



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOs.3145-3146 OF 2012

STATE OF HARYANA & ORS.

...APPELLANTS

VERSUS

M/S. JAI DURGAA FINVEST P. LTD.

...RESPONDENTS

J U D G M E N T

V. MOHANA, J.

1. These appeals arise out of the judgement and order dated 21.03.2009 in LPA No. 215 of 2006 and subsequent order dated 19.03.2010 in Review Application No. 5 of 2010 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh. The only issue that arises for consideration in these appeals is whether the amount of security deposit given by the Respondent-contractor will carry interest despite there being a contract to the contrary between the Appellant and the Respondent.

BRIEF FACTS:-

2. The Punjab Minor Minerals Concession Rules, 1964 (for short “the Rules”) were notified on 25.04.1964 under the Mines & Minerals (Regulation and Development) Act, 1957. Rule 33 of the Rules provides for execution of a contract. When a bid is confirmed or a tender is accepted, the bidder or tenderer shall execute an agreement in Form-L within one month. As per Clause 1 of Form-L the contractors shall, during the subsistence of the contract, pay in advance to the Government the contract money in respect of the land given to them on a monthly basis. As per Clause 2 of the Form-L, if the contractor fails to pay instalment of contract money or any part thereof, under the terms and conditions of the contract, on the due date without written permission of the Director in that behalf, he will be liable to pay interest thereon at the rate of 24 percent per annum till such amount is paid. Clause 17 stipulates that the contract may be terminated by the Government if considered by it to be in public interest by giving one-month notice. Clause 16 stipulates that in case of default in the due observance of the terms and conditions of the contract or in payment of the contract money on the due date, the contract may be terminated by the Government or by any officer authorised by the Government in this behalf, by giving one-month notice, with forfeiture of security deposit as also the instalment, paid in advance, if any. The contractor shall deliver the

possession of the quarry / mine to the mining officer concerned within seven days of the receipt of order of termination of contract.

3. In the very same Form, there is a Clause 19 which stipulates that the security deposited by the contractor(s) shall not carry any interest. It shall be refunded to the contractor within three months from the date of the expiry or sooner determination of the contract.

4. In the instant case, an auction notice was given for the extraction of Yamuna sand from Bega Murthal Sand Zone on 26.03.1998. The auction was held on 06.04.1998 for grant of contract for the extraction of sand and the Respondent firm was the highest bidder for Rs.1.48 crores per annum for a mining contract which was for a period of 3 years i.e., up to 31.03.2001. The bid was accepted by the Appellant. On 30.11.1998, a contract was executed between the parties in terms of the aforementioned Form-L. As per the said contract the Respondent was to deposit the contract money in advance to the Government on a monthly basis and the amount was also stipulated in the contract. There were also stipulations about interest on delayed payment and penalty for default.

5. After the agreement the Respondent had also given an affidavit to the Appellant that they will take the lands from the owners at their own level. Subsequently, the records show that the Respondent has been defaulting in

their instalment due to the Appellant from the month of September, 1999 and a notice was issued on 19.01.2000 for termination of the contract as prescribed in Clause 16 of the contract and the Respondent was called upon to give possession of the land.

6. On 09.03.2000, after affording due opportunity to the Respondent and after perusing the reply, the contract was terminated by the Director of Mines and Geology and the security amount was also forfeited for non-observance of the terms of the agreement. By this order, the Respondent was also directed to immediately handover the possession of the Bega Murthal Sand Zone to the Mining Officer, Sonapat as per the terms of the contract.

7. The Respondent took up the matter in appeal before the Appellate Authority which is the Director of Mines and Geology, Government of Haryana. By an order dated 10.07.2000, the Appellate Authority disposed of the appeal by holding that ends of justice would be met if, like in the similar cases, forfeited security money is adjusted against the outstanding contract money and the interest. Accordingly, the Appellate Authority ordered that the department shall raise the demand of contract money and up to date interest within a period of seven days of the order and the contractor shall deposit the demanded security within a period of one month in two fortnightly instalments. The Appellate Authority held that in case they deposit this amount within the

stipulated period then the security amount shall be adjusted against the balance amount, but in case they fail to adhere to the schedule of the payment then the appeal shall stand rejected without any further notice to the Contractor.

8. The Appellant served a notice upon the Respondent for depositing a sum of Rs.68,35,298/- out of which the Respondent seems to have deposited a sum of Rs.26 lakhs and requested for extension of time which was granted. However, the Respondent instead of depositing the contract money for the period up to 31.03.2000 deposited only for the period up to 09.03.2000 on which date the contract was terminated.

