SUDARSAN TRADING CO.

v.

GOVT. OF KERALA & ANR.

FEBRUARY 14, 1989

[SABYASACHI MUKHARJI, AND S. RANGANATHAN, JJ.]

Arbitration Act, 1940: s. 30—Non-speaking award—Validity of—Not open to court to probe the mental process of the arbitrator—Reasonableness of the reasons—Arbitrator the sole judge of quality and quantity of evidence—Interpretation of contract by arbitrator—Court cannot substitute its own decision—Setting aside of award—Grounds for.

The appellant-contractor undertook construction of certain time-bound projects. The work, however, could not be completed within the scheduled time due to various reasons. The contract was consequently cancelled at appellant's risk. The disputes arising therefrom between the parties were referred to the arbitrator named in the agreement. He made three awards allowing claim Nos. 1(e), 2, 5, 7(a), 7(b), 7(c), 13, 14, and 15 preferred by the appellant aggregating to Rs.31.15 lakhs under the several heads mentioned therein.

Upon these awards, an application was made before the court for passing decrees in terms thereof. Objections were also filed.

The trial court took the view that it could not adjudicate upon the justification for the conclusions arrived at by the arbitrator unless such awards were the result of corruption, fraud or there were errors apparent on the face of the award, that it was not necessary for the arbitrator to give reasons for his award, that there was no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence for the purpose of finding out whether or not the arbitrator had committed an error of law or fact, that the arbitrator had not incorporated in the award any materials for his conclusion nor did he incorporate the terms of the contract between the parties. Under such circumstances the award could not be set aside, especially when there was no error apparent on the face of it and there was nothing to show that the arbitrator had misconducted the proceedings or that the award had been improperly procured.

In appeal before the High Court it was contended for the respon-

A dents that there were errors apparent on the face of the award, that the arbitrator had misconducted himself and travelled beyond the terms of the contract, and that the claims allowed were beyond and contrary to the agreement between the parties, whereas for the appellants it was contended that the award was a non-speaking award and, therefore, it was not open to the court to go into the correctness or reasonableness of
B the award.

The High Court set out the claims, noted the rival contentions and referred to the various clauses and the conditions of the contract, though the contract itself was made no part of the award, and concluded that there were errors apparent on the face of the award that the arbitrator had misconducted himself and travelled beyond his power.
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In the appeals by special leave, it was contended that the High Court had exceeded its jurisdiction in acting in the manner it did on the aforesaid aspects.

D Allowing the appeals by special leave,

HELD: 1.1 The High Court fell into an error in deciding the question on interpretation of the contract. It had no jurisdiction to examine the different items awarded clause by clause by the arbitrator and to hold that under the contract these were not substainable in the
E facts found by the arbitrator. [688D, E]

1.2 Once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the arbitrator and on which the court cannot substitute its own decision. So also, the court cannot substitute the decision of the arbitrator, as to what was meant by
F the contract, once a dispute under the contract is conceded to the arbitrator. [687B, D]

1.3 In the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the
G decision, the arbitrator had acted correctly or incorrectly. This the court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator. By
H purporting to construe the contract the court could not take upon itself

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the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. [686D-F]

1.4 Furthermore, if on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the court in the manner done by the High Court in the instant case. [688D]

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F.R. Absalom, Ltd. **v.** *Great Western (London) Garden Village Society, Ltd.*, **[1933] AC 592;** *Heyman & Anr.* **v.** *Darwins, Ltd.* **[1942] AC 356 and** *Attorney General for Manitoba* **v.** *Kelly & Ors.*, **[1922] I AC 268 distinguished.**

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State of Kerala **v.** *Poulose,* **[1987] 1 KLT 781 and** *State of Kerala* **v.** *Raveendranathan,* **[1987] 1 KLT 604 partly overruled.**

2.1 Where there are errors apparent on the face of the award it can only be set aside if in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award. But where a specific question is referred, the award is not liable to be set aside on the ground of an error on the face of the award even if the answer to the question involves an erroneous decision on a point of law. [684D-E]

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Champsey Bhara & Co. **v.** *Jivraj Balloo Spinning & Weaving Co. Ltd. (L 1922 IA 324; M/s Alopi Parshad & Sons, Ltd.* **v.** *The Union of India,* **[1951] S.C.R. 793;** *Jivarajbhai Ujamshi Sheth & Ors.* **v.** *Chintamanrao Balaji & Ors.*, **[1964] 5 SCR 480 and** *Upper Ganges Valley Electricity Supply Co. Ltd.* **v.** *U.P. Electricity Board.*, **[1973] 3 SCR 107 referred to.**

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2.2 An award can also be set aside if the arbitrator had misconducted himself or the proceedings. One of the misconducts could be the decision by the arbitrator on a matter which is not included in the agreement or reference. But in such a case one has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. [686C]

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Anisminic Ltd. **v.** *Foreign Compensation Commission,* **[1969] 2 AC 147;** *Regina* **v.** *Noseda, Field, Knight & Fitzpatrick,* **[1958] 1 WLR 793 and** *Halsoury's Laws of England*, **4th Edn. Vol. para 622 referred to.**

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2.3 An award may be remitted or set aside on the ground that the arbitrator in making it had exceeded his jurisdiction and evidence of matters not appearing on the face of it will be admitted in order to establish whether the jurisdiction had been exceeded or not, be because the nature of the dispute is something which has to be determined
B **outside the award—whatever might be said about it in the award or by the arbitrator. [685H; 686A-B]**

