



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 304 OF 2025

BETWEEN:

1. MR. KRISHNA SARTHAK
AGED ABOUT 33 YEARS
PROPRIETOR OF
M/S. KRISHNA CREATIONS
HAVING OFFICE AT NO.9 &10
(NEW No.433)
V.B.H.C.S, 4TH PHASE
GIRINAGAR
B.S.K.1ST STAGE
BENGALURU - 560 085

ALSO AVAILABLE AT:

MR. KRISHNA SARTHAK
AGED ABOUT 33 YEARS
SON OF LATE S.K. NAGARAJ
NO.2932, 8TH MAIN ROAD
2ND CROSS
KUMARASWAMY LAYOUT
BENGALURU - 560 017

...APPELLANT

(BY SRI RAGHUNATHA K., ADVOCATE)

Digitally
signed by
AMBIKA H B

Location:
High Court
of Karnataka



AND:

1. MR. VIJAY MILTON
MAJOR IN AGE
PROPRIETOR OF ROUGH
NOTE PRODUCTIONS DIRECTOR
AND DIRECTOR OF
PHOTOGRAPHY
NO.14/18, SENTHIL NAGAR
2ND MAIN ROAD
CHINNA PORURU
CHENNAI - 600 116

...RESPONDENT

(BY SRI M. VEERABHARAIHAH, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1A) OF COMMERCIAL COURTS ACT, 2015 READ WITH ORDER XLIII RULE 1(R) OF CODE OF CIVIL PROCEDURE, 1908 PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT PASSED IN COM.A.P 128/2024 DATED 17.02.2025 PASSED BY THE LEARNED LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT (CCH-84) INCLUDING EX-PARTE ARBITRAL AWARD PASSED IN A.C. NO.511/2023 DATED 29.01.2024 PASSED BY THE LEARNED SOLE ARBITRATOR, BENGALURU BY ALLOWING THIS COMMERCIAL APPEAL & ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. Issue notice. Mr.M.Veerabharaiah, learned counsel accepts notice for the respondent. With the consent of the learned counsel appearing for the parties, the present appeal is taken up for final hearing.
2. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning an order dated 17.02.2025 [**impugned order**] passed by the learned LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru [**Commercial Court**] in COM.AP No.128/2024. The appellant had filed the said petition under Section 34 of A&C Act challenging an arbitral award dated 29.01.2024 [**impugned award**] passed by the sole arbitrator [**Arbitral Tribunal**]. In terms of the impugned award, the Arbitral Tribunal has awarded a sum of Rs.80,80,000/- along with interest at the rate of 12% per annum from January 2022 till the date of



HC-KAR

**NC: 2025:KHC:51942-DB
COMAP No. 304 of 2025**

realisation in favour of the respondent (claimant before the arbitral tribunal).

3. It is the appellant's case that the impugned award is nullity as it was rendered by the arbitral tribunal after the arbitration proceedings had been terminated. The appellant claims that the arbitral tribunal had no jurisdiction to pass any order for reviving the arbitral proceedings after the arbitral tribunal's mandate had been terminated.

4. The aforesaid controversy arises in the following context. Certain disputes had arisen between the parties in connection with the Cinema Director Agreement dated 14.01.2022. The respondent had invoked the arbitration agreement (arbitration clause under the agreement) by a notice dated 14.11.2022. Thus, in terms of Section 21 of the A&C Act, the arbitral proceedings commenced from the date of receipt of the said notice by the appellant. The parties did not appoint an arbitrator and consequently, the respondent filed an application, being Civil Miscellaneous Petition [CMP) No.935/2022 before this Court under Section 11 of the A&C Act. The said application was allowed and a sole arbitrator was appointed to adjudicate the disputes between the parties.



HC-KAR

**NC: 2025:KHC:51942-DB
COMAP No. 304 of 2025**

5. The sole arbitrator accepted his appointment on 04.08.2023 and the arbitral tribunal was constituted. The arbitral proceedings were required to be conducted under the Arbitration and Conciliation Rules, 2012 at the Karnataka Arbitration and Conciliation Center, Bengaluru (Domestic and International) **[arbitral institution]**.

6. The arbitral institution issued notice dated 05.09.2023 to the respondent calling upon it to file its statement of claim along with supporting documents in terms of the applicable rules. However, the respondent failed to file its statement of claim pursuant to the said notice. In the aforesaid circumstances, the arbitral proceedings were terminated. The arbitral tribunal passed an order dated 26.10.2023 terminating the arbitral proceedings. Admittedly, the said order is required to be construed as an order under Section 32 (2) of the A&C Act.

7. Thereafter, the respondent filed an application on 08.11.2023 seeking recall of the order dated 26.10.2023 terminating the proceedings. The notice of the said application was sent to the appellant, but, was returned unserved. There is a dispute whether the appellant was served with the notice of the said application.



