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HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Appeal No.10 of 2014**

Smt. Snehalata Agrawal, W/o Shri Kishore Agrawal, aged about 50 years, Proprietor, Vaishnavi Paddy Processors, Dharampura, Raipur, R/o House No.1, Lalganga Vihar, Ramkund, G.E. Road, Raipur, P.S. Tatibandh, Tahsil and District Raipur (CG).

---- Appellant**Versus**

District Distribution Officer, Chhattisgarh State Co-operative Marketing Federation Limited, having office at Nutan Kisan Rice Mill, Ramsagarpara, Raipur, District Raipur (CG).

--- Respondent

For Petitioner : Mr. Anand Dadariya, Advocate
For Respondent : Dr. N.K. Shukla, Sr. Advocate with Mr. Vikram Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

27/06/2017

(1) The neat question for consideration is whether the learned District Judge exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act of 1996' for short) has a jurisdiction to entertain the review application on merits against his order rejecting an application under Section 34(2) of the Act of 1996.

(2) The petitioner preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the learned District Judge, Raipur. That application was rejected by the learned District Judge by its order dated 11.05.2012 holding it to be barred by limitation provided for in making an application for review.

(3) Calling in question the order of the learned District Judge, the appellant preferred an arbitration appeal under Section 37 of the Arbitration and Conciliation Act, 1996 before this Court. The said appeal was dismissed as withdrawn with liberty to file review petition before the trial Court by this Court vide order dated 21.02.2013 and thereafter, on 22.04.2013 the appellant preferred an application for review of the order dated 11.05.2012 along with application under Section 5 of the Limitation Act for condonation of delay in filing the review application, which has been rejected on the ground of delay in filing the same.

(4) Feeling aggrieved against that order, this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been preferred by the appellant herein.

(5) Learned counsel appearing for the appellant would submit that leave has been granted to the appellant by this Court vide order dated 21.02.2013 to file a review petition before the trial Court, therefore, a review petition filed against the order dated 11.05.2012 was maintainable, therefore, impugned order be set-aside.

(6) On the other hand, learned counsel appearing for the respondent would submit that in absence of provision of review to the learned District Judge exercising the power under Section 34 of the Act of 1996 review jurisdiction was not exercisable by the learned District Judge, therefore, review petition as framed and filed by the appellant was not maintainable before the learned District Judge and rightly dismissed the review petition as barred by limitation and no useful purpose will be served by condoning the delay as review petition cannot

be heard on merits by that Court.

(7) I have heard learned counsel appearing for the parties, cautiously analyzed the submissions made by learned counsel for the parties herein and gone through the records extensively and thoroughly as well.

(8) The learned District Judge has exercised the power and jurisdiction under Section 34(2) of the Act of 1996 and rejected the application or refusing to set-aside an arbitral award. Against an order of setting-aside, an appeal would be maintainable under Section 37(1) (c) of the Act of 1996 and under the Act of 1996 there is no provision for review to be exercised by the learned District Judge, who has refused to set-aside the award.

(9) At this stage, it would be appropriate to notice Section-5 of the Arbitration and Conciliation Act, 1996, which states 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.”

Section 5 of the Act of 1996 clearly indicates that judicial authority or court shall exercise only such powers in relation to arbitration as is conferred on it by the Act. Therefore, unless power of review is specifically conferred on the Court by the Act, it will not have power to review its order.

(10) The expression 'review' is used in two distinct senses, namely (i) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a

misapprehension by it and (ii) review on merits when the error sought to be corrected is one of law and is apparent on the face of record.

(11) The Supreme Court in the matter of **S. Nagraj & Ors vs. State of Karnataka & Anr.**¹ has held that review literally and even judicially means reexamination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility.

(12) It is well settled law that the power of review is not inherent power it must be conferred either specifically or by necessary implication. The Supreme Court in the matter of **Patel Narshi Thakershi Vs. Pradvuman Singhji Arjunsinghji**² has held that if the power of review is not provided under the statute or by necessary implication, power of review cannot be exercised. Their Lordships held as under:-

"4..... It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to out notice from which it could be gathered that the government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order....."

(13) Similar is the law laid down by the Supreme Court in the matter of **Kapra Mazdoor Ekta Union vs. Management of M/s. Birla Cotton Spinning and Weaving Mills Ltd. & another**³ in which it has been held that where a court or quasi judicial authority having

1 1993 Supp (4)SCC 595

2 AIR 1970 SC 1273

3 (2005) 13 SCC 777

jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

(14) Recently, the Supreme Court in the matter of **Kalabharati Advertising vs. Hemant Vimalnath Narichania and others**⁴ while reiterating the law in this regard succinctly held that in absence of statutory provision of review, review application cannot be entertained and held as under:-

"12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar⁵ and Harbhajan Singh vs. Karam Singh⁶).

