



2026:UHC:2274-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA
AND
THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY
Appeal from Order No.80 of 2026
27 March, 2026

Asha Sharma and Another

-----Appellants

Versus

Yukti Construction Pvt. Ltd.

----Respondents

Presence:-

Mr. B.D. Pande, Mr. Ravi Joshi and Mr. Gaurav Kandpal, learned counsel for the appellant.

Mr. Deepak Dhingra, learned counsel (through V.C.) along with Mr. B.S. Kathayat, learned counsel for the caveator.

JUDGMENT: (per Mr. Subhash Upadhyay, J.)

1. The present appeal from order under Section 37 of The Arbitration and Conciliation Act (hereinafter referred to as "Arbitration Act") has been preferred by the appellants against the order dated 12.02.2026 passed by the learned Additional District Judge, Commercial Court, Dehradun in Arbitration Case No.25 of 2024 whereby the application under Section 34 of the Arbitration Act filed by the appellants was dismissed and the award passed by the sole arbitrator in claim petition filed by the respondents was affirmed.

2. The respondents claimed specific performance of an Agreement to Sale dated 05.01.2026 along with compensation /damages to the tune of Rs.3,00,00,000 for the purported willful breach of the contractual obligations



by the appellants, or alternatively, the refund of the principal sum of Rs.1,10,00,000 purportedly paid by the respondents to the appellants under the term of the Agreement along with interest.

3. The agreement to sale dated 05.01.2016 was executed between the respondents and the appellants in reference to the plots of land being Khasra Nos. 52, 57 and 2045 in Khewat No.65, admeasuring 9.65 bigas out of 13.36 acres, on which a two-storey building was built, situated at Village Kyarkulil, Bhatta, Pargana – Kendriyandun, Tehsil and District Dehradun.

4. The appellants expressed their desire to sell the property to the respondents for a total sale consideration of ₹1,50,00,000/-(Rupees One Crore Fifty Lakh). As per the terms and conditions of the agreement the respondents paid a sum of ₹1 Crore vide account payee cheque on 05.01.2016 which was duly encashed and the remaining amount of ₹50 lakh was to be paid at the time of execution of the sale deed on 31.03.2016.

5. The appellants, however, informed the respondents that there is a ban imposed on the execution of the sale deed in the Village Kyarkulil, Bhatta, Pargana – Kendriyandun, Tehsil and District Dehradun on the suit property by the District Magistrate, Dehradun as such a request was made for extension of time which was



extended till 31.08.2016. The appellants, however, further demanded an amount of ₹10 lakhs and the respondents paid an amount of ₹9,90,000/- after deducting TDS vide cheque dated 27.04.2016 which was also encashed by the appellants.

6. As the appellants did not execute the sale deed, as such, a legal notice dated 20.08.2018 was sent by respondents calling upon the appellants to either refund the amount of Rs.1 Crore along with 12% interest or to obtain the requisite permission for the execution of the sale deed. In absence of any response from the appellants to the said legal notice the respondents invoked arbitration clause whereby a retired Judge of the High Court could be appointed as an Arbitrator.

7. The said letter for appointment of an arbitrator was also not responded by the appellants and the respondents filed an Arbitration Application No.70/2018 under Section 11(6) of the Arbitration Act before the High Court of Uttarakhand for appointment of an Arbitrator.

8. In the interregnum, the respondents filed a petition under Section 9 of the Arbitration Act before the Civil Judge/ Senior Division, Dehradun wherein vide order dated 24.07.2019, the learned Judge directed the appellants to maintain *status quo* with respect to the suit property.



9. Vide order dated 09.09.2022 passed in Arbitration Application No.70 of 2018, the High Court of Uttarakhand appointed Shri Justice V.K. Bist, (Retired High Court Chief Justice) as sole arbitrator.

10. The sole arbitrator vide order dated 24.04.2024 allowed the claim petition filed by the respondents and directed the appellants to refund the sum of Rs.1 Crore along with interest @ 9% per annum from 05.01.2016 and sum of Rs.10 Lacs with an interest @9% per annum from 29.04.2016 till the date the actual recovery is made and further directed the appellants to pay a sum of Rs.10 Lacs as damages.

11. The appellants assailed the said order under Section 34 of the Arbitration Act before the Commercial Court, Dehradun and the said Arbitration Case No.25 of 2024 was dismissed on 12.02.2026 against which the present appeal from order has been preferred by the appellants.

12. Learned counsel for the appellants submits that the security/ advance amount paid by the respondents was liable to be forfeited in view of Clause 12 of the Agreement to Sale, as the respondents failed to take steps to get the sale deed executed during extended time period of agreement which expired on 31.08.2016 and, thereafter, did not get the time period extended.



13. He further submits that the email sent by the appellants for payment of balance consideration was not replied by the respondents thereby indicating that the respondents were neither interested in extension of time nor were interested for execution of the sale deed.

