



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 ARBITRATION APPEAL NO. 7 OF 2016

The Executive Engineer, Under
G.M.I.D.C. Aurangabad,
Through Executive EngineerAppellant

VERSUS

M/s. M.D. Parmar, Govt. Contractor
And Civil EngineerRespondent

.....
Mr. B. R. Surwase, Advocate for Appellant
Mr. A. K. Gawali, Advocate for Respondent No. 1.

WITH
ARBITRATION APPEAL NO. 9 OF 2016

The Executive Engineer, Under
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WITH
ARBITRATION APPEAL NO. 8 OF 2016

The Executive Engineer, Under
G.M.I.D.C. Aurangabad,
Through Executive EngineerAppellant

VERSUS

M/s. M.D. Parmar, Govt. Contractor
And Civil Engineer

.....Respondent

.....

Mr. B. R. Surwase, Advocate for Appellant
Mr. A. K. Gawali, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 7th FEBRUARY, 2025.

PER COURT :

1. These appeals under Section 37 of Arbitration and Conciliation Act take exception to the judgment and order passed in Civil Misc. Application RJE Nos. 51/2013, 52/2013 and 53/2013 dated 28.09.2015 whereby application under Section 34 of Arbitration and Conciliation Act challenging award passed by the Arbitral Tribunal on 13.11.2012 came to be rejected.

2. In order to appreciate submissions of rival sides, it would be necessary to take note of the relevant facts in brief as under :-

Appellant is GMIDC, Aurangabad, Executive Engineer. Respondent is a Government contractor. Appellant had issued tender for construction work of earth work, selective lining etc. Tender of respondent/contractor came to be accepted. Agreements bearing L.C.B. No. 86 of 1993-94, L.C.B. No. 87 of 1994-95 and L.C.B. No.

74-A of 1992-93 respectively were executed between the parties.

Relevant dates are mentioned as under :-

	Arbitration Appeal No. 7/2016	Arbitration Appeal No. 9/2016	Arbitration Appeal No. 8/2016
Acceptance of tender	19.07.1993	13.03.1995	04.08.1993
Issuance of work order	19.07.1993	13.03.1995	04.08.1993
Issuance of order of extension of work	30.03.1996	No extention granted	04.12.1995
Notice of arbitration	25.01.2005	25.01.2005	21.01.2006
Invocation of arbitration clause	21.01.2006	25.01.2005	21.01.2006
Appointment of Arbitrator	10.03.2006	10.03.2006	10.03.2006
Appointment of retired Judge of this Court as sole Arbitrator.	24.07.2009	24.07.2009	24.07.2009

In the backdrop of above facts, proceedings commenced before the Arbitral Tribunal. Parties appeared before the tribunal and participated therein. At the conclusion of proceeding, arbitration award came to be passed on 13.11.2012. Appellant being aggrieved by the same, filed application under Section 34 of the Act, taking exception thereto.

3. Learned counsel for appellant submits that the Arbitral Tribunal has committed error in granting interest at the rate of 12%

per annum on the amount liable to be paid to the respondent/contractor in contravention of provisions of Clause No. 1.17.0. It is his further contention that the measurements were carried out in the year 2001. Final bill was paid in the year 2002 whereas arbitration clause was invoked in the year 2006. Thus, he has a grievance that the Arbitrator ought not to have granted interest at the rate of 12% per annum considering the said delay on the part of the contractor in raising the issue. On the point of limitation, it is sought to be argued that the claim of respondent/contractor was barred by limitation as the same was not raised within a period of three years from final bill payment i.e. on 17.05.2002, 13.3.2003 and 17.5.2002 respectively. He further drew attention of the Court to the defect liability clause in the agreement which according to him, disentitles the respondent/contractor to seek any relief from the Arbitrator.

4. Learned counsel for respondent supported the impugned award/order.

5. At the outset, it would be relevant to take note of latest judgment of Hon'ble Supreme Court wherein the scope of interference

in any arbitral award is determined. In case of Somdatt Builders vs. National Highways Authority of India and others, **2025 SCC OnLine SC 170**, in Paragraph Nos. 36 to 39 observations with regard to the scope of Sections 34 and 37 of the Act read as under :-

36. In MMTC Ltd. v. Vedanta Ltd., this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.

37. *What is public policy of India has been explained in Ssangyog Engineer and Construction Company Ltd. (supra). It means the fundamental policy of Indian law. Violation of Indian statutes linked to public policy or public interest and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. It would also mean that the arbitral award is against basic notions of justice or morality. An arbitral award can be set aside on the ground of patent illegality i.e. where the illegality goes to the root of the matter but re-appreciation of evidence cannot be permitted under the ground of patent illegality.*