13. In Patel Narshi Thakershi & Ors. vs. Shri Pradyuman Singhji Arjunsinghji⁷, Major Chandra Bhan Singh v. Latafat Ullah Khan⁸, Kuntesh Gupta (Dr.) v. Management of Hindu Kana Mahavidhyalaya⁹, State of Orissa v. Commr. of Land Records and Settlement¹⁰, and Sunita Jain v. Pawan

4 (2010) 9 SCC 437

5 AIR 1965 SC 1457

6 AIR 1966 SC 641

7 (1971) 3 SCC 844

8 (1979) 1 SCC 321

9 (1987) 4 SCC 525

10 (1998) 7 SCC 162

Kumar Jain¹¹ this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarized to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible."

(15) Similarly, the Supreme Court while considering the question as to whether District Forum and State Commissions have power to set aside or recall their own ex parte order in the matter of Rajeev Hitendra Pathak and others v. Achyut Kashinath Karekar and another¹² has held that the Tribunals are creatures of the statute and derive their power from express provision of the statute and in absence of power of review in the Consumer Protection Act, 1986, power of review cannot be exercised by the District Forums and the State Commissions and held as under:-

"34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers

11 (2008) 2 SCC 705

12 (2011) 9 SCC 541

which have not been expressly given by the statute cannot be exercised."

(16) However the Supreme Court in the matter of **United India Insurance Co. Ltd. V. Rajendra Singh and others**¹³ has held that the Claims Tribunal has an inherent power to review its own award if it is obtained by fraud or misrepresentation. The relevant paragraph of the report states as under:-

"16.No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

(17) The Supreme Court in the matter of **ITI Ltd Vs. Siemens Public Communications Network Limited**¹⁴, has held that the provisions under Section-5 of the Act of 1996 cannot be read to deny power of revision to the High Court against the order passed in Appeal under Section 37 of the Act. Paragraph 13 reads as under:-

"We also do not find much force in the argument of learned counsel for the appellant based on Section 5 of the Act. It is to be noted that it is under this Part, namely, Part I of the Act that Section 37 (1) of the Act is found, which provides for an appeal to a civil court. The term "court" referred to in the said provision is defined under Section 2(e) of the Act. From the said definition, it is clear that the appeal is not to any designated person but to a civil court. In such a situation, the proceedings before such court will have to be controlled by the provisions of the Code, therefore, the remedy by way of

¹³ 2009 ACJ 276

¹⁴ (2002) 5 SCC 510

revision under Section 115 of the Code will not amount to a judicial intervention not provided for by Part I of the Act. To put it in other words, when the Act under Section 37 provided for an appeal to the civil Court and the application of the Code not having been expressly barred, the revisional jurisdiction of the High Court gets attracted. If that be so, the bar under Section 5 will not be attracted because conferment of appellate power on the civil court in Part-I of the Act attracts the provisions of the Code also.

(18) In taking the view that right of review is not provided and it cannot be exercised by learned District Judge; I am supported by judgment of Bombay High Court in the matter of **Madhav Structural Engineering Ltd v. The Maharashtra State Road Development Corporation Limited**¹⁵ that the Arbitration and Conciliation Act is a self contained code and power of review is substantive remedy.

(19) Thus, from the aforesaid analysis, it is quite vivid that since power of review has not been expressly conferred to the learned District Judge, who has exercised the power under Section 34(2) of the Arbitration and Conciliation Act, 1996 and provision contained in Order 47 Rule 1 of the CPC providing for review has not been made expressly applicable to the Act of 1996, therefore, in absence of statutory provision the power of review cannot be exercised by the learned District Judge except in a case where the order has been obtained by practicing fraud or making misrepresentation. However, the power of review is inherent in the Court to rectify procedural, arithmetical, clerical error or defect made by that Court to prevent

¹⁵ 2013(2) MHLJ 372

abuse of its process and to make its record straight and to that extent, the review application would be maintainable before the learned District Judge, who exercised the jurisdiction under Section 34(2) of the Act of 1996, but review application on merits would not maintainable.

(19) In the light of principle of law laid down in above-stated judgments, I do not find any good ground to entertain the instant appeal. Consequently, the arbitration appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s). However, dismissal of appeal will not bar the appellant herein to proceed in accordance with law. No cost.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-