Christopher Brown Ltd. **v.** *Genossenschaft Oesterreighischer etc.*, **[1954] 1 QB 8;** *Dalmia Dairy Industries Ltd.* **v.** *National Bank of Pakistan,* **[1978] 2 Lloyd's Rep, 223 and** *Russell on The Law of Arbitra-*
C *tion*, **20th Edn. 427 referred to.**

2.4 An arbitrator acting beyond his jurisdiction, however, is a different ground from the error apparent of the face of the award. In the former case the court can look into the arbitration agreement but in the latter it cannot unless the agreement was incorporated or recited in
D **the award. In the instant case the contract in question was not incorporated or referred to in the award. [686B-C]**

2.5 However, there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power
E **of the arbitrator to grant a particular remedy. The nature of the dispute has to be determined. [686F-G]**

Commercial Arbitration by Sir M.J. Mustill & Steward G. Soyd page 84, **referred to.**

F **3.1 The court look into the reasoning only in a speaking award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. [683G-H]**

3.2 Furthermore, in any event, reasonableness of the reasons
G **given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of**
H **being a judge on the evidence before the arbitrator. [684B-C]**

3.3 In the instant case, the award was not a speaking award. The arbitrator had merely set out the claims and given the history of the claims and then awarded certain amount. He had not spoken his mind indicating why he had done what he had done; he had narrated only how he came to make the award. In the absence of any reasons for making the award, it was not open to the court to interfere with the award. [684A-B]

Hindustan Steel Works Construction Ltd. **v.** *C. Rajasekhar Rao,* **[1987] 4 SCC 93 and** *Municipal Corporation of Delhi* **v.** *M/s Jagan Nath Ashok Kumar & Anr.,* **[1987] 4 SCC 497 referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 840-842 of 1989.

From the Judgment and Order dated 5.5.1988 of the Kerala High Court in M.F.A. Nos. 72/83, 346/83 and 380 of 1983.

K.K. Venugopal, Shiv Pujan Singh and Miss Niranjana for the Appellant.

G. Vishwanath Iyer and K.R. Nambiar for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Leave granted.

These appeals arise from the judgment and order of the High Court of Kerala, dated 5th May, 1988. The High Court by the impugned judgment and order in M.F.A. Nos. 72, 346 and 380 of 1983 allowed the appeals of the respondent—the Govt. of Kerala, against the judgment and decree dated 25th September, 1982 passed by the principal Sub-Judge, Trivandrum in S.P. (Arbitration) Cases Nos. 184, 185 and 186 of 1982 by which the learned Sub-Judge had upheld the awards by the arbitrator on the ground that it was not open to the court to sit in appeal over the decision of the arbitrator and the court could not adjudicate upon the justification for the conclusions arrived at by the arbitrator unless such awards were the result of corruption, fraud or when there were errors apparent on the face of the award. The learned Sub-Judge further held that there was no error apparent on the face of the record and there was no allegation of corruption or fraud. The High Court reversed the said decision.

A The questions involved in these appeals are: how should the court examine an award to find out whether it was a speaking award or not; and if it be a non-speaking award, how and to what extent the court could go to determine whether there was any error apparent on the face of the award to be liable for interference by the court. The other question that arises in this case is, to what extent can the court B examine the contract in question though not incorporated or referred to in the award.

It may be noted that on 23rd December, 1976 the agreement No. 25/SESPC/1976-77 was entered into between the appellant and the respondent herein for construction of masonary dam across Siruvani river. Certain disputes arose between the appellant and the C respondent. These disputes were referred to the arbitrator named in the agreement. The arbitrator passed the awards dated 12th, 16th and 23rd April, 1982, which were filed before the Sub-Judge and the appellant prayed for passing of decree in terms of the awards. The respondents filed petitions seeking to set aside the awards. The learned Judge D refused to set aside the awards and passed decrees in terms of the awards. The Trial Court held that there was no merit in the contention regarding limitation; and that the claims under the award were not barred by limitation. It was further held by the learned Trial Judge that the arbitrator had not incorporated in the award any material for his conclusion nor had he incorporated the terms of contract between E the parties. Under such circumstances the award could not be set aside, especially when there was no error apparent on the face and that there was nothing to show that the arbitrator had mis-conducted the proceedings or that the award had been improperly procured. So the objection to the passing of the award was turned down.

F Aggrieved thereby, the respondent filed appeals before the High Court. The High Court by the impugned judgment dated 5.5.1988 set aside the awards and the decree of the Trial Court on the ground that there were errors of law apparent on the face of the awards. It is contended that the High Court in the circumstances of this case and in view of the settled principles of law, exceeded its jurisdiction by acting G in the manner it purported to do. It is, therefore, necessary to refer to the award to determine how has the arbitrator proceeded and what actually the arbitrator has decided. The arbitrator has noted in the first award that the dispute related to the work of 'Siruvani drinking Water Supply Project—Construction of an Intak Tower and allied structures'; and observed that an estimate amounting to Rs.17.45 lakhs was H sanctioned for the work and it was entrusted on contract to the

