

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

IA NO. GA 1 of 2022

RVWO 32 of 2022

IN

AP 731 of 2019

SARADA CONSTRUCTION

VS

BHUPENDRA PRAMANIK AND ORS.

For the Petitioner : Mr Saurabh Guha Thakurata, Adv.
Mr. Bikash Kumar Roy, Adv.
Mr. P. Bharara, Adv.
Ms. Nilanjana Sarkar, Adv.

For the Respondent : Mr. Ashim Kumar Roy, Adv.
Mr. Sutanu Chakrabarti, Adv.
Mr. B. Ghosh, Adv.

Last Heard on : February 08, 2023

Judgement on : February 16, 2023

Shekhar B. Saraf, J.:

1. This Court had passed an order dated August 18, 2022, in A.P. 731 of 2019 [hereinafter referred to as the 'impugned order'] for appointment of an arbitrator under section 11 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'].
2. At this instant, this Court has received an application for review of the impugned order from respondent nos. 7, 8 and 9 namely Panch Leaf Developer Private Limited along with two of its directors Prashant Gupta and Hamjal Mondal. The above named respondents hereinafter are collectively referred to as 'review applicants'.
3. The review applicants seek to challenge the impugned order which was purportedly passed without considering arbitrability of the matter and especially the fact that the review applicants were not represented in the same. Additionally, the review applicants also seek condonation of delay under section 5 of the Limitation Act, 1963 on grounds of ill-health of respondent no. 8 who looked after the day-to-day affairs of the company that is respondent no. 7. The counsel for the review applicants prays that there was no wilful delay in filing of the review petition.
4. The application of the review applicants is resisted by one Sarada Construction [hereinafter referred to as the 'petitioner'] who was a party

to the said impugned order and prayed for its specific performance. The counsel for the petitioner submitted that the application for condonation of delay suffers from suppression of material facts as no doctor's prescription was attached or any legitimate reason were given for non-appearance of the review applicants. Furthermore, the counsel contended that a High Court is not authorised to review an order passed under section 11(6) of the Act, relying on ***Jain Studios Ltd., -v- Shin Satellite Public Co. Ltd.*** as reported in **2006 (5) SCC 501** as well as other judicial precedents of various High Courts to support their case.

5. Having thoroughly perused the present factual matrix and taking into consideration the arguments adduced by the counsel representing both parties I find it necessary to first determine whether a High Court is competent to review an order passed under section 11 of the Act.
6. It is an established principle that the Act is a complete code in itself, containing no provision or mechanism for permitting review. Naturally, being a holistic code, it is appropriate that no review should be entertained by the High Court in the absence of an enabling provision. The said rationale was recently affirmed by the Delhi High Court in ***M/s Diamond Entertainment Technologies Private Limited & Ors. -v- Religare Finvest Limited through its Authorized Officer*** as reported

in **2023/DHC/000156**. The relevant paragraph is reproduced below as follows:

“23. By way of the present review petition, the petitioner is seeking review of the Order vide which an application under Section 11 of the Arbitration & Conciliation Act, 1996 has been allowed. Since the Order made under Section 11 of the Act is in exercise of the statutory powers as defined under the Arbitration & Conciliation Act, any review of the same can be only within the parameters of the Statute. Since, there is no provision of review in the Arbitration & Conciliation Act, this Court finds itself without any jurisdiction to review the present Order.”

7. The situation, however, is different for the Supreme Court. In ***Nagireddy Srinivasa Rao -v- Chinnari Suryanarayana*** as reported in **AP No. 138 of 2017**, the Andhra Pradesh High Court observed as follows: -

“11. In Jain Studios Ltd., vs. Shin Satellite Public Co. Ltd., the Hon'ble Supreme Court was considering a case where a review application was moved against an order under Section 11 of the Act. While considering this issue, the Hon'ble Supreme Court had held that by virtue of Article 137 of the Constitution of India, a review is provided against any judicial order of the Hon'ble Supreme Court and as such a review would be maintainable. However, the Hon'ble Supreme Court did not go into the question, whether a review against an order under Section 11 of the Act would be available, de hors Article 137 of the Constitution of India.

12. The present application is before the High Court, which does not have the benefit of Article 137 of the Constitution of India. In such circumstances, it would have to be seen whether such review is permissible on the basis of any provision of law or judgment.”

8. ***Nagireddy-v-Chinnari (supra)*** then proceeded to identify if there exists any power upon the High Courts to entertain a review. The Court thus, relied on numerous judicial precedents to identify that the power to review is a creature of the statute and unless a procedural irregularity exists, it cannot be permitted. Thus, as far as High Courts are concerned, they are without jurisdiction and have no power to review an application under section 11 of the Act. The Apex Court in ***M/s Diamond (supra)*** has comprehensively addressed this matter, upholding the ratio established in ***Ram Chandra Pillai -v- Arunschalathammal & Ors.*** as reported in ***1971 (3) SCC 847***, according to which the power to review is not inherent but must be conferred by law either specifically or by necessary implication. Of particular significance, the absence of an express provision precludes any exercise of review.

9. As aforementioned, the Act is a complete code which does not specifically confer any power upon this Court to review an application under the statute which is section 11 of the Act and consequently, a review in the instant case is not maintainable.

10. However, for the sake of argument, even if adjudged on the basis of merit, the present review application is not maintainable. Order XLVII Rule 1 of the Civil Procedure Code, 1908 [hereinafter referred to as the 'CPC'] delineates the grounds under which review can be sought. I had delineated the principles of review in light of the aforesaid provision in my judgment in **State Of West Bengal & Ors. -v- Gopal Chandra Pramanik** in **R.V.W. 208 of 2019** reads as follows: -

- i. *discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant;*
- ii. *such important matter or evidence which could not be produced by the applicant at the time when the decree was passed or order made;*
- iii. *and on account of some mistake or error apparent on the face of the record or any other sufficient reason.*

The matrix of merit in the present petition lies beyond the grounds of the review as outlined above. There is no error apparent on face of the record or any other valid ground under Order XLVII Rule 1 of the CPC to entertain the present review petition.

11. In the light of above discussions, R.V.W.O. 32 of 2022 in A.P. 731 of 2019 is disposed of. All connected applications are hereby dismissed. There shall be no order as to the costs.

12. Urgent photostat certified copy of this judgment, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)