14. Learned counsel for the appellants thus contends that the appellants were not at fault and the security /advance amount deposited by the respondents was liable to be forfeited and the said fact was not considered by the sole arbitrator in the right earnest. He further submits that the learned Commercial Court also failed to consider the said vital aspect and the application under Section 34 of the Arbitration Act was dismissed cursorily.

15. Per contra, learned counsel for the respondent supports the orders passed by the sole arbitrator and the learned Commercial Court and submits that the scope of judicial intervention by the Hon'ble Court under Section 37 of the Arbitration Act is very limited.

16. We have heard learned counsel for the parties and perused the record.

17. Learned sole arbitrator has framed total 8 issues and issue no.7 deals with Clause 12 of the Agreement to Sale which reads as under:



"Issue 7: Whether the advance amount paid by the Claimant has been forfeited in view of Clause 12 of the Agreement to Sell? If not, then whether the Claimant is entitled to its refund along with interest?"

18. Learned sole arbitrator dealt with the said issue in detail and recorded its finding in paragraph no.85 to 92 of the order which reads as under:

"85. The last issue remaining for consideration by this Tribunal pertains to another defence that has been set up by the Respondents, which has taken the form of issue no. 8. It is whether the advance amount paid by the Claimant has been forfeited in view of Clause 12 of the Agreement to Sell, and if not, then whether the Claimant would be entitled to receive the same along with interest.

86. Clause 12 of the Agreement to Sell, wherein "first party" refers to the Respondents and "second party" refers to the Claimant reads as under:

"12. That if the first party refuses or delays the compliance of this agreement to sell deed then the second party will have the right to receive the earnest money and double of its amount as damages from the first party and institute every type of legal proceedings against her including arbitration in the competent Court and if by the time period fixed the second party does not register the Sale deed in its favour then the earnest money shall be deemed to be forfeited."

87. Pertinently, Clause 12 of the Agreement provides that if the Respondents fails to honour its obligation under the Agreement, then the Claimant will have the right to receive the earnest money and double the amount in damages. Conversely, if the Claimant fails to register the sale deed in their favour in the time fixed, then the earnest money will be deemed to be forfeited.



88. As for the second part of the clause, it has been contended by the Respondents that the Claimant failed to take steps till 31.08.2016 to get the sale deed executed, and thereafter did not get the time period for the same extended. It is submitted that whereas the Respondents had written an email dated 11.11.2016, requesting the Claimant to pay the balance sale consideration, no positive response was received from them, thereby indicating that the Claimant did not wish to extend the time and nor was it interested in executing the sale deed.

89. The Claimant, on the contrary, stated that there was no occasion for any alleged forfeiture. Besides, notwithstanding various communication including the legal notice, the Respondents never exercised any of their alleged rights of forfeiture. It was argued that this plea was only adopted in the present proceedings as an afterthought and was never adopted earlier. Further, no forfeiture could even otherwise take place since the Claimant was not at fault. The only obligation of the Claimant was to pay balance sale consideration against execution of the sale deed, which could not be executed due to the ban.

90. As has been highlighted above, the Respondents were clearly in the wrong in not making any efforts in getting the ban removed, and thereafter, the Agreement registered and executed. Instead, the Respondents are baselessly attempting to shift the blame on the Claimant by contending that it was incumbent on the Claimant to complete the formalities for the execution or registration of the sale deed, even though the same finds no mention in the Agreement or any of the written correspondence placed on record by the parties. Amidst this, the Respondents have nonetheless made a hollow and frivolous demand to the Claimant vide email dated 11.11.2016 to pay the balance sale consideration for the suit property.

91. The conduct of the Respondents demonstrates that they want to have the cake and eat it too. On one hand, they are desirous



of the balance sale consideration. On the other hand, they have not taken any effective steps to have the encumbrances/ban removed, The Claimant has even paid a late stamp duty along with penalty amounting to total of Rs. 8,00,000. However, the Respondents have still not taken any constructive steps to perform their obligations under the Agreement. The Respondents have not even taken a small step forward into performing any of the three obligations as promised under the Agreement, i.e., constructing a pathway/road at the suit property to access the property; constructing a water tank; and shifting out the portion of the suit property owned by a third party. In this eventuality, the bad faith of the Respondents is clearly discernible.

92. Therefore, first part of issue no. 7 is answered in negative and second part in favour of claimant. The present case is befitting for directing the refund of the earnest money with interest along with damages and compensation. The Tribunal's view is further fortified by the judgment of the Hon'ble High Court of Allahabad in Vijay Kumar Sharma v. Devesh Behari Saxena (supra), referenced by both the parties, whereby despite finding that the suit for specific performance was not enforceable for want of registration of the agreement to sell, the Hon'ble Court granted refund of the earnest money along with an interest at 12% per annum to the plaintiff. This was specifically so because the Hon'ble Court noted that the legal lacuna in the agreement to sell has deprived the party to get a valuable property in Noida."