claimant—appellant herein, on tenders. The value of the work arranged on contract was Rs.14.45 lakhs as per the departmental estimate which the appellant undertook, as understood by the arbitrator, to carry out works at a total amount of Rs.19.15 lakhs as per their tender. The contract was embodied in agreement No. 18/SC/SPS/1977-78 dated 17.3.78 between the claimants on the one side and the respondent No. 2 on behalf of the State of Kerala cited as respondent No. 1 on the other, in these proceedings. The work had been taken up as part of the scheme for augmenting the drinking water supply to Coimbatore city from the yield of the Siruvani river and due to acute scarity of water in the city, work was taken up on an urgent footing and it was understood by both the parties that time was of utmost importance in the execution of work. The site for the work was handed over to the claimants on 17th December, 1977 and the work had to be completed by 15.6.1978. Accordingly to the arbitrator, however, it was clear that the work could not be completed within the stipulated period due to various reasons for which each party blamed the other. It was noted in the award that according to the respondents, after carrying out the work to the tune of Rs.3.46 lakhs (approx.) against the accepted probably estimate of contract of Rs.19.15 lakhs, the appellant refused to proceed with the balance work in spite of specific notices to them and so the respondents were constrained to terminate the contract at the risk and cost of the appellant. Several efforts were made to re-arrange the balance works and finally as per the situation obtaining then these works were to be expected to be completed at an excess cost of Rs.0.97 lakhs over the amount that would have been payable to the appellant as per the terms of the original contract. The arbitrator, thereafter, noted that the appellant had raised in respect of the dispute which is the subject-matter in the first award, specific claims for an amount of Rs.5.97 lakhs in addition to release of their retention sum of Rs.32,139 and the security deposit of Rs.38,400 payment of final bill for the work done including the above claims, interest on amounts awarded and cost of the arbitration proceedings.

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It seems from the award of the arbitrator that the contention of the respondents had been that as per the terms of the contract, they were entitled to realise the excess cost on re-arrangement of the balance works estimated at Rs.0.87 lakhs from the claimant and so they proposed to appropriate the retention sum of Rs.32,139 lying in their hands, the Security Deposit of Rs.38,400 and the sums due to the claimant by way of final bill on other works as well. It was noted by the arbitrator that there was a prayer by the appellant for inspection of the site and the same was inspected on 9.12.80. It was contended on behalf

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A of the claimant that the site of work was situated on the Western Ghats far away from human habitation in dense forest infected with wild animals at an elevation of about 600 M and subject to heavy precipitation of upto 400 cms. annually and that access to the site was only from Coimbatore side in Tamil Nadu. Several obstacles for access to the site were highlighted before the arbitrator. Another important point on B which considerable stress was laid was the compensation for losses occasioned to them on account of the unsatisfactory law and order situation coupled with labour unrest, stoppages and threats and even physical violence on the agents of the appellant. It was further highlighted that the termination of the contract at their risk despite the frustration and impossibility of performance was clearly illegal and C unjustified. In the premises compensation was demanded for loss of equipments. The arbitrator noted that the main point of defence of the respondent was that the time for the completion of the work forming part of the time-bound programme was six months from the date of handing over the site. As the site was handed over on 16.12.77, the date of completion should have been 15.6.1978. Of the difficulties D arising out of the location of the site of the work, it was emphasised by the respondent that the conditions under which the contract had to be performed were within the knowledge of the parties, and there could not be any ground for claiming any addition than those contemplated in the contract. It was definitely further stated that the additional haulage was due to the alternate route via Thachampara which was E opened on 15.2.1977 and that any claim on this account subsequent to the above date was unjustified. Furthermore, that materials like sand, cement and steel were all issued in time and there could hardly be any justification regarding delays on these account. Regarding interruptions in power supply the respondents' case was that such interruptions were not unexpected at a site to which the power lines passed through F virgin reserve area, and at any rate the claimants were not assured by the respondents of uninterrupted power and there was hardly any items of machinery belonging to the appellant which had remained idle for want of power.

It was further stated that the various extra items of works including the work on the quarries had been adequately paid for by them and G no further payments were due to the appellant; that there was no serious deterioration of the law and order situation; and that the losses were due to the conduct of the claimant and the materials left over by the claimant at the end of the second working seasons that had been taken over by them, duly accounted for and the credit thereof given in H the final bill. It was further reiterated by the respondent that the work

was not completed within the period agreed and, therefore, the respondent issued notice to resume the work and on the failure of the claimant to re-start the work, there was no other alternative except to terminate the contract as the work itself was part of a time-bound programme; and they had to make alternate arrangements and that would have cost Rs.0.87 lakhs additionally which was sought to be recovered from the appellant appropriating the retention money and security deposit. It was, therefore, claimed that the claims of the appellant should be rejected.

Considering all these contentions and noting the several respective claims, the arbitrator awarded as follows:

> "Claims Nos. (1), (2) (a & b) and (3) These claims are declined.
>
> Claim No. 4 The Respondents shall pay the Claimants a sum of Rupees Ninety Six Thousand only (Rs.96,000) in satisfaction of this claim including the various Sub Claims under the same.
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> Claims No. 5(a), (b) & (c)—The Respondents shall pay an amount of Rs. five thousand only (Rs.5,000) to the Claimants in satisfaction of this claim.
> Claims Nos. (6), (7), (8) and (9)—These four Claims are declined.
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> Claim No. (10)—The retention moneys recovered from the Claimants in regard to this work shall be refunded to them by the Respondents. Claim No. 11—The f.oo. for the work shall be paid to Claimant for the sums awarded under Claims (4) and (5) Supra resulting in a net payment of Rupees one Lakh and One thousand only (Rs.1,01,000).
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> Claim No. 12—The Respondents shall refund the security deposit held by the Claimants for this work subject to the rules regarding tax clearance.
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> Claim No. 13—The Claim for interest is declined.
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> Claim No. 14—The parties shall suffer their respective costs in these proceedings."

