. 50, 64 and 132). I have kept these principles in mind while interpreting Section 31(7) of the Act."*
>
> (emphasis supplied)

34. Thus, in view of the aforesaid provision and the ratio of the decision in ***Hyder (Supra)***, the issue germane in the impugned Review Application no longer remains debatable, having already been answered/decided by the Hon'ble Supreme Court.

35. Once, it is brought on record that the Court, while

passing the order dated 21.10.2005, did not analyse the aforesaid provision of the Act, 1996, and passed an order contrary to it, would amount to an error and apparent gross error on the face of the record.

36. Such would be the situation when such an error apparent on the face of the record is pointed out to the Court; it requires to review its order having been passed either in ignorance of law or overlooking the provisions of law.

37. According to my view, considering the aforesaid peculiar facts and circumstances of this case, the Court, while passing the order dated 21.10.2005, committed an error apparent on the face of the record of the case inasmuch as it did not award 18% interest on the sum, i.e., the principal amount, but 16% interest on such principal amount post-arbitral award, i.e., from 01.06.2000 till its payment.

38. Having reached to the aforesaid conclusion, when there is an erroneous order passed by the Court on 21.10.2005, the reasons assigned by the Court while rejecting the impugned application filed below Exhibit 32 would also fall within the

category of an erroneous, perverse, and non-judicious order that requires to be interfered with by this Court while exercising its power of superintendence under Article 227 of the Constitution of India.

39. The question of delay in filing impugned applications would not be a ground to throw the impugned applications on such hyper technical reason, inasmuch as, from 21.10.2005 till 13.04.2015, respondent busy in pursuing its legal remedy, whereas petitioner busy due to aforesaid reason. Further, review application so filed below Exhibit 32, the Court not rejected impugned review application, on ground of delay. So, such argument canvassed by learned AGP would not help to his case anymore, thus, such arguments hereby rejected.

40. Furthermore, while taking note of such delay on the part of petitioner having not filed review application below Exh.32, immediately after passing of order dated 21.10.2005 but appears to have been filed on 29.08.2016, this Court while considering the claim of petitioner on merits would like to exclude such period while giving benefit of interest as per

Section 31 (7) (b) of the Act, 1996. Further discussion on this aspect will find in later portion of this judgment.

41. It can be gainsaid that this Court, while exercising its power under Article 227 of the Constitution of India, is required to exercise such power to keep the Court within its bounds. Whenever any perversity and/or any erroneous observation/reasons assigned by the Court while passing the impugned order having so found, such power of superintendence requires to be exercised by this Court to correct such impugned order. ***[See - Waryam Singh vs. Amarnath,, reported in AIR 1954 SC 215 (para-13) & Bhudev Mallick alias Bhudeb Mallick and Another vs. Ghoshal and Others, reported in 2025 SCC OnLine SC 360 (para 53 to 58); 2025 1 GLH 553]***. *So,* ***Point No.II*** *is answered accordingly*.

POINT NO.III

42. This Court, having found as observed hereinabove that there was an error apparent on the face of the record on the part of the Court when it ordered the respondent to pay the amount as per the award. Such order was also not found in

consonance with the provisions of the Act, 1996, and as such, at given point of time, none of parties raised such an issue, having so raised it in review application (Exhibit 32), would not be a ground that petitioner forgo its right, as no question of waiver/estopple/merger would apply to the facts of this case, and so also against statute.

43. Having so found that the execution application in question was not disposed of by the Court while passing the order on 21.10.2005, the claim made by the petitioner, having so filed in the impugned application below Exhibit 22, needs and requires to be reconsidered, keeping in mind all such factors including provision of the Act, 1996.

44. This Court could have remanded the matter back to the Court for final adjudication of the amount to be paid by the respondent to the petitioner as per the award and also interest as per Section 31(7)(b) of the Act, 1996, but having so recorded in the facts and during the pendency of this application, the execution petition was withdrawn subject to the outcome of this application. This Court would like to

adjudicate the impugned application filed below Exhibit 22 on its merit. Thus, matter is not remanded back to the Executing Court.

45. Having so observed and held hereinabove that the petitioner would be entitled to receive interest at the rate of 18% post-award on the sum directed to be paid by an arbitral award, such sum would constitute principal + interest, thereby, the principal amount of Rs.80,47,130/- wherein interest at the rate of 16% for the aforementioned period requires to be added till date of award.

46. It is not in dispute that the principal amounts awarded by the sole arbitrator under different claims would be Rs.80,47,130/-; its bifurcation would be Rs.79,94,130/- + 53,000/-, and interest at the rate of 16% was awarded on such amount from 25.09.1997 to 31.05.2000 and 01.10.1997 till 31.05.2000, would come to Rs.34,31,080.60/- + Rs. 22,613/- respectively. Total comes to Rs.1,15,00,824/- (So defined by petitioner in Exhibit 22 in para-4) and such amount would be treated as 'sum' as per Section 31 (7) (b) of the Act, 1993.

47. Accordingly, the respondent is under a statutory obligation as per Section 31(7)(b) of the Act, 1996, to pay such sum i.e. Rs.1,15,00,824/- with 18% interest from 01.06.2000 till its realization.