9. The Respondent then filed a Writ Petition being CWP No.12114 of 2000 before the Punjab and Haryana High Court at Chandigarh for quashing the notice to the extent it demanded contract money and interest thereon at the rate of 24 percent per annum and also challenging the validity of Clause 19 of the agreement which stipulated that there is no interest payable on the amount of security deposited by the Respondent and further it prayed for a direction to be issued to the State to pay interest at the rate of 24 percent per annum on the amount of security till final adjustment of the outstanding contract money.

10. The learned Single Judge by its judgement dated 07.10.2002 partly allowed the writ petition. The learned Single Judge held that the demand of a contract money after 09.03.2000 does not arise since the contract had been

terminated on 09.03.2000. However, on the issue of entitlement of interest of security deposit as per Clause 19 of the agreement the learned Single Judge held that the firm has voluntarily entered into a contract with an obligation to deposit some amount as security with full knowledge that the same would not carry any interest. The learned Single Judge also noted that this plea had been taken when the major period of contract had already expired and the contractor has taken it for the first time in the writ petition and he cannot be permitted to assail the contract as unconscionable and oppressive.

11. The Respondent-contractor thereafter filed a Special Leave Petition being SLP (C) No. 9491 of 2003 before this Court which was disposed of and this Court by its order dated 05.01.2004, after referring to various provisions of the agreement dated 30.11.1998, held that the matter needs to be re-examined by the High Court and remanded the same.

12. After remand by this Court the learned Single Judge of the High Court re-examined the entire issue. There were predominantly two issues before the learned Single Judge. The first issue being whether the State complied with their statutory obligations when the request was made by the contractor, and if not, what would be the effect of non-compliance of the statutory obligation of the State insofar as they did not comply with the contractor's request which had a direct bearing on the rights of the contractor. The second issue was

whether the security deposited by the Respondent-contractor would carry any interest after the contract was terminated. The learned Single Judge, on a detailed examination of the facts and documents, and after analysing the contentions, came to the conclusion that the contractor has failed to prove that State has failed to comply with their statutory obligations. The learned Single Judge also found that there was nothing to show that the contractor was not permitted to carry out the mining or that the termination was as the result of non-compliance of statutory obligations by the authorities. Finally, the learned Single Judge held that the contractor had failed to abide by the terms and conditions of the agreement dated 30.11.1998 and had failed to pay monthly instalments, as stipulated, therefore the order of termination of the contract does not suffer from any illegality. It held that the contractor himself was responsible for not extracting sand from the licensed land and for his failure to comply with the provisions of Clause 27 of the agreement. However, the learned Single Judge held that the demand for the period from 10.03.2000 to 07.04.2000 is not justified as the Respondent herein was denied the right to extract sand after termination of the contract vide order dated 09.03.2000, therefore, the claim made by the State for this period was set aside.

13. The learned Single Judge held that Clause 19 is “unsustainable in law” and directed the Appellant herein to refund the security amount of Rs. 37 lakhs with interest at the rate of 9 percent per annum from the date of its deposit.

14. The Appellants herein filed LPA No.215 of 2006 and the Respondent herein also filed LPA No.85 of 2007 before the High Court of Punjab and Haryana at Chandigarh. The Division Bench of the High Court dismissed both the appeals filed by the parties and upheld the judgement of the learned Single Judge.

15. The Respondent subsequently filed SLP(C) Nos.9761-9762 of 2009 which were dismissed by this Court by its order dated 08.05.2009. Subsequent Review Petition and Curative Petition have also been dismissed by this Court by its orders dated 22.07.2009 and 08.12.2009, respectively.

16. A subsequent SLP was filed by the Appellant herein which was disposed of by this Court by an order dated 14.12.2009 granting liberty to the Appellant to file a Review Petition before the High Court. It appears that the Appellant had filed a Review Petition in the High Court which was also dismissed by the second impugned order. The Appellant is before us challenging both the orders.

17. Initially this Court had issued notice on 07.03.2011 and stayed the operation of the impugned orders. Subsequently, by an order dated 16.03.2012 this Court granted leave and made the interim order absolute till the disposal of the appeal.

18. The only issue that arises in these appeals is whether the security money deposited by the contractor will carry interest once the contract is determined.

19. Heard Mr. Akshay Amritanshu, ably assisted by Mr. Sarthak Srivastava, learned counsel for the Appellants, and Mr. Manoj Joshi ably assisted by Ms. Shikha John and Mrs. Lalita Kaushik, learned counsel for the Respondent, and perused the documents on record.