A Regarding the counter-claims it was held that the order of the 2nd respondent terminating tne contract in favour of the appellant was valid and as such, the respondents were free to arrange for the balance work in the manner they thought fit. The counter claim for costs of the respondents was also held by the arbitrator to be covered by other claims. The award was passed on 12th April, 1982.

B There was another award dated 16th April, 1982 which was with regard to the dispute that arose for controlling the work of "Siruvani Drinking Water Supply Project—Constructing a Masonry dam across Siruvani River Block Nos. I, II and III from Ch. 13 to 60 up to level + 883.00 metres and Block No. III from ch. 60 to 82 upto level + 870 metres". In respect of the aforesaid, an estimate amounting to Rs.71.5 C lakhs had been sanctioned for the work and it was entrusted on contract to the appellant. It appears that the value of the work arranged on contract was Rs.67,72,760 as per departmental estimate which the appellant undertook to carry out at a total amount of Rs.76,55,300 as per their tender. The contract was embodied in the aforesaid agree- D ment of 23rd December, 1976. The arbitrator recited the original claim and noted that the work could not be completed during the scheduled time and the respective contentions of the parties were, more or less, identical with the one made in the previous case.

There was inspection of documents and the parties were heard in E person, it was noted. After noting the respective contentions the arbitrator awarded as follows:

> "Claim No. (1)(A)—The Claim for additional payment on account of aslar work is declined.
>
> F Claim No. (1)(B)—The Respondents shall pay the Claimants an additional amount of Rupees One Lakh only (Rs.1,00,000) in satisfaction of this claim over and above the amounts already paid by them in the various part bills.
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> Claim No. (1)(c)—This claim for compensation on account G of loss in hire charges and shortage of rubble is declined.
>
> Claim No. 2—The Respondents shall pay the Claimants a sum of Rupees three lakhs and thirty six thousand only (Rs.3,36,000) in satisfaction of this claim.
>
> H Claim Nos. 3 & 4—These two claims are declined.

Claim No. 5—The Respondents shall pay the Claimants an increase of forty (40) per cent in the agreed rates for agreed items and rates derived from the agreement for the extra items for all work paid for after CC2 and part, such increase being worked out on the cost of the work excluding the value of the materials supplied by the Respondents.

Claim No. 6—The Claimant shall be entitled to a payment of Rupees twenty five thousand only (Rs.25,000) in satisfaction of this claim and the Respondent shall pay it accordingly.

Claim No. 7(a)(b) & (c)—The Claimants shall be entitled to a consolidated payment of Rupees fifty thousand only (Rs.50,000) from the Respondents in satisfaction of these claims and the same shall be paid accordingly in addition to the payments already made. The Claimants on receipt of such payment shall have no lien whatsoever on the sheds, goods of whatever description and materials lying at the site of the work and said to belong to them. Claims 8, 9, 10, 11 & 12—These five claims are declined.

Claim No. 13—The retention amounts from the bills of the Claimants lying in the hands of the Respondents shall be released to them.

Claim No. 14—An amount of Rupees two lakhs only (Rs.2,00,000 shall be paid to the claimants in settlement of the final claims on the work in addition to the specific items referred to in the other claims as per this award.

Claim No. 15—The Security offered by the Claimants for this work shall be released to them subject to the rules regarding tax clearance,

Claim No. 16—The claim for interest is declined.

Claim No. 17—The parties shall suffer their respective costs in these proceedings."

Regarding the counter claims, it was reiterated by the arbitrator that the respondents were entitled to arrange for the balance work in any manner they deemed fit on the termination of the contract by

them. But the appellant should not be responsible for any loss that might be sustained for this re-arrangement. The counter claim for costs of the respondents was also dealt with.

There was a third award dated 23.4.1982 which was in respect of the sum due to Blocks Nos.7, 8 & 11. In respect thereof an estimate of Rs.69.7 lakhs had been sanctioned for the work and it was entrusted to the appellant. The value of the work arranged on that contract was Rs.63.68 lakhs as per the departmental estimate which the claimants undertook to carry but at a total amount of Rs.71.96 lakhs as per their tender. After reiterating that time was of the essence of the contract, the difficulties that arose in carrying out the contract and the respective contentions, which were identical with those in respect of the first two contracts were discussed. In respect of interruptions in power supply the case of the respondent was that such interruptions were not unexpected at a site through which the power lines passed through virgin reserve forest and that the claimants had not been assured by the respondents of uninterrupted power and in any case there was hardly any item of machinery belonging to the claimant which could have remained idle for want of power. In respect of the medical facilities it was submitted by the respondents that according to the terms of the contract it was the primary duty of the appellant to provide for medical assistance to their work force. After setting out the rival contentions the arbitrator awarded as follows:

> "Claim No. (1)(A)—The claim for additional payment on account of ashlar work is declined.
>
> Claim No. (1)(B): The respondents shall pay the claimants an additional amount of rupees seventy five thousand only (Rs.75,000) in satisfaction of this claim over and above the amounts already paid by them in the various part bills.
>
> Claim No. (1)(C): The claim for compensation on account of loss of hire charges and shortage of rubble is declined.
>
> Claim No. 2: The respondents shall pay the claimants a sum of Rupees three lakhs and seventy five thousand only (Rs.3,75,000) in satisfaction of this claim.
>
> Claim Nos. 3 & 4: These two claims are declined.
>
> Claim No. 5: The respondents shall pay the claimants an

increase of Forty (40) per cent in the agreed rates for agreed items and rate derived from the agreement for extra items for all work paid for after CC 2 and part, such increase being worked out on the cost of the work excluding the value of materials supplied by the respondents. A

Claim No. 6: the claimants shall be entitled to a payment of rupees twenty five thousand only (Rs.25,000) in satisfaction of this claim and the respondents shall pay it accordingly. B

Claim No. 7(a)(b) & (c): The claimants shall be entitled to a consolidated payment of rupees fifty thousand only (Rs.50,000) from the respondents in satisfaction of these claims and the same shall be paid accordingly in addition to the payments already made. The claimants on receipt of such payment shall have no lien whatsoever on the sheds, goods of whatever description and materials lying at site of the work and said to belong to them. C D

Claims Nos. 8, 9, 10, 11 & 12: These five claims are declined.

