

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 39 OF 2007

Union of India,
Acting through Divisional Railway
Manager (Engg), South East Central
Railway, Nagpur.

.... **APPELLANT**

VERSUS

M/s. Chakraborty & Company,
Railway Contractor,
63/64, Gandhi Nagar, Nagpur-440010.

.... **RESPONDENT**

Mr. Nitin Lambat, Counsel for the appellant,
Mr. G.E. Moharir, Counsel for the respondent.

WITH

FIRST APPEAL NO. 596 OF 2007

M/s. Chakraborty & Company,
Proprietary concern, through its Proprietor
Mr. Subhrajit s/o Sitesh Chakraborty,
Aged 38 years, Occupation – Business,
R/o 125, Narmada Colony, Near Darpan
Beauty Parlour, Katol Road, Nagpur-440013
(dead).

- 1) Mrs. Rinku wd/o Subhrojit Chakraborty,
Aged 41 years, Occupation – Service,
R/o 125, Narmada Colony, Near Darpan
Beauty Parlour, Katol Road, Nagpur-440013. - (Amended as per
order dt. 10-7-13)
- 2) Debabrata s/o Subhrojit Chakraborty,
Aged 13 years, Occupation – Student,
R/o 125, Narmada Colony, Near Darpan

Beauty Parlour, Katol Road, Nagpur-440013.
Minor, through his natural guardian
Mother Mrs. Rinku wd/o Subhrojit
Chakraborty.

.... **APPELLANTS**

VERSUS

South East Central Railways,
through its Divisional Railway Manager
(Engineering), D.R.M. Office, Near
Railway Station, Kingsway, Nagpur.

.... **RESPONDENT**

Mr. G.E. Moharir, Counsel for the appellants,
Mr. Nitin Lambat , Counsel for the respondent.

CORAM : **ROHIT B. DEO, J.**
DATED : **22nd APRIL, 2022**

ORAL JUDGMENT :

These appeals arise from the award dated 06-3-2004 rendered by the Arbitral Tribunal, which left both the contesting parties dissatisfied. Union of India assailed the award in Miscellaneous Civil Application 318/2004 under Section 34 of the Arbitration and Conciliation Act, 1994 (Act) while M/s. Chakraborty & Company assailed the award in Miscellaneous Civil Application 298/2004. The learned Principal District Judge, Nagpur was pleased to dismiss both the applications by common judgment dated 21-8-2006 which is assailed by the Union of India in First Appeal 39/2007 and by M/s. Chakraborty & Company in First Appeal 596/2007.

2. Broad facts are that the Railway floated tender dated 27-10-1993 for execution of the work of “repairs and strengthening of banks and improvements to the drainage system of the tracks between Nagpur and Itwari Station”. Mr. Chakraborty & Company (hereinafter referred to as the “contractor”) was the successful bidder. The contractor was informed of the acceptance of the bid vide letter dated 30-6-1994 and was asked to execute the agreement within seven days. The Railway issued another letter dated 19-9-1994 asking the contractor to start the work in anticipation of the work order and further to execute the agreement. The work was in two parts to-wit civil work and earth work and was to be completed on or before 29-12-1994. The work order was issued in February, 1995 and the time for completion of the work was extended till 31-5-1995. The contractor requested for further time to execute the earth work which extension was not granted and the contract was terminated by the Railway by notice dated 16-6-1996 at the risk and costs of the contractor.

The contractor approached the High Court for appointment of Arbitrator. Arbitral Tribunal comprising Three Members with Mr. Justice M.M. Qazi (Retired) as the Presiding Arbitrator was constituted. The Tribunal awarded the contractor Rs,5,62,186-97 (Rupees Five Lac Sixty Two Thousand One Hundred Eighty Six and Ninety Seven Paise) on account of work done and directed the Railway to return the security

deposit. The Tribunal awarded interest at the rate of 12% per annum and directed the Railway to pay the costs of arbitration proceedings.

The learned Principal District Judge formulated the following points for determination :

- 1) Whether the contractor has proved that the quantity of earth work executed by him was more than what was shown in final bill and measurement book ?
- 2) Whether the contractor is entitled to claim the amounts like execution of extra excavation work and transportation of material in respect of extra work (Claim Nos. 1 and 2) ?
- 3) Whether the contractor is entitled to amount awarded on account of extra heads allowed (claim Nos. 3 to 13) ?
- 4) Whether the contractor has proved that the employer committed breach of contract and the contractor is entitled to compensation (Claim No.28) ?
- 5) Whether the employer has proved that the contractor committed breach of contract ?
- 6) Whether the employer is entitled to compensation ?
- 7) Whether the interference is possible in the Award under Section 31 of the Act ?
- 8) What order ?

and rendered the findings, which are as follows :

- 1) Yes.
- 2) Entitled to amount awarded by Arbitral Tribunal.
- 3) Entitled to amount awarded by Arbitral Tribunal.
- 4) No.

- 5) Yes.
- 6) No.
- 7) No.

3. I have scrutinized the reasons recorded by the learned Principal District Judge while dismissing both the applications under Section 34 of the Act by the common judgment impugned, and having done so, I am satisfied that there is no reason for this Court to interfere in exercise of jurisdiction under Section 37 of the Act, which cannot be wider in scope than the restricted jurisdiction under Section 34 of the Act, which was exercised by the learned Principal District Judge.

4. Perusal of the memos of appeals reveal that the Railway and the contractor are in essence expecting this Court to reconsider and re-appreciate the material on record. Further, if the reliefs which are claimed, are granted, the same would be modification of the award, which in any event, is not permissible in law. The contention of the Railway that the Arbitral Tribunal and the learned Principal District Judge erred in allowing the claim of the contractor despite holding the contractor responsible for the delay caused in the execution of the work, ignores that the claim which is allowed, is on account of work executed by the contractor for which there was no payment made. The claim of the contractor on account of compensation etc. is rightly

rejected by the Arbitral Tribunal and the learned Principal District Judge.

5. In any event, the substratum of the rival submissions focus on findings recorded on the basis of material on record. The learned Principal District Judge was right in not appreciating the material on record as an appellate Court and in exercise of jurisdiction under Section 37 of the Act, nor can I.

6. Both the appeals are substanceless, and are dismissed, with no order as to costs.

JUDGE

adgokar