38. *In PSA Sical terminals Private Ltd. (supra), this Court reiterating the well settled principles held as under :*

40. *It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration*

Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

39. In Reliance Infrastructure Ltd. (supra), this Court referring to one of its earlier decisions in UHL Power Company Ltd. v. State of Himachal Pradesh, held that scope of interference under section 37 is all the more circumscribed keeping in view the limited scope of

interference with an arbitral award under Section 34 of the 1996 At. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed.

Provisions of Section 34 of Arbitration and Conciliation Act provides limited power to the District Court to cause interference in the arbitral award and the same cannot be caused unless the award is in unconscionable or is passed in utter disregard of the terms and conditions of the arbitration agreement.

6. As far as issue of limitation is concerned, it is sought to be contended by learned counsel for appellant that arbitration clause is invoked in the year 2006 though final bill was paid in the year 2002. The said aspect as well as other relevant facts are duly considered by the Arbitral Tribunal in the impugned award. It would be relevant to take note of the said observations of learned Arbitral Tribunal in paragraph No. 10 of the award which are reproduced as under :-

10. Respondent herein filed three separate applications in three sister proceedings, purporting to be under Section 16 of the Arbitration and Conciliation Act 1996 raising objection to the reference to the arbitration proceedings. Objection raised in these applications was two-fold. Firstly, it was contended that the arbitration was not sought after following due procedure prescribed in the contract and within limitation which is specifically mentioned in the contract. Second objection was that the claim itself is barred by Law of Limitation and, therefore, cannot be adjudicated in this arbitration proceedings. The first objection regarding question of the appointment of Arbitrator and Reference to the Arbitration was heard by him and by Order dated 25.10.2009 all the three Applications came to be dismissed holding that there is no violation of procedure prescribed by contract and Reference to Arbitration was within limitation. It was held that Section 18(e) of the Contract has no application so far as facts of the present case are concerned. It was, however, made clear that the order has not dealt in any way with the question whether the claim itself is within limitation as prescribed by the Limitation Act, 1963 and no opinion was expressed in this regard.

7. The findings recorded by the Arbitral Tribunal are consistent with the evidence on record. The findings are thus cannot be said as unconscionable to cause any interference therein.

8. As far as issue of awarding interest is concerned, the Arbitrator has directed interest to be paid for the period of six years. Award is passed on 13.11.2012. Interest is granted at the rate of 12% per annum on the amount due for a period of six years meaning thereby interest has been granted for the period during the pendency of arbitration proceeding. In such circumstances, it cannot be said that grant of interest is contrary to Clause No. 1.17.0 of the agreement. By way of ready reference, said clause is re-produced herein below:-

1.17.0 NO INTEREST ON MONEY DUE TO THE CONTRACTOR (Tender page No.220.)

No omission by the Engineer-in-charge to pay the amount due upon measurements or otherwise shall vitiate or make void the contract, nor shall contractor be entitled to get interest on any guarantee bond or payment in arrears nor on any balance which may, on the final settlement of his account be found to him.

This clause no way disentitles the respondent to seek interest on the amount due and payable after invocation of arbitration clause. Thus, no fault can be found with award granting interest on the amount due. In any case, the award of interest at the

rate of 12% per annum in commercial transaction like one in hand cannot be held as excessive.

9. The learned District Judge, while entertaining the application under Section 34 of the Act, has rightly taken into consideration the scope of interference in arbitral award and has rejected the same. The scope available under Section 34 of the act cannot be further extended while invoking Section 37 of the Act. Thus, this Court finds no reason or justification to cause any interference in the impugned order. Hence, all the appeals stand dismissed.

10. Respondent is permitted to withdraw amount deposited in this Court along with accrued interest.

11. Learned counsel for appellant seeks stay of this order to test this order before the Hon'ble Supreme Court.

12. Learned counsel for respondent opposed to said request. He seeks withdrawal of the amount deposited in this Court.

13. In order to enable the appellant to move Hon'ble Supreme Court, this order is stayed for a period of four weeks. After expiry of four weeks, if there is no order passed by the Hon'ble Supreme Court, it is permissible for the respondent to withdraw the amount deposited in this Court along with interest accrued.

(R. M. JOSHI)
Judge

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