Claim No. 13: The retention amounts from the bills of the claimant lying in the hands of the respondents shall be released to them. E

Claim No. 14: An amount of rupees fifty thousand only (Rs.50,000) shall be paid to the claimants in settlement of the final claims on the work in addition to the specified items as per this award. F

Claim No. 15: The security offered by the claimants for the work shall be released to them subject to the rules regarding tax clearance.

Claim No. 16: The claim for interest is declined. G

Claim No. 17: The parties shall suffer their respective costs in these proceedings."

About the counter claims it was also stated that the claimants would not be responsible to carry out the balance work which the H

A respondents might arrange in any manner they thought fit on termination of the contract, but it should not be at the risk of the claimants.

Upon these awards, an application was made before the Court of the Principle Sub-Judge, Trivandrum, for passing decrees in terms of the award. Objections were also filed. The learned Judge by his judgB ment and order dated 25th September, 1982 dealt with the objections. He rejected the contention that the claims were barred. He further held that it was not necessary for the arbitrator to give reasons for his award; and that there was no provision under the law which required that the arbitrator should furnish reasons for the award. It was submitted before him that the arbitrator ought to have given separate findings for the issues under claim No. 4 as the issues raised were C entirely independent of each other. It was submitted that under subclaim (a) in claim No. 4 the appellant had claimed loss on account of the pressure tactics adopted by the labourers. Under sub-claim (b) the appellant had claimed compensation for the extra works done. In the statement of defence filed by the respondents it was more or less D conceded that the claim for extra works would lie, and stated that the actuals should be accounted and paid along with the final bill. The learned judge noted that the arbitrator could only give a lump sum award with respect to various claims and that he need not quantify the sum awarded under each claim separately. It was contended before the learned Sub-Judge that in respect of claim No. 5, there was no E evidence to support the claim. Under that claim the appellant had detailed the value of tools, plants and materials etc. that were left by him at the site. In the defence statement itself the respondent admitted that some materials belonging to the appellant were taken possession of by them and the value thereof would be paid in the final bill. Therefore, according to the learned judge, it was not correct to say F that there was no evidence at all for allowing claim No. 5. Further it was held that there was no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence for the purpose of finding out whether or not the arbitrator had committed an error of law or fact. The learned judge reiterated that the arbitrator had not incorporated in the award any materials for his conclusion nor G did he incorporate the terms of the contract between the parties. Under such circumstances the award could not be set aside especially when there was no error apparent on the face of it; and there was nothing to show that the arbitrator had misconducted the proceedings or that the award had been improperly procured. So the objection was repelled. In the premises the judgment in terms of the award was H passed. In respect of the three awards, three different judgments were

delivered incorporating more or less the same reasons.

Being aggrieved thereby the respondent preferred appeals before the High Court. The Division Bench of the High Court by the judgment under appeal in F.M.A. Nos. 72, 346 and 380 of 1983 disposed of the appeals.

Being aggrieved thereby, the appellant is before this Court. In the judgment under appeal, the Division Bench of the High Court has set out the claims and noted the rival contentions and referred to the various clauses and the conditions of the contract, though the contract itself was made no part of the award. The Division Bench referred to the decision of the learned Sub-Judge. Before the Division Bench, the main contention which succeeded was that there were errors apparent on the face of award, and further that the arbitrator had misconducted himself and travelled beyond the terms of the contract. On behalf of the appellant, however, it was contended that the award was a non-speaking award and, hence, it was not open for the court to go into the correctness of the reasons of the award. The High Court referred to the several decisions of this Court and other relevant decisions of the Kerala High Court. In order, however, to appreciate the contentions, it is necessary to refer in detail to the judgment under appeal. The High Court referred to the various clauses of the contract which were produced before the High Court. The submissions were made on behalf of the respondents that the claims allowed were beyond and contrary to the agreement between the parties. The High Court noted that the arbitrator had allowed claims Nos. 1(b), 2, 5, 7(a), 7(b), 7(c), 13, 14 2 15 and had passed an award for payment of an amount of Rs.31.15 lakhs to the claimant towards his claim under the several heads mentioned therein. The High Court noted the judgment of the learned Sub-Judge. It was held by the learned Sub-Judge that the court could set aside an award only when it was the result of corruption, fraud or there were errors apparent on the face of the award. According to the learned Sub-Judge there was no error apparent on the face of the award and there was no allegation of fraud. Thereafter, the different points on which the learned Sub-Judge rested his decision, were noted by the High Court. It was contended before the High Court on behalf of the respondents that there were errors apparent on the face of the award, and that the arbitrator had misconducted himself and travelled beyond the terms of the contract.