20. The Appellant submitted that the High Court could not have rewritten the contract between the parties nor it could have substituted its own terms in the agreement that the parties have arrived at. It was further submitted that Clause 19 was an express term which was unambiguous and it was standard statutory form accepted by the Respondent in an open commercial tender which was never challenged by the Respondent during the currency of the agreement or even when the Respondent filed statutory appeal before the authorities and the challenge was raised for the first time in the writ petition. It was further submitted that the security deposit paid by the contractor is always kept in a non-interest bearing Treasury Head (8443-Civil Deposit and Advances) and that the department is not doing any banking business and it does not earn anything from out of the security deposit. The purpose of the security works as a deterrent for securing performance and finally it was submitted that the reasoning of the High Court that the interest should be paid on the security

because the State charges interest on instalments is not correct as the interest charged under Clause 2 of the agreement is only as a compensation for the default of the contractor.

21. Learned Counsel for the Respondent supported the impugned judgment and he submitted that contract was unconscionable, one sided and in favor of the State, and that while on the one hand the State is charging interest on the contractor for delay in payments and for non-performance, it is denying the contractor interest on his own security. He submitted that the judgment of the High Court is founded on equity, justice and good conscience and ought not to be disturbed on technical reasons and that the contract had been frustrated by failure of the State in procuring the land under Clause 27.

ANALYSIS AND CONCLUSION:-

22. Form-L, prescribed under Rules 28A and 33 of the Rules, prescribes the form in which a contract will be executed when a bid is confirmed or a tender is accepted. The relevant clauses in Form-L, which is prescribed under the Rules, are mentioned below:-

“1. Amount and mode of payment of contract money: The contractor/contractors shall during the subsistence of the contract pay in advance to the Government the following contract money in respect of the said land given to him on contract for the period from _____ to _____ on the dates mentioned below:-

Number of Instalments	Amount of instalments	The date on which
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		instalments is to be paid
1	2	3
(a) In case of contract where the annual contract money does not exceed Rs. 1000/- in annual instalment after adjusting Rs. _____ as contract money for the period from _____ to 31.03.19 _____ remaining amount of Rs. _____ out Rs. _____ (deposited at the time of auction) is adjustable against the annual instalment falling due from 1.4.19__	Rs. _____ (annual contract money)	1.4.19____ 1.4.19____ 1.4.19____ 1.4.19____ And so on
(b) In case of contract where the annual contract money exceed Rs. 1000/- and does not exceed Rs. 5 lacs in quarterly instalments after adjusting Rs. _____ as contract money for the period from _____ to _____ remaining amount of Rs. _____ out of Rs. _____ (Advance quarterly instalment deposited at the time of auction) is adjustable against the quarterly instalment falling due from 1 st of _____	Rs. _____ (quarterly instalment of contract money)	1.4.19____ 1.7.19____ 1.10.19____ 1.1.19____ And so on
(c) In case of contract where the annual contract money exceeds Rs. 5 lacs in monthly instalments after adjusting Rs. _____ as contract money for the period from _____ to _____ remaining amount of Rs. _____ out of Rs. _____ (advance monthly instalment) is adjustable against the monthly instalment falling due from _____ 19 _____.	Rs. _____ (monthly instalment of contract money)	1.1.19____ 1.2.19____ 1.3.19____ 1.4.19____ 1.5.19____ 1.6.19____ 1.7.19____ 1.8.19____ 1.9.19____ 1.10.19____ 1.11.19____ 1.12.19____ And so on

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Money for the subsequent years of the contract shall be paid by the contractor/contractors in advance in equal monthly/quarterly/yearly instalments.]

2. Interest for delayed payment:- If the contractor (s) fails to pay instalment of contract money or any part thereof due to the Government under the terms of the conditions of the contract on the due date without written permission of the Director in that behalf, he/they will be liable to pay interest thereon at the rate of *[twenty four percent] per annum till such amount is paid: Provided that no interest shall be payable if the amount is paid within three days in case the annual contract money does not exceed five lacs and within 7 days in case the annual contract money exceed Rs. 5 lacs.

16. Penalty for default:- In case of default in the due observance of the terms and conditions of the contract or in payment of the contract money on the due date, the contract may be terminated by the Government or by any officer authorised by Government in this behalf, by giving one month's notice, with forfeiture of security deposit as also the instalment, paid in advance, if any.

18. Recovery of contract money as arrears of land revenue:- Any sum due from the Contractor/Contractors on account of contract money in respect of the contract, shall be recovered from him/them as arrears of land revenue.