19. The power of the Court under Section 37 of the Arbitration Act is very limited and the scope of power to be exercised by the Court under Section 37 of the Act has been dealt with by the Hon'ble Apex Court recently in the judgment of Jan De Nul Dredging India Pvt. Ltd. Vs.



Tuticorin Port Trust 2026 INSC 34 wherein in paragraph no.24 to 27, 31 to 37 and 51 it has been held as under:

“24. The primary object of the Act is to provide speedy and inexpensive mode of resolution of disputes through the process of arbitration with the minimum intervention of the law courts. In this context, it would be beneficial to refer and quote Section 5 of the Act which reads as under:-

“5.Extent of judicial intervention
Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

25. The above Section 5 of the Act contemplates that in matters of arbitration governed by Part-I i.e. in relation to domestic arbitration, minimum intervention of the judicial authority is acceptable unless it is otherwise provided under Part-I of the Act. In other words, in order to speed up the remedial measures under the Act in relation to domestic arbitration, there has to be minimum intervention of the court and, if necessary, it has to be only in strict compliance with the provisions of the Act.

26. The Act provides for the challenge of the arbitral award before the court on limited grounds as contemplated by Section 34 of the Act i.e. where one of the party was under some incapacity; or where the arbitration agreement itself was not valid; or the parties were not given proper notice of the appointment of an arbitrator or the arbitral proceedings; or was unable, for some reason, to present his case before the Arbitrator or Arbitral Tribunal; or if the arbitral award deals with the dispute not contemplated or falling within the terms of the arbitration or deals with the matters beyond the scope of the arbitration; or where the constitution of the Arbitral Tribunal was not in accordance with arbitration agreement; and, or where the court finds the subject matter of the arbitral dispute was incapable of settlement by arbitration or the arbitral award is in conflict with the public policy of India.



27. In short, apart from the above grounds, the arbitral award is not open for challenge under Section 34 of the Act on any other ground. So, the intervention of the court is limited. Therefore, technicalities apart, the main ground for challenge of the arbitral award in the instant case, which survives is that of the award being in conflict with the public policy of India i.e. whether it is in contravention with the fundamental policy of India or is in conflict with the most basic notions of morality or justice.

31. In **MMTC Limited vs. Vedanta Limited**⁵, this Court has very succinctly laid down the powers of Appellate Court under the Act. It held as under :-

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

32. In **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**⁶, a three-judge bench of this Hon'ble Court has extensively dealt with the jurisprudence around Sections 34 and 37 of the Arbitration Act. This Court has held that:

“18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in *MMTC Ltd. v. Vedanta Ltd.*⁷, is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled



that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.”

33. In **Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills⁸**, this Hon’ble Court, while examining the scope of Section 34 and Section 37 of the Arbitration Act, has held that:

“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a fullfledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature



and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”

34. In *UHL Power Company Limited vs. State of Himachal Pradesh*⁹, a three judges Bench of this Court observed as under:-

“The jurisdiction conferred on the courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of the Appellate Court in examining an order, setting aside or refusing to set aside an order, is all the more circumscribed.”

35. In a recent case of ***Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani***¹⁰, a Bench of this Court, of which one of us (P. Mithal, J.) was a member, had held that the jurisdiction of the Appellate Court dealing with an appeal under Section 37 of the Act against the judgment in a petition under Section 34 of the Act is more constrained than the jurisdiction of the court dealing with a petition under Section 34 of the Act.

36. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.

37. In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the Appellate Court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded



or failed to exercise the power so conferred. The Appellate Court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The Appellate Court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.

51. Before parting, we consider it proper to note that the Act is a special enactment which aims to resolve contractual/commercial disputes through arbitration with the minimum intervention of the court, if not without the intervention of the court. In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally by means of SLP/Civil Appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act. It is therefore, necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of intervention under Section 34 of the Act. The appeal thereof has a much narrower scope of intervention particularly when the arbitral award has been upheld under Section 34 of the Act. The appellate jurisdiction acquires little significance only when the arbitral award has been erroneously upheld or set aside by the court in exercise of its power under Section 34 of the Act as discussed earlier, but has no authority of law to consider the matter which was before the Arbitral Tribunal on merits.”

20. In the present case, the appellants have challenged the finding of the sole arbitrator and the order passed by the learned Commercial Court under Section 34 of the Arbitration Act and have tried to re-argue the matter on merits.



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21. The Court under Section 37 of the Arbitration Act cannot sit as an appellate authority and re-appreciate the evidence. In the present case, the arbitration award is a speaking award and the learned Commercial Court has also recorded the finding that there is no violation of the fundamental policy of any Indian law or the basic notion of morality and justice, for interfering with the award.

22. In view of the above discussion, we are of the considered view that the orders passed by the learned Arbitrator and the learned Commercial Court does not suffer from any infirmity and there is no scope for interference under Section 37 of the Arbitration Act, therefore, the appeal from order is liable to be dismissed and, as such, the same is dismissed.

23. Pending application, if any, also stands disposed of.

(MANOJ KUMAR GUPTA, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 27.03.2026
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