The first contention urged on behalf of the respondents, however, was that the award was a non-speaking award and, there-

A fore, it was not open to the court to go into the correctness or reasonableness of the award. The High Court held that when the arbitrator was constituted the sole and final judge of all questions both of law and of facts, normally his decision should stand final and it was only when there was any error apparent on the face of the award either because a question of law arose on the face of the award or upon some paper B accompanying or forming part of the award, it could be interfered with. Thereafter, the High Court in para 8 of its judgment observed that in the light of several decisions it could say that there were any errors apparent on the face of the award, and that the arbitrator had misconducted himself and had travelled beyond his power. The High Court referred to the decision of the Division Bench of the Kerala High Court in *State of Kerala* v. *Poulose*, [1987] 1 KLT 781. The High C Court, thereafter, observed that it was not open to the arbitrator or the umpire to arrogate to himself jurisdiction and answer a question not referred to him. In this connection, reference was made by the High Court to several decisions, namely, *Attorney General for Manitoba* v. *Kelly and Ors.*, [1922] 1 AC 268; *Upper Ganges Valley* D *Electricity Supply Co. Ltd.* v. *U.P. Electricity Board*, [1973] 3 SCR 107; *M/s Alopy Parshad & Sons, Ltd.* v. *The Union of India*, [1951] 2 SCR 793 and *Jivarajbhai Ujamshi Sheth & Ors.* v. *Chintamanrao Balaji & Ors.*, [1964] 5 SCR 480.

Regarding claim No. 1(b) it was the contention of the respondent E that the award was over and above the amounts already paid under various part bills. It was argued before the High Court that the Department had measured and paid for all quantities of earth work and ruble work and the same had been entered in the measurement book and accepted by the contractor. Hence, the award of additional amount was unwarranted. It was also argued that as per clause 10 of F Form No. 83 (Notice inviting tender) which formed part of the agreement, every tenderer was expected to inspect the site of the proposed work and quarries, and satisfy himself about the quality and availability of materials. It was also notified in the same clause that the Govt. would not, after acceptance of the contract rate, pay any extra charges for lead or any other reason in case the contractor was found later on to G have mis-judged the materials available. It was also notified that the Department would not be liable for any claim raised later on the plea of non-access to the site. Ext. R2 was a copy of extract of Clause 10 of Form No. 83. It was argued that the award of Rs.75,000 under claim 1(b) was beyond the powers of the arbitrator. The High Court held that the award on this asepct was beyond the provisions of the agree- H ment, and therefore there were errors apparent on the face of the award.

Similarly, in respect of the claim for Rs.3,75,000 under claim No. 2, it was contended on behalf of the respondents that this was beyond the powers of the arbitrator and, as such, there were errors apparent on the face of the award. It was argued by him that clause No. 2 of the general specification and special conditions of the contract clearly notified to the tenderers the site of the dam. It was also contended by the Govt. Pleader that the period during which the contractor had conveyed sand through Madukkarai, the claimant had been actually paid additional conveyance charges. Hence, after construing clause 10 of Form No. 83, namely, notice inviting tender, the High Court held that it was necessary for the contractor to have inspected the site before tender. Therefore, in awarding, the amount as the arbitrator did on this head, there was error apparent on its face and such award was liable to be set aside. The High Court did so accordingly.

With regard to claim No. 5, it was contended that the claim was beyond the powers of the arbitrator and reference was made to clause 6(6)III of the General Specification and Special Conditions which stated that the Department was not responsible for supply of uninterrupted electric supply, so any damage on that basis was also unwarranted. The finding on this issue found in the award was set aside.

Similarly, in connection with claim No. 6, there was a claim for Rs.24,000 towards expenses for providing a permanent doctor. It was held to be contrary to Clause 7 of (IV) of the contract dealing with camp facilities—medical aid etc. which, according to the high Court, indicated that the contractor himself was responsible for providing medical facilities to the contract labourers and that the respondents were not bound to pay any additional medical expenses. The claim on this construction and view of the contract, was held to be not sustainable.

The arbitrator had awarded Rs.50,000 by way of damages for sheds and other materials left by the contractor at the site under claim No. 7. It was held by the High Court that it was the duty of the contractor to remove the sheds and materials brought by him and, therefore, the award allowing such claim was definitely against the provision of the contract. On this head it was held that the award by the arbitrator was contrary to the provision of the agreement and as such bad.

Regarding claim No. 14 for an additional amount of Rs.50,000 it

A was held that it was unsustainable and due to the misconduct of the arbitrator that it was awarded. It was further observed that it was beyond the power of the arbitrator as it was against the provisions of the contract.

While dealing with that part of the award which exonerated the B contractor from the risk after holding that the termination of the contract by the respondent was valid, it was held that the same was opposed to the provisions of the agreement. The direction to release the amount and release of security deposit without taking into account the liability to account for the loss on re-arrangement of work amounted to errors apparent on its face. In the aforesaid light, the High Court held that the award under claims Nos. 1(b), 2, 5, 6 & 7 and C also the award of an additional sum of Rs.50,000 under claim No. 14 over and above the claim allowed was against the terms of the contract and, therefore, liable to be set aside.

Similarly, in M.F.A. No. 346/82, the High Court went into the D details of the claims and on the construction of the contract, came to the conclusion that the termination of the contract was legal and that the exoneration of the contractor from the risk and losses was opposed to that finding. In the aforesaid light, the High Court set aside several claims as mentioned in the judgment on the award. On similar or, more or less, identical grounds several items of MFA No. 380/83, were E set aside.

One of the claims under claim No. 4 was the award of Rs.96,000. The High Court found that it was under clause 20(5) of the General Specification and Special Conditions of the contract, which stated that the Department would not be liable to pay any damages or compen- F sation for hold up caused by intervention of the court, labour strike or any other extraneous forces and therefore and award under claim No. 4 on the ground of labour unrest and extra work, suffered from being erroneous and was liable to be set aside. The clause of the contract covered only situations of labour strike and not labour unrest.

