



2024:DHC:512



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.A. 1/2023, I.A. 10996/2023****KHERA BUILDCON PVT. LTD. AND ANR. Appellants**Through: **Mr. Amit Seth, Mr. Mukul Saluja,
Mr. D. N. Kumar, Advs.**

versus

B.K.BANSAL

..... Respondent

Through: **Mr. Mahip Datta Parashar, Mr.
Aman Vasisth, Advs.**

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*Date of Decision: 16.01.2024.***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (herein referred to as “the A&C Act”) against the order dated 23.02.2023 passed by the learned Arbitral Tribunal comprising of Sole Arbitrator in case Ref. No. DAC/3210/09-21 titled as “B.K. Bansal vs. Khera Buildcon Pvt. Ltd. & Anr.”.
2. Briefly stated the facts are that the matter was referred to the learned Arbitrator in arbitration petition bearing No. 773/2021 titled as *B.K. Bansal vs. Khera Buildcon Pvt. Ltd. & Anr.* vide order dated

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09.09.2021.

3. During the proceedings the claim petition was filed by the claimant/respondent on which primarily the following claims were raised:

“Claim No.1

Mandatory Injunction Directing Respondents To Remove Himself The His Representatives / Staff / Agents From The Property Admeasuring 360 Sq. Yards Bearing No. D-145, Situated In The Railway Board Employs Cooperative Housing Society Ltd., Anand Vihar, Delhi-110092.

Claim No.2

Recovery Of Rs. 9,00,000/- (Rupees Nine Lakhs Only) Outstanding Towards The Malba, Fixtures And Woods Of Existing Structure alongwith Interest @ 18% Compounded Annually In Terms of Collobaration Agreement Dated 18.07.2012.

Claim No.3

Recovery Of Rs. 64,73,380/- (Rupees Sixty Four Lakh Seventy Three Thousand Three Hundred Eighty Only) Against The Financial Assistance Provided By The Claimant In Terms Of Supplementary Agreement Dated 26.11.2016 Along With Interest @ 18% Compounded Annually.

Claim No.4

Recovery Of Rs. 86,52,948/- (Rupees Eighty Six Lakh Fifty Two Thousand Nine Hundred Forty Eight Only) In Lieu Of The Amount Spent By The Claimant and His Sons On His Behalf On The Pending Construction Of The Property admeasuring 360 Sq.Yards Bearing No. D-145, Situated In The Railway Board Employs Cooperative Housing Society Ltd., Anand Vihar, Delhi-110092 Out Of Their Own Funds And Resources Alongwith Interest @12% Compounded Annually.

**Claim No.5**

Recovery For An Amount Of Rs. 2,55,00,000/- (Rupees Two Crore Fifty Five Lakh Only) Against The Damages In Terms Of Collaboration Agreement Alongwith Interest @18% Compounded Annually.

Claim No.6

Recovery For A Sum Of Rs. 84,00,000 (Rupees Eighty Four Lakh Only) On Account Of The Rent To The Paid By The Respondents To The Claimant Along With Interest @12% Compounded Annually.

Claim No.7

Recovery For A Sum Of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakh Only) For Future Expenses To Be Incurred On Completion Of The Pending Civil And Finishing Work At The Subject Premises.

Claim No.8

Recovery For A Sum Of Rs.1,00,00,000/- (Rupees One Crore Only) Towards Mental Harassment Suffering, Pain And Agony.

Claim No.9

Recovery For Damages On Account Of Depreciation Of The Building Being Constructed On Admeasuring 360 Sq.Yards Bearing No. D-145, Situated In The Railway Board Employs Cooperative Housing Society Ltd., Anand Vihar, Delhi-L10092.

Claim No.10

Claim For Pendent-Lite Interest From 30.08.2021 To The Date Of Making Of The Award And Future Interest From The Date Of The Award Till The Date Its Realization.

Claim No.11

Costs."

4. While the proceedings were pending, an application under Section 17



of the A&C Act was moved by the respondent herein with the following prayer:

- “i. Ad-interim order be passed in favour of the Claimant and against the Respondents for restoring back the physical possession of the subject property in favor of the Claimant from the Respondents and their employees, successors, administrators, representatives; and executors, agents,*
- ii. Ad-interim order be passed in favour of the Claimant and against the Respondents putting the Claimant back into the physical possession of the subject property; and*
- iii. Ad-interim injunction restraining the Respondent, their employees, successors, executors, agents, administrators, representatives from frivolously representing to the third party its authorization on behalf of the present Claimant to deal with the said property in any manner, whatsoever; and*
- iv. Pass such other further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances and in the interest of justice,”*

5. The appellant has duly filed the reply taking various objections to the application and predominantly including that the reliefs claimed in the application filed under Section 17 of the A&C Act are the same which have been claimed in the main petition and if this prayer is allowed it would amount to passing an award in favor of the claimant. However, the learned Arbitrator after considering the entire material on record allowed the application and passed the order in favor of the respondent.
6. Learned counsel for the appellant has challenged the order of the learned Arbitrator on the ground that the impugned order is manifested wrong, perverse, and not based upon the settled principles of law. It has been submitted that the claim of the respondent is *malafied*, vexatious, and liable to be rejected.