Whereas, the appellant claims that it had not received the notice of further proceedings; the respondent claims that the notice of the application sent through registered post was duly served. The Arbitral Tribunal held that appellant had notice of the respondent's application seeking recall of the order dated 26.10.2023. The appellant did not appear before the Arbitral Tribunal to contest the said application and accordingly, the arbitral tribunal allowed the same. Thereafter, the respondent filed a statement of claim annexing the relevant documents.

8. The arbitral proceedings culminated in the impugned award. It is to be noted that the appellant did not participate in the arbitral proceedings and was proceeded *ex parte*.

9. After the impugned award was delivered, the appellant impugned the same by filing a petition under Section 34 of the A&C Act, which was dismissed by the impugned order.

10. It is relevant to refer to Section 25 and 32 of the A&C Act. The said provisions are set out below:

"25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—



HC-KAR

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

32. Termination of proceedings.—(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall



terminate with the termination of the arbitral proceedings."

11. In the present case, the Arbitral Tribunal had terminated the arbitral proceedings on account of default on the part of the respondent in filing the statement of claim. It was assumed that the appellant had withdrawn the claim.

12. Sub-section (3) of Section 32 of the A&C Act expressly provides that the mandate of the arbitral tribunal would terminate with the termination of the arbitral proceedings. Since in the present case, the arbitral tribunal had terminated the arbitration proceedings, the mandate of the arbitral tribunal also stood terminated. The arbitral tribunal had no jurisdiction thereafter to re-enter the reference and to pass any orders in the arbitral proceedings. It was necessary for the respondent to seek appropriate orders from the court in appropriate proceedings or the consent of the appellant, for recommencing the arbitral proceedings.

13. In **Lalitkumar V. Sanghavi (Dead) through LRs Neeta Lalit Kumar Sanghavi and another v. Dharamdas V. Sanghvi and others: (2014) 7 SCC 255**, the Supreme Court examined the



remedies available for a party to challenge the termination of the arbitral proceedings under Section 32 of the Act. The relevant extract of the said decision is set out below:

"10. Chapter III of the Act deals with the appointment, challenge to the appointment and termination of the mandate and substitution of the arbitrator, etc.:

10.1. Section 11 provides for the various modes of appointment of an arbitrator for the adjudication of the disputes which the parties agree to have resolved by arbitration. Broadly speaking, arbitrators could be appointed either by the agreement between the parties or by making an application to the Chief Justice of the High Court or the Chief Justice of India, as the case may be, as specified under Section 11 of the Act.

10.2. Section 12(3) provides for a challenge to the appointment of an arbitrator on two grounds. They are—

- (a) "that circumstances exist" which "give rise to justifiable doubts as to" the "independence or impartiality" of the arbitrator;
- (b) that the arbitrator does not "possess the qualification agreed to by the parties".

10.3. Section 14 declares that "the mandate of an arbitrator shall terminate" in the circumstances specified therein. They are—

"14. Failure or impossibility to act.—(1)

The mandate of an arbitrator shall terminate if—

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
- (b) he withdraws from his office or the parties agree to the termination of his mandate.



HC-KAR

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.”

Section 14(2) provides that if there is any controversy regarding the termination of the mandate of the arbitrator on any of the grounds referred to in clause (a) then an application may be made to the Court — “to decide on the termination of the mandate”.

11. Section 32 of the Act on the other hand deals with the termination of arbitral proceedings. From the language of Section 32, it can be seen that arbitral proceedings get terminated either in the making of the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) provides that the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings in the three contingencies mentioned in clauses (a) to (c) thereof.

12. On the facts of the present case, the applicability of clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29-10-2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-section (2), clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court “as provided under Section 14(2)”.

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HC-KAR

**NC: 2025:KHC:51942-DB
COMAP No. 304 of 2025**

14. Therefore, we are of the opinion, the apprehension of the appellant that they would be left remediless, is without basis in law.

15. The appellants are at liberty to approach the appropriate court for the determination of the legality of the termination of the mandate of the Arbitral Tribunal which in turn is based upon an order dated 29-10-2007 by which the arbitral proceedings were terminated."

14. Whilst the respondent has its remedies regarding termination of the arbitral proceedings, the recourse to the arbitral tribunal is not available as mandate of the arbitral tribunal also stood terminated with the termination of the arbitral proceedings.

15. In view of the above, there is merit in the contention that the impugned award is a nullity as it was delivered by an arbitral tribunal whose mandate was terminated. The learned Commercial Court also failed to consider the same.

16. The view of the above, the impugned order as well as the impugned award are set aside. We clarify that this order would not preclude the respondent from availing of appropriate remedies for resolution of its disputes including seeking recourse to Section 14 of the A&C Act. Needless to state that if any such remedy is



availed, the same would be examined on its own merit in accordance with law.

17. The appeal stands disposed of in the above terms.

18. The pending interlocutory application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**