G It was submitted before us that the High Court had exceeded its jurisdiction in acting in the manner it did on these aforesaid aspects. The first question, therefore, that arises for consideration in this case is, whether the award in question was a speaking award or not. In our opinion, the award was not a speaking award. An award can also be set aside if the arbitrator had misconducted himself or the proceedings or H had proceeded beyond his jurisdiction. These are separate and distict

grounds for challenging an award. Where there are errors apparent on the face of the award it can only be set aside if in the award there is any proposition of law which is apparent on the face of the award, namely, in the award itself or any document incorporated in the award. The Judicial Committee in *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning & Weaving Co, Ltd.*, L 1922 IA 324 has discussed this problem. It was held that an award of arbitration can be set aside on the ground of error of law apparent on the face of the award only when in the award or in a document incorporated with it, as for instance a note appended by the arbitrator stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous. In that case the appellants had sold cotton to the respondents by a contract which contained a submission to arbitration of disputes as to quality, and a further clause submitting to arbitration all other disputes arising out of the contract. Cotton was delivered, but the respondents objected to its quality, and upon arbitration an allowance was awarded; the respondents thereupon rejected the cotton. The appellants claimed damages for the rejection, and upon that dispute being referred to arbitration under the further clause, were awarded damages. The award recited that the contract, the date and subject of which were stated, was subject to the rules of the Bombay Cotton Trade Association, which were not further referred to; and that the respondents had rejected on the grounds contained in a letter of a certain date. That letter stated merely that as the arbitrators had made an allowance of a certain amount the respondents rejected the cotton. The High Court set aside the award, holding that it was bad on its face, in that under one of the rules of the Association the respondents were entitled to reject without liability. It was held by the Judicial Committee that the award could not be set aside; the terms of the contract were not so incorporated with the award as to entitle the Court to refer to them as showing, either that the award was wrong in law, or that under them the contract, and therefore the jurisdiction of the arbitrators, were terminated. This decision and the ratio on this proposition of law has always been accepted by the courts of this country and is well-settled.

The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in *Hindustan Steel Works Construction Ltd.* v. *C. Rajasekhar Rao*, [1987] 4 SCC 93. In the in-

A stant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he was done what he has done; he has narrated only now he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the B reasons given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator. See the C observations of this Court in *Municipal Corpn. of Delhi* v. *M/s Jagan Nath Ashok Kumar & Anr.*, [1987] 4 SCC 497.

The same principle has been stated in *M/s. Alopi Parshad & Sons, Ltd.* v. *The Union of India*, (supra). There this Court held that D the award was liable to be set aside because of an error apparent on the face of the award. An arbitration award might be set aside on the ground of an error on the face of it when the reasons given for the decision, either in the award or in any document incorporated with it, are based upon a legal proposition which is erroneous. But where a specific question is referred, the award is not liable to be set aside on E the ground of an error on the face of the award even if the answer to the question involves an erroneous decision on a point of law. But an award which ignores express terms of the contract, is bad. Similarly, in *Jivarajbhai Ujamshi Sheth & Ors.* v. *Chintamanrao Balaji & Ors.* (supra), this Court reiterated that an award by an arbitrator is conclusive as a judgment between the parties and the court is entitled to F set aside an award if the arbitrator has misconducted himself in the proceeding or when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid under section 30 of the Act. An award may be set aside on the G ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbirtrator has committed some mistake in arriving at his conclusion. The Court, however, went into the question whether the arbitrator had included depreciation and appreciation of certain assets in the value of the goodwill which he was incompetent to H include by virtue of the limits placed upon his authority by the deed of

reference. The Court found that was not a case in which the arbitrator had committed an error of fact or law in reaching his conclusions on the disputed questions submitted for adjudication. It was a case of assumption of jurisdiction not possessed by him and that redered the award to the extent to which it was beyond the arbitrators' jurisdiction, invalid. This was reiterated by Justice Hidayatullah that if the parties set limits to action by the arbitrator, then the arbitrator had to follow the limits set for him and the court can find that he exceeded his jurisdiction on proof of such excess. In that case the arbitrator in working out net profits for 4 years took into account depreciation of immovable property. For this reason he must be held to have exceeded his jurisdiction and it is not a question of his having merely interpreted the partnership agreement for himself as to which the Civil Court could have had no say, unless there was an error of law on the face of the award. Therefore, it appears to us that there are two different and distinct grounds involved in many of the cases. One is the the error apparent on the face of the award, and the other is that the arbitrator exceeded his jurisdiction. In the latter case, the courts can look into the arbitration agreement but in the former, it can not, unless the agreement was incorporated or recited in the award. In *Upper Ganges Valley Electricity Supply Co. Ltd.* v. *U.P. Electricity Board* (supra), the respondent had taken over the appellant's undertakings, but as the parties were at variance on the true market value to be paid to the appellant, the matter was referred to arbitration. As the arbitrators were unable to agree on the question whether the appellant was entitled to compensation for the 'service lines' which were laid with the help of contributions made by consumers, they referred the question to the umpire. The umpire framed an issue and gave a finding that the appellant was not entitled to claim from the respondent the value of the porition of the service lines which were laid at the cost of the consumers, for the sole reason that they were laid at the cost of the consumers. The appellant filed an application under section 30 of the Arbitration Act, 1940 challenging the validity of the award on the question. The lower court and the High Court held against the appellant. Allowing the appeal, it was held by this Court that the appellant's application for setting aside the award could succeed only if there was any error of law on the face of the award. There, it was found, that the umpire had made a speaking award and there was no question of the construction of any document incorporated in or appended to the award. If it was transparent from the award that a legal proposition which forms its basis is erroneous, the award is liable to be set aside.

