

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.1 OF 2023
IN
ARBITRATION APPEAL NO.9 OF 2008

Navnirman Development Consultants (I) Pvt. Ltd. ... Review Petitioner
Vs.
Divisional Commissioner and President District
Sports Complex ... Respondent

Dr. Uday Warunjikar a/w. Mr. Siddhesh Pilankar for Review Petitioner.
Mr. A. R. Patil, Additional G. P. for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : JANUARY 25, 2023

P.C. :

. Heard Dr. Warunjikar, learned counsel appearing for the review applicant.

2. The applicant is seeking review of the judgment and order dated 08.12.2022 passed by this Court whereby an appeal filed on behalf of the review applicant under Section 37 of the Arbitration and Conciliation Act, 1996 was dismissed.

3. Learned counsel for the applicant submits that in paragraph 19 of the said judgment and order of this Court, a factual error has crept in, since observation has been made that the applicant had moved the arbitral tribunal for issuance of a corrigendum while record shows that the arbitral tribunal had done so *suo motu*. It is further submitted that this Court has relied upon Full Bench judgement of this Court in the case of *R. S. Jiwani Vs. Ircon International Limited*, **2010 (1) Bom.C.R.529** as regards setting aside of the award partially. In this context, reliance is placed on the judgement of the Supreme Court in the case of *Project Director, NHAI Vs. M. Hakeem and another*, **(2021) 9**

SCC 1, particularly paragraph 48 thereof to contend that the Court exercising jurisdiction under Section 34 of the said Act cannot modify an arbitral award; the award can only be set aside. It is further contended that certain documents form part of the arbitral award, which find no reference in the judgement and order of this Court.

4. On the other hand, Mr. Patil, learned AGP appearing for the respondent submits that the scope of jurisdiction while exercising review powers is limited and he relies upon the judgement of the Supreme Court in the case of *S. Madhusudhan Reddy Vs. V. Narayana Reddy and others*, **2022 SCC OnLine SC 1034**.

5. There can be no quarrel with the proposition that the Court has to exercise review jurisdiction within the review parameters available, the foremost concern being an error apparent on the face of record.

6. This Court has considered the contentions raised on behalf of the applicant. A perusal of the record shows that a factual finding rendered in paragraph 19 of the judgement and order of this Court appears to be in the teeth of the material on record. The record does show that the arbitral tribunal, in the present case, *suo motu* issued the corrigendum and not at the behest of the applicant. To that extent, there is substance in the contentions raised on behalf of the applicant.

7. In so far as the other two contentions raised on behalf of the applicant are concerned, a perusal of the judgement of the Supreme Court in the case of **Project Director, NHAI Vs. M. Hakeem and another** (*supra*) would show that the settled position of law has been reiterated by stating that a Court exercising power under Section 34 of the said Act, cannot modify an arbitral award and such an award can only be set aside. The said judgement does not comment upon the power of the Court to partially set aside the award.

8. The Full Bench judgement of this Court in the case of **R. S.**

Jiwani Vs. Ircon International Limited (*supra*) has discussed in great detail as to the hardships that parties would suffer if the arbitral award was to be set aside only on one of the issues that arose in the matter, relegating the parties to successive rounds of arbitration thereby militating against the very object of the said Act. Thus, partially setting aside of the award has been upheld by this Court in the aforesaid Full Bench judgment of this Court.

9. In the judgement and order of this Court, dismissing the appeal of the applicant herein, the said position of law has been recognized and on that basis, the impugned judgement and order passed by the District Court has been upheld. No error apparent on the face of the record has been demonstrated on that count.

10. In so far as the third contention is concerned, nothing much turns on the assertion on the part of the applicant that non-mentioning of the annexures appended to the impugned award goes to the very root of the matter. This Court is of the opinion that while passing the judgement and order dismissing the appeal of the applicant, this Court considered the entire material on record and it was found that the District Court, in the present case, had passed an appropriate order, partly setting aside the arbitral award.

11. Hence, the review application is disposed of, only by correcting the factual finding in paragraph 19 of the judgement and order. It is recorded that the arbitral tribunal, in the present case, issued the Corrigendum *suo motu* and not upon the applicant moving the tribunal for doing so.

12. Rest of the contentions of the applicant are rejected.

(MANISH PITALE, J.)