

ITEM NO.11

COURT NO.2

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 9206/2020

(Arising out of impugned final judgment and order dated 06-12-2019 in OPC No. 23/2019 passed by the High Court Of Kerala At Ernakulam)

AHCOM SARL

Petitioner(s)

VERSUS

PENIEL CASHEW COMPANY

Respondent(s)

(IA No. 39508/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 40492/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 4569/2023 (XI-A)

IA No. 119264/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 05-12-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Mr. Romy Chacko, AOR
Mr. T. R. Ashwas, Adv.
Mr. Prashant Kumar, Adv.
Mr. Sachin Singh Dalal, Adv.
Mr. Robin V. S., Adv.

Mr. V.chitambaresh, Sr. Adv.
Mr. Premachandran N D, Adv.
Mr. Pranav P.p., Adv.
Mr. Ramesh Babu M. R., AOR

For Respondent(s) Mr. Romy Chacko, AOR
Mr. T. R. Ashwas, Adv.
Mr. Prashant Kumar, Adv.

Mr. Sachin Singh Dalal, Adv.

Mr. V.chitambaresh, Sr. Adv.

Mr. Premachandran N.D Adv, Adv.

Ms. Swati Setia, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP(C) No. 4569/2023

Learned counsel for the respondent submits that mistakenly the affidavit which was required to be filed in these proceedings in terms of order dated 20.10.2023 was filed in SLP(Civil) No. 9206/2020. The said affidavit along with reply be placed on record in the present petition instead of in the connected SLP(Civil) 9206//2020.

The additional affidavit in response thereto has been perused. It has been stated in the affidavit that the decree holder was never struck off from the Registry but was only suspended and the said suspension stands retracted by the competent Court at Monaco as per judgment dated 24.08.2023. The judgment also directed that the retraction be published in Journal/Gazette and in compliance thereof the retraction was published in the Monaco Journal/Gazette in the Journal dated 01.09.2023. Along with the affidavit, the order of the Tribunal in French with English translation has been produced.

We are satisfied that company does exist to execute the decree. Learned counsel for the petitioner did make a valiant endeavour to persuade us that the translation should be looked into in the manner that it is retraction which means that earlier order was there and the impugned order was passed at that stage.

We are unable to agree with the aforesaid submissions. The aforesaid being the only plea, more so, in view of order dated 20.10.2023 where we had observed that there is a little scope for interference except the plea sought to be raised regarding the executing company having gone into liquidation.

The result of the aforesaid is that this petition is dismissed.

Pending applications stand disposed of.

SLP(Civil) No. 9206/2020

The issue in terms of the impugned order is only the question of interest as the petitioner was claiming 18% interest as per the then provision of Section 31(7) of the Arbitration Act. The executing Court was directed to determine the rate of interest applicable to the "seat of international arbitration"

as on the date of the award after giving reasonable opportunities to both the sides to establish.

We have heard learned counsel for parties.

The matter has dragged on for more than a decade. The principal amount now stands deposited in this Court in SLP (C) No. 4569/2023 and is earning interest in the FDR. It is a commercial transaction. To put an end to the dispute, we asked the parties whether they would resolve on an interest which is something between 18% interest claimed by the petitioner and the then prevalent libor rates. Learned counsel for the parties submit that this Court may determine it.

We are of the view that 8% simple interest from the due date till the date of deposit in this Court would meet the ends of justice in the present case. The interest amount be paid within three months from today. The principal amount deposited in this Court along with accrued interest be released to the petitioner.

The special leave petition stands disposed of in terms aforesaid.

The order of arrest be kept in abeyance till the period of three months expires for payment of interest and in case of non-payment, the said order would automatically activate.

Pending applications stand disposed of.

**[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS**

**[POONAM VAID]
COURT MASTER (NSH)**