An award may be remitted or set aside on the ground that the

A arbitrator in making it, had exceeded his jurisdiction and evidence of matters not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which has to be determined outside the award—whatever might be said about it in the award or by the arbitrator. See in this connection, the observations of Russell on B The Law of Arbitration, 20th Edn. 427. Also see the observations of *Christopher Brown Ltd.* v. *Genossenschaft Oesterreichischer etc.*, [1954] 1 QB 8 at p. 10 and *Dalmia Dairy Industries Ltd* v. *National Bank of Pakistan*, [1978] 2 Lloyd's Rep 223. It has to be reiterated that an arbitrator acting beyond his jurisdiction—is a different ground from the error apparent on the face of the award. In Halsbury's Laws of England (4th Edn. Vol. 2 para 622) one of the misconducts enume- C rated, is the decision by the arbitrator on a matter which is not included in the agreement or reference. But in such a case one has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. See the observations in *Anisminic Ltd.* v. *Foreign Compensation Commission,* [1969] 2 AC 147 and D *Regina* v. *Noseda, Field, Knight & Fitzpatrick*, [1958] 1 WLR 793. But, in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the decision, the arbitrator had acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do, namely, substitution of its own evalua- E tion of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the F contract and, as such, beyond jurisdiction. It has to be determined that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. See Commercial Arbitration by Sir N.J. Mustil and Stewart C. Boyd page 84.

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The High Court in the judgment under appeal referred to the decision of the Division Bench of the Kerala High Court in *State of Kerala* v. *Poulose*, (supra). Our attention was also drawn to the said decision by the counsel for the respondents that if an arbitrator or the umpire travels beyond his jurisdiction and arrogates jurisdiction that H does not vest in him, that would be a ground to impeach the award. If

an arbitrator, even in a non-speaking award decides contrary to the basic features of the contract, that would vitiate the award, it was held. It may be mentioned that in so far as the decision given that it was possible for the court to construe the terms of the contract to come to a conclusion whether an award made by the arbitrator was possible to be made or not, in our opinion, this is not a correct proposition in law and the several decisions relied by the learned Judge in support of that proposition do not support this proposition. Once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the arbitrator and on which court cannot substitute its own decision.

Reference was also made to the decision in *State of Kerala* v. *Raveendranathan,* [1987] 1 KLT 604. Insofar as the court held therein that an arbitrator deciding a dispute under the contract, is bound by the contract, the court is right. The court cannot, however, substitute the decision of the arbitrator as to what was meant by the contract, once that dispute is conceded to the arbitrator. In so far and to the extent the aforesaid decision of the Kerala High Court decided to the contrary, the same is not the correct law.

The Kerala High Court in certain decisions relied on certain authorities of England. In a decision of the House of Lords in *F.R. Absalom, Ltd.* v. *Great Western (London) Garden Village Society, Ltd.,* [1933] AC 592 it was held that the arbitrator had erred in his construction of clause 30 of the contract. But as the judgment of Lord Warrington at page 600 of the report, made it quite clear that the arbitrator had recited the terms of clause 32 of the contract in the award, and thereafter on the construction of that clause, the court decided that the arbitrator had misconstrued the effect thereof. That was a case where dispute was not within the contract. In *Heyman & Anr.* v. *Darwins, Ltd.,* [1942] AC 356 the controversy was entirely different. Similarly, in *Attorney General for Manitoba* v. *Kelly & Ors.,* (supra), upon which the High Court in the judgment under appeal referred was again in a different context. There, in an action in Manitoba against building contractors to recover sums improperly paid to them under a contract, and for damages, a judgment by consent was entered whereby it was provided, *inter alia,* that the plaintiff should recover, among other sums, "all loss to the plaintiff by reason of defective workmanship and materials", and that these should be set off against the sums recovered by the plaintiff the fair value of the work done and materials provided at fair contractor's prices. The judgment, however, provided further that the sums to be debited and

A credited were to be determined by two appraisers, and that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; and that the Manitoba Arbitration Act should not apply. The defendants moved to set aside or vary an award. It was held that under the words "all loss" there was jurisdiction to award to the plaintiff not only sums actually expended, but also
B a sum estimated as being necessary to make good the defects, and that extrinsic evidence was not admissible to show that the sum allowed to the defendants as set-off had been reduced in respect of defective work for which they had also been debited. Further, it was held that the award being within the jurisdiction conferred by the submission, and there being no error apparent on its face, it could not be questioned
C either on the facts or on the law.

In the instant case, the High Court seems to have fallen into an error of deciding the question on interpretation of the contract. In the aforesaid view of the matter, we are of the opinion that the High Court was in error. It may be stated that if on a view taken of a contract, the
D decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the court in the manner done by the High Court in the instant case.

In light of the above, the High Court, in our opinion, had no
E jurisdiction to examine the different items awarded clause by clause by the arbitrator and to hold that under the contract these were not sustainable in the facts found by the arbitrator.

These appeals are, therefore, allowed. The judgment and order of the High Court are set aside and the orders of the learned Sub-
F Judge are restored. In the facts and the circumstances of the case, however, the parties will bear their own costs.

P.S.S. Appeals allowed.