19. Security deposit shall carry no interest:- The security deposited by the Contractor/Contractors shall not carry any interest. It shall be refunded to the Contractor within three months from the date of expiry or sooner determination of the contract.”

23. It is well settled that in matters of contract between the parties the function of a Court is to interpret and enforce the terms as has been agreed between parties. The Court will not re-write the terms howsoever reasonable the substituted term may appear to be. In matters of commercial contracts where the parties stand on equal footing and have committed to certain

unambiguous terms, the language of the contract is to be clearly looked into and parties are bound by the same. Once the parties with their eyes open without any protest whatsoever and with free will accept certain terms of a contract they cannot afterwards be permitted to go back on the same merely because at a later point of time the stipulation proves to be onerous. The agreed forfeiture/security stipulation is to be enforced according to the terms of the contract as held in *National Highways Authority of India v. Ganga Enterprises And Another*¹, and *Shri Hanuman Cotton Mills and Others Vs. Tata Aircraft Limited*².

24. In *Venkataraman Krishnamurthy And Another v. Lodha Crown Buildmart Private Limited*³ this Court held as under:-

“21. In this regard, we may refer to the Constitution Bench decision in *General Assurance Society Ltd. v. Chandumull Jain*, wherein it was observed that, in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Thereafter, in *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corporation Ltd.*, this Court reiterated that a contract, being a creature of an agreement between two or more parties, is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves.

¹ (2003) 7 SCC 410

² (1969) 3 SCC 522

³ (2024) 4 SCC 230

22. More recently, in *Shree Ambica Medical Stores v. Surat People's Coop. Bank Ltd.*, it was observed that, through its interpretative process, the court cannot rewrite or create a new contract between the parties and has to simply apply the terms and conditions of the agreement as agreed between the parties. Again, in *GMR Warora Energy Ltd. v. CERC*, it was observed that courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. It was held that the explicit terms of a contract are always the final word with regard to the intention of the parties.”

25. The Respondent was fully aware of the statutory Rules and Form as per the terms of which there are certain conditions to be fulfilled and failure thereof will entail certain consequences. Likewise, the Respondent was also aware that the security deposited will not carry any interest and it will be refunded within three months from the date of the expiry of the contract or sooner determination of the contract. The Respondent had at least two opportunities of perusing the terms and conditions. Despite knowing the existence of the clause, the Respondent applied for the bid and became a successful bidder. Secondly when the Respondent signed the contract/agreement on 30.11.1998 as prescribed under Form-L, it was conscious of all the clauses, especially Clause 19 which prescribed that the security deposited will not carry any interest. It is not the case of the Respondent that it had been coerced into signing the contract nor is it the case that when the contract was signed it was under some mistake or undue influence. Respondent has voluntarily entered into the contract by which they were obliged to deposit the amount as prescribed therein

and the failure would result in termination. It has been consistently held by the learned Single Judge and the Division Bench of the High Court that the termination of the contract was purely by the conduct of the Respondent and it was the Respondent who is to be blamed for non-performance and for not depositing the monthly payments on time. The courts below have clearly examined the conditions and the exchange of letters and notices between the parties and have finally concluded that there was no failure on the part of the Appellant for non-performance of the contract by the Respondent.

26. It has been consistently found that the order of termination of the contract was effected due to the failure of the Respondent in abiding by the conditions as stipulated in the agreement. It has been noticed that after one year of the execution of the agreement the Respondent-company sent a letter to the Appellant stating that they have been obstructed by the land owners and, therefore, they are unable to carry out the mining. However, it has been found that the Respondent did not carry out the mining on their own and they have had made up a false plea with regard to the issuance of a notice in order to secure benefits from the Department. The Respondent was also required to submit a monthly return about sand extracted and if it was not extracting any sand due to problems created by the land owners then it would certainly submit a monthly report to that effect mentioning therein that extraction of the sand is Nil. It was clearly found by the High Court that the Respondent was negligent

in not reporting the matter though they were working in other villages and carrying out mining. Though the Appellant had served a notice on the Respondent calling upon them to make the payment of monthly instalment failing which contract would be cancelled, Respondent did not abide by the same and took excuses for not carrying out the obligation. Therefore, it has been found by the courts below that the order of termination of the contract does not suffer from any illegality particularly when the Respondent failed to respond even to the notice of termination. This aspect has also attained finality, especially in view of order dated 08.05.2009 passed by a coordinate bench of this Court in SLP(C) Nos.9761-9762 of 2009.

