

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

ARBITRATION APPEAL NO. 20/2022

M/s. Jimmy Constructios PVT. Ltd.
Company duly constituted under the
provisions of Companies Act, 1956,
having its registered office at “Kusum
Smruti” 19, Dharampeth Extension,
Shankar Nagar Square, Nagpur-400010
through its Director Prabhubhai s/o.
Jadhavji Rathod.

... **APPELLANT/**
ORIGINAL APPLICANT.

VERSUS

1. Union of India through General
Manager, South Eastern Railway,
Garden Reach, Kolkata-700043
(West Bengal).
2. Mr. B. N. Mohapatra, Presiding
Arbitrator & FA & CAO, Office of
the FA & CAO (CON), South
Eastern Railways, Bhubneshwar,
(Orissa).
3. Mr. Y. S. Nandekar, Co-Arbitrator
& CMM (Sales)/GRC, South
Eastern Railways, Bhubneshwar
(Orissa).

4. Mr. S. K. Srivastava,
Co-Arbitrator & CE/ECOR BBS,
South Eastern Railways,
Bhubneshwar (Orissa).

(Respondent Nos. 2 to 4 are
deleted as per Court's order
dated 19.12.2022.)

... RESPONDENTS

Mr. C. B. Dharmadhikari, Advocate for Applicant.
Mrs. M. Chandurkar, Advocate for respondent.

CORAM : VINAY JOSHI, J.
DATE OF JUDGMENT : 19.12.2022.

ORAL JUDGMENT :

On oral request, the appellant is permitted to delete the names of respondent Nos. 2 to 4 who were the Arbitrators.

2. **Admit.** Heard finally by consent of both sides.

3. 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.

4. It is the appellant's case that by virtue of appointment of Arbitrator award was passed on 28.01.2003. The appellant's partial

claim was rejected, that is why the appellant has challenged the award in terms of Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') in Civil Miscellaneous Application No. No. 250/2003. It is the appellant's contention that application under Section 34 of the Act was filed on 25.04.2003, 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 25.04.2003, the learned District Judge has considered the same and, therefore, the matter requires to be reheard.

5. 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 *Ssangyog Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)*, (2019) 15 SCC 13. 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.

6. The learned Principal District Judge in paragraph 17 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.

7. The learned counsel Mrs. Chandurkar appearing for respondent 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.

8. In view of the above, the appeal is allowed. The impugned judgment and order dated 17.03.2021 passed in Civil Miscellaneous

Application No. No. 250/2003 is hereby quashed and set aside. The application is restored as 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 30.01.2023 without notice. The appeal stands disposed of in the above terms.

(VINAY JOSHI, J.)

Gohane

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signed by
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BHARAT
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