7. It has further been submitted that the learned Arbitrator has wrongly granted the final relief prayed by the respondent in the claim petition vide the impugned order. Learned counsel submits that this relief could have been granted only after due adjudication by the Arbitral Tribunal on the claims of the respondent.
8. It has further been submitted that by virtue of the impugned order the learned Arbitrator has wrongly dispossessed the appellants from the premises i.e., from D-145, situated in the Railway Board Employs Cooperative Housing Society Ltd., Anand Vihar, Delhi-110092 in which the appellants were in a settled position.
9. Learned counsel has further submitted that the learned Arbitrator has granted the prayer of permitting the respondent to let out the disputed property on rent, lease, or license which was not even claimed by the respondent. It has further been submitted that there was no material on the record that the appellant handed over the possession to the respondent and there was not even a prima facie proof vide which the respondent had re-entered into the possession of the property.
10. It has been submitted that there was no cause of action with the respondent to file an application under Section 17 of the A&C Act
11. Learned counsel has further submitted that the work is 80% complete and the appellant has invested a lot of money and the remaining work could not be completed on account of the act and conduct of the respondent. The attention has also been invited to the various e-mails which have been exchanged between the parties and have also been reproduced by the learned Arbitrator.



12. Learned counsel submitted that the learned Arbitrator did not take into account the reasons attributed to the respondent which caused the delay in completion of the project.
13. Learned counsel has relied upon ***U.P. Junior Doctors' Action Committee and Others vs. Dr. B. Sheetal Nandwani and Others*** 1992 Supp (1) SCC 680 in which it was inter alia held that it is a well known rule of practice and procedure that at interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted.
14. The reliance has also been placed upon ***Metro Marins and Ors. vs. Bonus Watch Co. Pvt. Ltd. and Ors.*** 2004 SCC 54 wherein it was held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in ***"Dorab Cnvasji Warden v. Coomi Sorab Warden"***.
15. Learned counsel submits that in these circumstances the impugned order is liable to be set aside.
16. Learned counsel for the respondent has submitted that the learned Arbitrator has passed a reasoned order after taking into account the submissions and counter submissions of the parties. It has been submitted that the learned Arbitrator has properly secured the interest of both parties. Learned counsel has further submitted that the jurisdiction of this court while entertaining an appeal under Section 37 is very limited and has relied upon ***Konkan Railway Corporation Limited vs. Chenab Bridge Project Undertaking*** in Civil Appeal No. 2903 of 2023 dated 17.08.2023. Learned counsel submits that therefore the appeal is liable to be dismissed.



17. It is settled preposition that the intention of the legislature is that while entertaining an appeal under Section 37, the jurisdiction of the court is very limited. Though the legislature unlike Section 34 has not laid any parameter defining the scope of jurisdiction of an appeal filed under Section 37. But it has to be understood that if the jurisdiction of the court while entertaining an objection against final award is very limited, therefore by implication the jurisdiction of the court while entertaining an appeal filed under Section 37 against interim measure under section 17 of the A&C Act, 1996 has to be very narrow.
18. In ***Konkan Railway Corporation Limited vs. Chenab Bridge Project Undertaking*** the Hon'ble Supreme Court has inter alia held as under:

"14. Analysis: At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd., is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.¹⁰ In Dyna Technologies Private Limited v. Crompton Greaves Limited (2019) 20 SCC 1, this Court held:

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on



the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

19. It is pertinent to mention here that it is an admitted fact that property bearing No. D-145, situated in The Railway Board Employs Cooperative Housing Society Ltd., Anand Vihar, Delhi-110092 is owned by the respondent. The appellant is a developer. The parties entered into a collaboration agreement on 18.07.2012 for the construction of the said property. Initially, it was agreed upon that the construction would be completed within twenty-four months. However,



since it could not be completed the supplementary agreement was entered into on 25.11.2016. However, for reasons that may not be relevant here to discuss in detail the work is yet not fully completed.