27. The High Court fell into error in declaring Clause 19 as unsustainable in law and against public policy. The public policy cannot be pressed into service to set at naught the commercial contract which expressly denies interest on security deposit. Such a stipulation is neither immoral nor unlawful nor can it be classified as unsustainable in the legal sense. The Respondent as a commercial entity had participated in open auction and emerged as the highest bidder and executed the standard statutory Form-L with full knowledge and furnished an undertaking to abide by the same. Once parties have voluntarily accepted a contract they cannot turn around and assail the same as oppressive after major part of the contract period has gotten over. The reasoning of the High Court that when State charges interest on belated instalment they should

pay interest on the security does not stand scrutiny. The stipulations in Clause 2 and in Clause 19 operate in different fields and they serve different purposes. While Clause 2 provides for liquidated damages or compensation which is payable or referable to the contractor's default on the timely payment which is a consequence of the contractor's own breach, the security deposit in Clause 19 is a performance guarantee held by the State and the parties have clearly agreed that it would carry no interest. There is no reciprocal obligation upon the State to pay interest on the security. In fact, both the Clauses are seen in the same contract which has been agreed between both the parties with their eyes open. To reason otherwise and without interpreting the contract as agreed but to add new terms which were not admittedly written therein amounts to re-writing the contract which a Writ Court is not entitled to do.

28. Hence, it is held that Clause 19 is a valid binding term of the agreement and the finding of the learned Single Judge as affirmed by the Division Bench that Clause 19 is unsustainable in law and opposed to public policy is set-aside.

29. Having held as above, it is to be seen that Clause 19 of the agreement is in two parts. Clause 19 is extracted hereinbelow:-

“19. Security deposit shall carry no interest:- The security deposited by the Contractor/Contractors shall not carry any interest. It shall be refunded to the Contractor within three months from the date of expiry or sooner determination of the contract.”

The two limbs of the Clause 19 have to be read together, and they are interdependent. While the first portion states that “it shall not carry any interest” and second portion of the same clause reads that “shall be refunded to the contractor within three months from the date of expiry or sooner determination of the contract.” The correct interpretation of this Clause would mean the Respondent’s deposit will earn no interest and it will be returned to the Respondent within three months of the contract coming to an end or within three months of the termination of the contract. On a proper reading of the Clause 19 it is clear that the Appellant cannot retain the money which is interest free, in perpetuity. It does not clothe the Appellant with the power to read the first portion of the Clause in isolation without any limitation on time, therefore, while the first portion states that security deposited will carry no interest, the same clause would read further that it shall be refunded within three months from the date of expiry or sooner determination of the contract. Once the contract is determined then it is the obligation upon the State to refund the security deposit within the period prescribed in the agreement. If the State retains the security deposit beyond three months the Respondent-contractor is entitled for interest which is very clear from a proper reading of Clause 19. While the Clause 19 states that there is no interest from the date of deposit while securing it, once it is determined, the amount cannot be withheld by the State beyond three months as provided in the clause itself.

30. Therefore, since the contract has been determined on 09.03.2000 and the period of three months expired on 09.06.2000, the Respondent is entitled to interest for the period commencing from the expiry of three months from the determination of the contract that is from 09.06.2000 till the date on which the security was so adjusted or appropriated towards the dues payable by the Respondent to the Appellant. The direction of the High Court that the security deposit will carry interest from the date of deposit is erroneous and is contrary to the agreed terms of the contract and therefore, the said direction is set aside.

31. Having regard to the above, the rate of interest as fixed by the High Court at 9 percent per annum is reasonable and we see no reason to disturb the same.

32. In the result the Appeals are partly allowed in the following terms:-

A. The judgment of the learned single Judge dated 04.08.2006 as affirmed by the Division Bench on 21.03.2009 and the order dated 19.03.2010 dismissing the review insofar as they declare Clause 19 of the Form-L to be unsustainable in law and granting interest at 9 percent per annum on the security amount from the date of its deposit is set aside;

B. Clause 19 is declared to be valid and binding in term of the contract and no interest is payable on security deposit of Rs.37 lakhs for the period

up to expiry of three months from the date of determination of the contract, i.e., up to 09.06.2000;

C. The Respondent shall be entitled to simple interest at the rate of 9 percent per annum on the security deposit for the period commencing from 09.06.2000 and ending on the date on which the said amount was appropriated towards the dues or refunded to the Respondent; and

D. There shall be no order as to cost.

33. The Appeals are allowed and disposed of accordingly.

.....CJI
(SURYA KANT)

.....J.
(V. MOHANA)

New Delhi
July 13, 2026