



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 ARBITRATION APPEAL NO. 19 OF 2025

ARUN PUNJAJI KADU

VERSUS

KANHUR PATHAR MULTI STATE CO-OP. SOC. LTD., THRU. REPRESENTATIVE
PRADEEP PRABHAKAR DHAKANE AND OTHERS

...

Mr. V.D. Salunke, Advocate for appellant

Mr. S.V. Suryawanshi, Advocate for respondent Nos.1, 2c and 3

...

WITH

CIVIL APPLICATION NO. 4600 OF 2025 IN ARBA/19/2025

...

CORAM : ROHIT W. JOSHI, J.

DATE : 28th SEPTEMBER, 2026

ORDER :

. Present appeal takes exception to Judgment and order dated 04.03.2025 passed by learned Principal District Judge, Ahmednagar dismissing Arbitration Application No.11/2019 filed by present appellant under Section 34 of the Arbitration and Conciliation Act, 1996 in order to challenge arbitral award dated 26.07.2019 passed by Mr. B.B. Shelke as sole Arbitrator in Arbitration Reference No.1/2018 by which the present appellant

and respondent Nos.2 and 3 to pay an amount of Rs.11,63,883/- with interest @ 18% per annum from 25.03.2018 to the present respondent No.1. Respondent No.1 is a Multi State Co-operative Society registered under the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as “**MSCS Act**” for short). It had advanced a loan of Rs.2,00,000/- to present appellant.

2 Since the loan amount was not repaid, initially arbitration proceeding bearing Case No.ARB/KPMSCCS/ANR/60/2012 was initiated under Section 84 of the M.S.C.S. Act. In the said arbitration proceeding an Award was passed on 31.03.2013. The arbitral award was challenged by filing an application under Section 34 of the Arbitration and Conciliation Act, which came to be registered as Arbitration Application No.2/2013. The said application filed under Section 34 of the Arbitration and Conciliation Act was allowed vide judgment and order dated 15.01.2018. The arbitral award dated 31.01.2013 was quashed and set aside with liberty to respondent No.1 to make fresh reference to the Arbitrator on the same cause of action.

3 Accordingly, fresh reference vide Arbitration Reference No.1/2018 was made by present respondent No.1. Learned Arbitrator has passed award dated 26.07.2019, *inter alia* directed the present appellant and respondent Nos.2a to 2e and 3 to jointly and severally pay amount of

Rs.11,63,883/- with interest @ 18% per annum from 25.03.2018. The said arbitral award dated 26.07.2019 came to be challenged by present appellant by filing present application under Section 34 of the Arbitration and Conciliation Act being Arbitration Application No.11/2019, which came to be dismissed by learned Principal District Judge, Ahmednagar vide Judgment and order dated 04.03.2025.

4 The contention of Mr. V.D. Salunke, learned Advocate for appellant is that the present arbitration proceeding has commenced as per leave granted by learned Principal District Judge, Ahmednagar in the first round of litigation. It is contended that in the first round of litigation, after having set aside arbitral award it was not open for the learned Principal District Judge to remand the matter for fresh consideration and/or to grant leave to initiate fresh proceeding for arbitration, more so, when the application under Section 34 of the Arbitration and Conciliation Act was filed by the present appellant. The contention of the learned Advocate is that clause 3 and 4 of the operative order in the Judgment and order dated 15.01.2018 is nullity since the learned Principal District Judge does not have jurisdiction to pass an order of remand under Section 34 of the Arbitration and Conciliation Act. Apart from this, it is contended that the person who has filed the second arbitration proceeding on behalf of respondent No.1 was

not authorized to do so and as such arbitration proceeding at his behest should not have been entertained. Lastly, it is argued that in the absence of any arbitration agreement between the parties the Arbitrator did not have any jurisdiction and as such the award passed is without authority of law.

5 Per contra, learned Advocate Mr. S.V. Suryawanshi argued that in the first round of litigation learned Principal District Judge has set aside the arbitral award, not on merits but on procedural infirmities. Learned Advocate contends that since adjudication on merits was not done, it was necessary that the claim was required to be decided on merits. Learned Advocate contends that even in the absence of clause 3 and 4 of the operative order in the Judgment dated 15.01.2018 fresh arbitration proceeding could always be by respondent No.1. In support of the said contention learned Advocate has placed reliance on Judgment of Delhi High Court in the case of **Steel Authority of India Limited vs. Indian Council of Arbitration and another** [2015 SCC OnLine Del 13394]. As regards the contention with respect to authorization, it is argued that the same person was authorized to file arbitration proceeding. It is argued that in the first round of litigation the said person has initiated the arbitration proceeding and no objection was raised with respect to his authority to conduct the arbitration. As regards the contention with respect to initiation of arbitration in the absence of

agreement for arbitration, the argument is that the arbitration in the present case is a statutory arbitration.

6 As regards the first contention that the initial order dated 15.01.2018 passed by learned Principal District Judge in Arbitration Application under Section 34 of the Arbitration and Conciliation Act being a nullity and consequently second arbitration proceeding is non est, the said contention cannot be accepted. Perusal of earlier Judgment would indicate that the dispute was not be decided on merits. It is only on account of some procedural defects that the arbitral award was set aside. In such situation, having regard to the legal principle that it is not open to remand the matter to Arbitrator the learned Principal District Judge has dismissed the application and has granted leave to make fresh reference on same cause of action.

7 Perusal of the Judgment in the case of **Steel Authority of India Limited** (supra), on which reliance was placed by respondent No.1, will indicate that a fresh arbitration in a case where arbitration award was set aside on technical ground is maintainable. Therefore, the contention that the arbitration which is commenced after adjudication of the first arbitration proceeding by the Principal District Judge is a nullity cannot be accepted.

8 The second contention by the learned Advocate is that the person who has initiated the arbitration proceeding on behalf of respondent No.1 was not duly authorized. The said contention is rejected on two grounds; firstly, because in the earlier arbitration proceeding the same person had initiated the arbitration proceeding and the arbitration proceeding is for the same cause and as such fresh authorization was not required and secondly, also because this contention is not raised under Section 34 proceeding before learned Principal District Judge.

9 The contention of Mr. V.D. Salunke that an arbitration agreement is a necessary prerequisite for initiating arbitration proceeding, as a general provision of law is acceptable, however, in the present case the arbitration has commenced in view of Section 84 of the MSCS Act and as such the last contention also cannot be accepted.

10 The contention of learned Advocate Mr. V.D. Salunke that in the subsequent arbitration proceeding the learned Arbitrator has proceeded as if the matter was remanded by the learned Principal District Judge and has decided the case accordingly. It does appear from the reading of the award that the learned Arbitrator was under such influence. Even if it is assumed that the learned Arbitrator has decided the case as if the order passed by the learned Principal District Judge is a remand order that by itself has not

affected the merits of the matter. For the reasons stated above, in the considered opinion of this Court, no case for interference is made out. Arbitration appeal is, therefore, **dismissed** with no order as to costs. Pending Civil Application also stands disposed of.

(ROHIT W. JOSHI, J.)

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