20. The contention of the appellant is that by virtue of the collaboration agreement, he is in physical possession of the same and remains to be the same. The contention is that the plea raised by the respondent that he was illegally dispossessed on 21.01.2021 is entirely false and contrary to the court.
21. Per contra, the plea of the learned counsel for the respondent is that in fact time was the essence of the contract. It has further been submitted that the appellant was only in permissive possession. Learned counsel has further invited the attention to paragraph Nos. 6A and B of the collaboration agreement which defined the portion of owner/first party and the portion of builder/second party.
22. The perusal of the same indicates that the developer was given the right to dispose of the share of his portion with the fully constructed second floor (with two car parking spaces; one big-sized car and one small-sized car) with a common right to use entrance, passage, and stair-case and lift with electrical meter and water meter with proportionate undivided, indivisible and impartible ownership rights in the land underneath together with all fittings, fixtures, connections, structure standing thereon on the said floor, with proportionate rights in the other common facilities and amenities provided therein of the redeveloped/reconstructed residential building on the said property except roof rights of the terrace. However, this right was subject to the



condition of the completion of the redevelopment of the proposed residential building.

23. The perusal of the impugned award also indicates that the learned Arbitrator vide a detailed and reasoned order has taken into account the submissions of both parties. It is advantageous to reproduce the inter alia findings of the learned Arbitrator:

“63. Although, the law is clear that mandatory injunction is to be granted in rare cases and there is no quarrel with this proposition. In this case, as per the Collaboration Agreement and the Supplementary Agreement which are both admitted documents, the shares of the parties are defined. It is not the case of the respondent that the claimant is not entitled to the property except the second floor. The respondent was granted possession of the property to redevelop the same by a Collaboration Agreement which was executed between the parties. The redevelopment work to the extent it had to be completed has been completed it not the case of the claimant that the respondent should be directed to complete the balance work. It is also not the case of the respondent that the respondent is interested to complete the remaining project, nor such a relief has been prayed. Both parties have made monetary claims. Needless to say that it is in the interest of both the parties to secure the property. The rights of both the parties can be safe guarded by directing the parties not to sell alienate transfer or part with possession with the subject property. Accordingly keeping in view the agreed terms of the agreements entered into between the parties the possession shall be handed over by the respondents to the claimant of the entire property except the second floor within 15 days of receipt of this order.

64. As far as the second floor is concerned the same shall be kept locked and status quo with regard to title possession and construction shall be maintained. In this way the rights



of both the parties shall stand secured in case either or both the parties succeed.

65. Another reason as to why the possession of the entire property is to be handed over to the claimant (except second floor) is that he respondent by email dated 19.9.2018 informed the claimant that they were not in a position to complete the project and hand over the site and the claimant should settle the account. Although the said mail is not clearly worded the meaning as well as issuing the same has not been disputed. In response various mails were addressed by the claimant to the respondent to meet and settle the account as well as to remove the material. All the said mails were not replied. Receipt of the mails by the respondent has not been denied.

66. The relevant emails have been extracted in paras 22 afore-going. I am also of the prima facie view that the documents relied upon by the learned senior counsel for the claimant to show possession from September 2018 to January 2021 are genuine and the said documents show the possession of the claimant.

67. Another ground as to why the claimant should be granted possession of the property except second floor is that in case the property is kept locked it will not serve any purpose the condition shall deteriorate and thus lead to multiplicity of proceedings. Based on the photographs filed by the parties and the extent of construction that exists there is no reason why the property should not be put to use. The counsel for the respondent has failed to point a single cogent ground as to why the possession of the property which is to fall to the share of the claimant should not be handed over to the claimant."

24. Thus taking into account the factual matrix and the law, it has to be seen whether the present case is entitled for any interference by this court. In ***Dinesh Gupta and Ors vs. Anand Gupta and Ors.*** in ARB. A. 4/2020 dated 17.09.2020 the court while dealing with the scope of



appeal filed under Section 37 went into a detailed analysis and inter alia held as under:

“42. Legal principles are, however, in every instance, required to be applied to the factual scenario, in which their application is invited. While, therefore, appreciating the jurisdiction of the High Court, under Section 37 of the 1996 Act, we are required to be aware of the fact that the order, interference with which is being invited, was passed by an arbitrator, or arbitral tribunal. The sanctity attached to arbitral awards, especially in the context of the 1996 Act which is based on the UNCITRAL model has, therefore, necessarily to be borne in mind, while exercising jurisdiction over the decision of the arbitrator, whether in the form of a final award, or an interim award under Section 17.

