



CNR: KAHC010527272026

NC: 2026:KHC:50260-DB
WP No. 23702 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MRS. JUSTICE GEETHA K.B.

WRIT PETITION NO.23702 OF 2026 (GM-RES)

BETWEEN:

M/S BITARA PVT LTD,
(REP. BY ITS BUSINESS HEAD
MR.NAGENDRA REDDY),
RO NO.389, BUILDING BITARA PVT. LTD,
M.B.ROAD, SRIRANGAPATNA,
BLOCK KAVERI LAYOUT,
SRIRANGAPATNA, MANDYA,
KARNATAKA-571 458.

...PETITIONER

(BY SRI AKSHAY RAMACHANDRA HUDDAR, ADVOCATE)

AND:

M/S DILIP BUILDCON PVT LTD,
R/AT NO.5, INSIDE GOVIND
NARAYAN SINGH GATE,
CHUNA BHATTI, KOLAR ROAD,
BHOPAL, MADHYA PRADESH,
BHOPAL-462 016.

...RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN ORDER OF QUASHING THE IMPUGNED ORDER DATED 16.04.2026 PASSED BY THE SOLE ARBITRATOR IN A.C.NO.587/2024 (ANNEXURE-A) ONLY INsofar AS IT RELATES TO THE REJECTION OF IA NO.IV, THEREBY ENSURING THAT THE PETITIONER'S RIGHT TO A FULL AND EQUAL OPPORTUNITY TO PRESENT ITS CASE IS RESTORED AND THAT NO PLEA OF ACQUIESCENCE OR FINALITY IS HELD AGAINST THE PETITIONER IN FUTURE PROCEEDINGS ETC.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

Digitally signed
by K G
RENUKAMBA
Location: High
Court of
Karnataka



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CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL ORDER

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

This petition is filed seeking quashing of the order dated 16.04.2026 passed by the sole arbitrator in A.C.No.587/2024 only insofar it relates to rejection of I.A.No.IV.

2. The sole argument made by the learned Counsel for the petitioner is that I.A.No.IV was filed to recall RW.1 for further cross examination. It is contended that the application has been wrongly rejected by the sole arbitrator on the ground that no cause has been shown by the petitioner.

3. It appears from the averments made in the petition that the petitioner had filed to enforce the arbitration case invoking the arbitration clause against the respondent for alleged wrongful withholding of payments amounting to Rs.6,95,44,821/-by the respondent, for bitumen supplies made by the claimant, under POs pertaining to the period from February 2024 till April 2024.

4. In the statement of defence filed by the respondent, a counter claim was also raised for payment of



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Rs.14,89,43,580/- payable by the petitioner towards financial losses and delays caused by the claimant.

5. It is stated in the petition that when the case was posted for arguments, the claimant was able to secure some documents which were not filed earlier, that were produced to counter the counter claim of the respondent and an application to recall RW.1 for further examination was made as there were critical contradictions which were unintentionally overlooked during the initial cross-examination. It is stated that the application was made in good faith to rectify a *bonafide* oversight and was vital for a just adjudication of the dispute.

6. Perusal of the impugned order dated 16.04.2026 reflects that on I.A.No.4, the Arbitral Tribunal recorded that no cause, much less reasonable cause is shown by the claimant. It was recorded that the order sheet reveals that the claimant had been given sufficient opportunity to cross examine RW.1 at length and had cross examined RW.1 in full. Thereafter, in view of the submission made by the learned Counsel for the claimant, the cross examination of RW.1 was taken as closed and the case was posted for final arguments. Therefore I.A.No.IV was rejected.



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7. I.A.No.IV is enclosed as Annexure-F to this petition. In the affidavit filed in support of the application, it is stated that the matter was posted for arguments. However, upon a detailed review of the record and certain documents, it became evident that specific crucial aspects of the case require further clarification through cross-examination of RW.1. It is stated that certain pertinent facts and contradictions were inadvertently not put to RW.1 during his previous cross examinations. Those omissions were not intentional but occurred due to a *bona fide* oversight and were essential to be elucidated to bring the true facts of the case before the Tribunal. It was stated that no prejudice could be caused to the respondent if the application was allowed.

8. In the case of **K. Bharathamma v Bandaru Sakku Bai¹**, the procedure provided in Order XVIII Rule 17 of CPC regarding recall of witnesses was noted and the relevant case law in that regard was considered. The Supreme Court observed that the invocation and use of Order XVIII Rule 17 of CPC is not meant for a routine exercise nor is it a provision which can be employed for mere asking by a party unless the

¹ 2026 SCC OnLine SC 1484



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Court wants any clarification on any aspect of the evidence already led in the proceedings. The provision can be put into play neither by the party nor by the Court itself to permit to fill up the gaps, omissions or lacunae in the evidence. The provision is not a tool whereby a party can embellish the evidence, fill in the omissions therein, or refine the evidence at a later stage. That a party to the proceeding will not be prejudiced, is no valid ground for invoking the power under Order XVIII Rule 17 of CPC. Independent justification must exist.

9. Though in arbitration proceedings, given the provision of Section 19 of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal is not bound by the Code of Civil Procedure or the Indian Evidence Act, it is noted that there was due consideration of the application I.A.No.IV, by the Arbitral Tribunal and it was rejected accordingly.

10. In the case of **Nivedita Sharma v COAI**², the Supreme Court held that it is a settled law that when a statutory forum is created by law for redressal of grievances, a

² (2011) 14 SCC 337



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writ petition should not be entertained, ignoring statutory dispensation.

11. In the case of ***Deep Industries v. ONGC***³ after considering the provisions of the Arbitration Act, it was held that though petitions can be filed under Article 227 of the Constitution against judgments allowing or dismissing first appeals, it was held as follows:

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the *High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.*"

³ (2020) 15 SCC 706



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12. In the case of ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd⁴***, after noting the provisions of the Arbitration Act, and the judgments of the Supreme Court, it was observed that it is prudent for a judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient. The Supreme Court observed as follows:

"**21.** Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modelled on the "principle of unbreakability". This Court in *P. Radha Bai v. P. Ashok Kumar* (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] observed : (SCC p. 459, paras 36-37)

"36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in *International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions*, 2nd Edn., observed:

'An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33 does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However,

⁴ (2022) 1 SCC 75



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although "an unbreakable time-limit for applications for setting aside" was sought as being desirable for the sake of "certainty and expediency" the prevailing view was that the words ought to be retained "since they presented the reasonable consequence of Article 33.'

According to this "unbreakability" of time-limit and true to the "certainty and expediency" of the arbitral awards, any grounds for setting aside the award that emerge after the three month time-limit has expired cannot be raised.

37. Extending Section 17 of the Limitation Act would go contrary to the principle of "unbreakability" enshrined under Section 34(3) of the Arbitration Act."

If the courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished.

13. In view of the aforesaid, and the provisions of Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, we do not find that this is a fit case for interference under Article 227 of the Constitution. This petition is accordingly dismissed.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**