

ARBITRATION APPEAL NO.9 OF 2021

M/s. Prabhu Construction Pvt. Ltd.

Mr. Prabhubhai Jadhveji Rathod, Aged : 75 years,
Office at 19, Dharampeth Extension,
Shankar Nagar Square, Nagpur 440010.

1) Union of India, Through -

1a) General Manager,
South Eastern Railway,
Carden Reach, Kolkata – 700 043, West Bengal.

**1b) Divisional Railway Manager,
South Eastern Railway (Engineering),
Nagpur, Maharashtra.**

**1c) Sr. Divisional Engineer,
South Eastern Railway,
Nagpur, Maharashtra.**

2) Mr. H.L.Suthar,
Secy. to Pr. Chief Engineer,
South Eastern Railway,
Garden Reach, Calcutta.

*Mr. C.B. Dharmadhikari a/w Ms. M.J. Kulkarni,
Advocates for the Appellant.*

Mr. Nitin Lambat, Advocate for the Respondents.

CORAM : VINAY JOSHI, J.

DATE : **29th SEPTEMBER, 2022**

ORAL JUDGMENT :-

Admit. Heard finally by consent of both sides.

02] A short issue is involved in this appeal regarding applicability of the amended provisions of the Amendment Act of the year 2015 to the proceedings under Section 34 of the Act.

03] It is the appellant's case that by virtue of appointment of Arbitrator, award was passed on 5th July, 2002 and modified on 30th July, 2002. The appellant's partial claim was rejected, that is why the appellant has challenged the award in terms of Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act" for short) in M.C.A. No.398/2006. It is the appellant's contention that application under Section 34 of the Act was filed on 11/11/2002, however, the learned Principal District Judge has taken into account the amended provision of Section 34(2)(a) of the Act while deciding the matter on merits. It is his submission that the amended provisions of the year 2015 have substantially made material change. Though the amended provisions were not applicable for deciding the application, which was filed on 11/11/2002, the learned District Judge has considered the same and, therefore, the matter requires to be reheard.

04] In order to contend that the amended provisions of Section 34 of the Act will apply to the applications, which have been filed on or after

23/10/2015, the appellant relied on the decision of the Supreme Court in the case of Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI) – (2019) 15 SCC 131.

Particularly, emphasis is laid on paragraph 19 of the judgment, wherein the Supreme Court has authoritatively declared that the amended provisions of Section 34 of the Act would apply to the applications, which are filed after 23/10/2015 irrespective of the proceedings might have commenced prior to the date.

05] The learned Principal District Judge in paragraph 21 has specifically referred amended proviso to Section 34(2)(a) of the Act, which speaks that “an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence”. Virtually, the amended provision restricts the nature and scope of interference to be made under Section 34 of the Act. Reference of amended provision of Section 34(2) (a) of the Act gives impression that the District Judge after considering the amended provision, which were in fact not applicable, has decided the matter on merits.

06] Learned Counsel Mr. Lambat appearing for the respondents conceded the legal position that the amended provisions of the year 2015,

particularly sub-section 2(a) of Section 34 of the Act was not applicable while deciding the arbitration application, which was filed prior to the amendment. He would submit that considering the above position, the matter can be remanded, however, the petitioner shall not be permitted to re-agitate the ground which has canvassed earlier in terms of amended Section 29A of the Act. Obviously, it is the appellant's own contention that the amended provisions would not apply meaning thereby he cannot re-agitate the ground of amended Section 29A of the Act after remand. Needless to say that the objection pertaining to Section 29A of the Act would not survive at all.

07] In view of the above, the appeal is allowed. The impugned judgment and order dated 20/09/2009 passed in Civil M.A. No.398/2006 is hereby quashed and set aside. The application is restored at its original stage. The learned Principal District Judge, Nagpur shall decide the application afresh on its own merits in view of the then prevailing legal position. Both the parties undertake to appear before the learned Principal District Judge, Nagpur on 10th October, 2022 without notice. The appeal stands disposed of in the above terms.

(VINAY JOSHI, J.)

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