

Form No. J (2)

**HIGH COURT AT CALCUTTA
IN THE CITCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

F. M. A. T. [ARBAWARD]2 of 2022
IA NO:CAN/1/2022

**NATIONAL HIGHWAYS AUTHORITY OF INDIA THROUGH
ITS PROJECT DIRECTOR
VS.
NARESH CHANDRA ROY AND ORS.**

For the applicants :Ms. Supriya Singh

For the respondent nos. 1-12 :Ms Suman Sehanabis
Mr. Tathagata Biswas

For the State :Mr. Pretom Das

Hearing concluded on : 24.11.2023.

Judgment on : 24.11.2023.

Debangsu Basak, J. :

1. The appeal is under section 37 of the Arbitration and Conciliation Act, 1996. National Highways Authority of India [NHAI] assails the judgment and order dated January 31, 2022 passed by the learned District Judge, Jalpaiguri in Misc Case No.1 of 2019 [Arbitration].
2. By the impugned judgment and order, the District Judge upheld the arbitration award dated May 30, 2017 with a direction to the

Competent Authority, Land Acquisition [CALA], Jalpaiguri to award solatium and additional interest in accordance with the guidelines of Central Government vide Notification no.NH-11011/30/2015-LA dated December 28, 2017 while preparing the arbitral estimates as per the arbitral award dated May 30, 2017.

3. Learned advocate appearing for the appellant submits that, the award dated May 30, 2017 passed by the learned arbitrator was assailed under section 34 of the Act of 1996 by the private respondent. In view of the provisions of section 34 of the Act of 1996, the learned District Judge was not empowered to modify the impugned award as done by the impugned judgment and order. She relies upon *[2021] 9 SCC 1 [National Highways Authority of India vs. M. Hakeem, And Another]* and All India Reports 2022 Calcutta 283 *[National Highways Authority of India vs. The Arbitrator and Divisional Commissioner, Jalpaiguri Division & Ors.]*.
4. Learned advocate appearing for the private respondent submits that, the impugned judgment and order should be upheld.
5. Powers under section 34 of the Act of 1996 was discussed in M. Hakeem [supra]. It was held as follows :

“ 42. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary

the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the 'limited remedy' under section 34 is coterminous with the 'limited right', namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

6. M. Hakeem And Another [supra] was noted and applied in National Highways Authority of India [supra]. The factual matrix of National Highways Authority of India [supra] and the present case is similar. There, the learned District Judge also modified the award in the manner as sought to be done herein, by the impugned judgment and order. In view of M. Hakeem [supra] the decision of the learned District Judge rendered under section 34 of the Act of 1996 was set aside.
7. Applying the ratio as noted above, we set aside the impugned judgment and order of the learned District Judge.
8. We make it clear that, in view of the limited scope of interference under section 37 of the Act of 1996 as well as the remedy available under section 34 of the Act of 1996, rival contentions of the parties relating to the solatium and interest are not being discussed herein or decided. Such issues are left open.

9. FMAT[ARBAWARD] 2 of 2022 along with CAN/1/2023 is disposed of without any order as to costs.
10. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

pkd.