43. In the opinion of this Court, another important, and peculiar, feature of the 1996 Act, which must necessarily inform the approach of the High Court, is that the 1996 Act provides for an appeal against interlocutory orders, whereas the final award is not amenable to any appeal, but only to objections under Section 34. If the submission of Mr. Nayar, as advanced, were to be accepted, it would imply that the jurisdiction of the Court, over the interlocutory decision of the arbitrator, would be much wider than the jurisdiction against the final award. Though, jurisprudentially, perhaps, such a position may not be objectionable, it does appear incongruous, and opposed to the well settled principle that the scope of interference with interim orders, is, ordinarily, much more restricted than the scope of interference with the final judgement.

44. Here, yet another peculiar dispensation, in the 1996 Act, apropos the scope of interference with the decision of the arbitrator, manifests itself. The proviso to Section 36 (3) ordains that the Court, while considering an application for grant of stay of a final arbitral award for payment of money, shall "have due regard to the provisions for grant of stay of



a decree under the provisions of the Code of Civil Procedure, 1908". By reference, therefore, Order 41 Rule 5 of the CPC, which deals with stay, by the appellate court, of original decrees, stands incorporated into Section 36(3) of the 1996 Act. Though, therefore, the final arbitral award is not made amenable to appeal, by the 1996 Act, any prayer for stay of the arbitral award, that accompanies objections under Section 34, is required to be examined in the light of the provisions, in the CPC, governing stay of original decrees, in exercise of appellate jurisdiction. Though, for the purposes of this judgement, it is not necessary to psychoanalyse the legislative intent in providing for such a peculiar dispensation, the fact that applications for stay of final arbitral awards, are required to be considered on the basis of the principles governing stay, by appellate courts, under Order 41 Rule 5 of the CPC, indicate, to an extent, that the principles of Order 41 are also required to be borne in mind, while exercising appellate jurisdiction, under Section 37.

45. The 1996 Act is, preambularly, a fallout of the United Nation's Commission on International Trade Law (UNCITRAL), adopted in 1995 as the Model Law on International Commercial Arbitration. The Statement of Objects and Reasons, preceding the 1996 Act, stipulates, in paras 2 to 5 thereof, as under, in this respect:

"2. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practise. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of



international commercial relations and the parties seek amicable settlement of the disputes by recourse to conciliation. An important feature of the UNCITRAL Model Law and Rules is that they have harmonized concepts on arbitration and conciliation of different legal systems of the world and thus contains provisions which are designed for universal applications.

3. Though the said UNCITRAL Model Law and Rules are intended to deal with International Commercial Arbitration and Conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.

4. The main objectives of the Bill are as under:-

- a. to comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation;*
- b. to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;*
- c. to provide that the arbitral tribunal gives reasons for its arbitral award;*
- d. to ensure that the arbitral tribunal remains within the limits of its jurisdiction;*
- e. to minimize the supervisory role of the courts in the arbitral process;*
- f. to permit an arbitral tribunal to use mediation, conciliation or other procedure during the arbitral proceedings to encourage settlement of disputes;*



g. to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;

h. to provide a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and

i. to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two international Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign awards.

5. The Bill seeks to achieve the above objects.””

25. Catena of the judgments has made it clear that the scope of the supervisory role of the court in the Arbitral proceedings has to be minimized and the court while exercising any kind of jurisdiction is required to maintain an extremely circumspect approach.

26. A coordinate bench of this court in ***Asia Hotels (North) Ltd. v. Sital Dass Sons & Anr.*** 2022/DHC/005842 inter alia held as under:

“43. This Court is aware of the limited scope of interference in appeal against orders passed by Arbitrators on applications under Section 17 of the Act. However, in appropriate cases, Court can exercise its jurisdiction under Section 37 of the Act to protect the legitimate interest of the appellant, which includes modifying the order of the learned Arbitral Tribunal. It may be noted that jurisdiction of this Court under Section 37 of the Act is substantially different from the scope of jurisdiction under Section 34 of the Act, which does not include the authority to modify the award passed by the Arbitral Tribunal.”

27. It is an established principle that arbitration serves as an alternative



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method of resolving disputes, and it is the court's responsibility to ensure that such resolution is treated with appropriate deference. The powers granted by section 37 of the A&C Act do not provide *carte blanche* to the courts and must be utilized while considering the principles of minimum judicial intervention advocated by the 1996 Act. The arbitrator in present case as discussed above has passed a detailed and a well-reasoned order after taking into account the contention of the parties. There is nothing on record to suggest that the order is not sustainable or the interest of the appellant has not been protected. I consider that there is no scope for intervention.

28. Hence, the appeal along with pending application stands dismissed.

DINESH KUMAR SHARMA, J

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