48. It is reported to this Court by learned AGP that the respondent has deposited/paid a sum of Rs.1,74,08,734/- on 26.10.2015 as per the order dated 21.10.2005 and so also, deposited/paid Rs.1,42,32,087/- on 20.03.2018 as per the impugned order dated 12.06.2017; thus, deposited/paid total Rs.3,16,40,821/- and such amount requires to be given set off from the amount payable as above. It goes without saying that the amount, which has already deposited/paid, would first get adjusted against the interest component (interest 18% on the amount of 'sum') then adjusted against amount of 'sum'.

49. At this stage, it would also requires to be taken note of the fact that the petitioner for quite a long time remained silent, having not promptly filed the impugned application either below Exhibit 22 or Exhibit 32, as the case may be, and as such, as observed hereinabove, due to the long pendency of

earlier litigation either before this Court or before the Hon'ble Supreme Court, the petitioner also remained quiet and did nothing, thereby, according to this Court, for such a long period, the petitioner would not be entitled to receive interest at the rate of 18% on the 'sum' for such period.

50. The petitioner, vide its affidavit dated 10.09.2025, filed in the present application, thereby, declared and stated on oath as under:-

> *"…….if the amount as prayed and claimed by the petitioner is granted and the respondent authority gives that amount to the petitioner within time as stipulated by the Hon'ble Court, the petitioner undertakes that the petitioner will waive additional interest as claimed, for any period between 21/10/2005 to 29/08/2016 as may be fixed by this Hon'ble Court……."*

51. Having considered the issue germane in the matter, the prolonged litigation between the parties, the inaction of the petitioner for quite long time having not pursued his execution proceeding, and coupled with the fact that the respondent, being a State ought not to be burdened for such period, in view of these peculiar facts and circumstances of the case, and so also, taking note of the statement of the petitioner in the form of additional affidavit filed in this writ application as

reproduced hereinabove, I would like to observe and hold that the petitioner would not be entitled to receive interest at the rate of 18% for the period between 21.10.2005 to 29.08.2016 on the amount of the 'sum' adjudged as per the arbitral award. *So, **Point No.III** is answered accordingly*.

CONCLUSION

52. In view of the foregoing discussions, observations, and reasons, I am of the view that the order dated 21.10.2005 passed by the Court in Arbitration Execution Petition No. 359 of 2002 would not merge in the judgment and order dated 01.08.2014 passed by this Court in Special Civil Application No.628 of 2006 for all purposes.

52.1. Consequently, the claim of the petitioner to get interest at the rate of 18% on the amount of the 'sum' adjudged as per the arbitral award, as per Section 31 (7)(b) of the Act, 1996 would be maintainable and requires to be decided in accordance with law. The doctrine of merger as pressed into service by respondent would not be applicable accordingly.

53. Having so found and as observed hereinabove, that there was an error apparent on the face of the record on the part of the Court inasmuch as it passed the order dated 21.10.2005, thereby, directed the respondent to pay the amount with interest as per the arbitral award with 16% interest, which was not in consonance with Section 31(7)(b) of the Act, 1996, thus, the impugned Review Application filed below Exhibit 32 erroneously rejected by the Court.

54. Consequently, having so reached to the aforesaid conclusion, the petitioner would be entitled to receive interest at the rate of 18% from 01.06.2000 on the amount of the 'sum' i.e., Rs.1,15,00,824/- adjudged as per the arbitral award, i.e., the principal amount + interest at the rate of 16% as awarded by the arbitrator till 31.05.2000 in the award.

55. At the same time, the petitioner would not be entitled to receive interest @ 18% interest on the aforesaid 'sum' for the period between 21.10.2005 to 29.08.2016, which shall be excluded while making payments by respondent to the petitioner. Further, whatever payment has been paid/deposited

by respondent in the matter shall be adjusted against said amount to be paid as per this order (See-para-47).

56. In view of the aforesaid, the respondent - State is hereby directed to recalculate the amount as observed hereinabove while answering Point No.3 and thereafter, pay such amount to the petitioner on or before 31.12.2025.

57. At the time of making such payment, either to the petitioner or depositing with the Court, the calculation sheet shall be prepared and provided to the petitioner showing calculation of interest and adjusted amount.

58. If the respondent - State fails to deposit such amount within the stipulated time as granted hereinabove, then after, it will be open for the petitioner to file a fresh execution application against the respondent - State to recover the amount as decided and ordered by this Court as aforesaid.

59. In view of the foregoing conclusions, the impugned order passed on 12.06.2017 by the Principal District Judge, below Exhibit 22 and 32 respectively, in Arbitration Execution Petition No.359 of 2002, is hereby quashed and set aside.

60. Accordingly, the impugned applications filed below Exhibit 32 is hereby allowed, and the impugned application filed below Exhibit 22 is also hereby partly allowed to the aforesaid extent.

61. Thus, the present writ application is hereby allowed to the aforesaid extent. Rule is made absolute accordingly. No order as to cost.

(MAULIK J.SHELAT,J)

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