



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 ARBITRATION APPEAL NO. 21 OF 2009

Gurunanak Industries
Kranti Chowk, Aurangabad
Through Its Partner
Mr. Khushbir Singh baantsingh
Age : 71 Years, Occ : Business
R/o Krnatichowk, Aurangabad

...Appellant

VERSUS

1. Executive Engineer,
Jaikwadi Irrigation Division
Nathnagar (North),
Paithan, dist. Aurangabad

2. Mr. V. V. Gaikwad (Learned Sole Arbitrator,
Respondent No.2) Secretary,
Water Resource Department,
Mantralaya, Mumbai – 32

...Respondents

...

Mr. M. D. Narwadkar (consent Obtained), Advocate for Appellant
Mr. S. B. Bhapkar, Advocate for Respondent Nos.1 & 2.

...

WITH
CIVIL APPLICATION NO. 10985 OF 2009
IN ARBA/21/2009

Gurunanak Industries

VERSUS

Executive Engineer Jaikwadi Irrigation Division Nathnagar And Anr

WITH
ARBITRATION APPEAL NO. 24 OF 2009

Gurunanak Industries

Kranti Chowk, Aurangabad
Through Its Partner
Mr. Khushbir Singh baantsingh
Age : 71 Years, Occ : Business
R/o Krnatichowk, Aurangabad

...Appellant

VERSUS

1. Executive Engineer,
Jaikwadi Irrigation Division
Nathnagar (North),
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Mr. M. D. Narwadkar (consent Obtained), Advocate for Appellant
Mr. S. B. Bhapkar, Advocate for Respondent Nos.1 & 2.

...

CORAM : ROHIT W. JOSHI, J.

DATED : 27th JUNE 2025

ORAL JUDGEMENT :-

1. The present appeals are taken up for final hearing at the admission stage with consent of the parties.

2. The present appellant is the original claimant who has lodged a claim seeking compensation in relation to a construction contract entered into between the appellant and respondent no.1. The learned Arbitral Tribunal has partly allowed the claim vide award dated 14.06.2005. The appellant and respondent no.1 both were dissatisfied

with the award. The appellant was aggrieved by disallowance of certain claims made before the learned Arbitral Tribunal and respondent no.1 was aggrieved by certain claims being allowed. Accordingly, both sides preferred separate applications under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) challenging the said award.

3. The learned Principal District Judge, Aurangabad has vide judgement and order dated 10.08.2009 rejected the application filed by the appellant being M.A.R.J.I No.297 of 2005 and has allowed the application filed by respondent no.1 being M.A.R.J.I.No.328 of 2005. The contractor has therefore preferred the present appeals under Section 37 of the Act challenging the judgment dated 10.08.2009 passed by the learned Principal District Judge, Aurangabad.

4. The learned Advocate for the appellant contends that in the proceedings before the learned District Judge both the parties contended that the award passed by the learned Arbitral Tribunal was liable to be quashed and set aside in view of Section 31 of the Act, since it is a non-speaking award and the agreement specifically provided that the award should be a speaking award. However, the learned District Judge has recorded that he can himself re-appreciate

the evidence and arrived at findings of fact in order to decide the claim on merits and has accordingly ventured to undertake the said exercise. On such exercise of jurisdiction the learned District Judge, as stated above, has rejected the application preferred by the appellant and has allowed the application preferred by respondent no.1, with the result, the entire claim is rejected. The learned Counsel for the appellant contends that the learned District Judge has completely erred in exercise of jurisdiction under Section 34 of the Act and therefore the judgment passed by the learned District Judge is liable to be quashed and set aside on this count alone.

5. Per contra, the learned counsel for respondent contends that concurrent findings of fact should not be interfered in an appeal under Section 37 of the Act and that unless there is a specific application by either party, order of remand cannot be passed under Section 34(4) of the Act. He has placed reliance on judgments of this Court in the matter of *Prabhubhai Jadhavji Rathod Vs. Union of India* reported in *2008 (4) MHLJ 238* in support of first contention and judgment of the Hon'ble Supreme Court in the matter of *Kinnari Mullick and Ors. Vs. Ghanshyam Das Damani* reported in *(2018) 11 SCC 328* in support of the second proposition.

6. Having heard the rival submissions as aforesaid, following point arises for my consideration.

(i) Has the learned Principal District Judge exercise the jurisdiction properly under Section 34 of the Arbitration and Conciliation Act, 1996 ?

(ii) What Order ?

7. Perusal of Section 34 of the Act will demonstrate that the Court exercising jurisdiction under Section 34 can interfere with an arbitral award only under contingencies mentioned under Section 34(2) of the Act. The scope of jurisdiction of the Court is very limited. Re-appreciation of evidence like a First Appellate Court is clearly beyond the scope of jurisdiction of a District Judge exercising jurisdiction under Section 34 of the Act. A perusal of paragraph 20 of the judgment will demonstrate that the learned District Judge has accepted the contention that it was obligatory on the part of learned Arbitral Tribunal to record reasons in support of the findings recorded in the award having regard to the mandate of Section 31 of the Act. However, having held that the learned Arbitral Tribunal had erred in passing award without reasons, the learned District Judge has ventured to re-appreciate the evidence on record and to record

independent findings on merits of rival claims.

8. No fault can be found with the conclusion drawn by the learned Principal District Judge that the award cannot be sustained if it is not a reasoned award. To this extent, the learned Principal District Judge is right. However, I am afraid having held so, it was obligatory on the part of the learned District Judge to remit the matter back to the Arbitral Tribunal for deciding the matter again. The learned District Judge could not have re-appreciated the evidence to record findings on merits. This exercise by the learned District Judge is clearly beyond his jurisdiction under Section 34 of the Act. The learned District Judge has placed reliance on decision of the Hon'ble Apex Court in the matter of *Steel Authority of India Vs. J. C. Budharaja* reported in (1999) 8 SCC 122. As rightly pointed out by the learned Counsel for the appellant the said decision pertains to Arbitration Act, 1940. The ratio of the said judgment is clearly inapplicable. The learned District Judge has committed a jurisdictional error warranting interference at the hands of this Court.

9. As regards the judgment in the matter of *Kinnari Mullick (supra)* relied upon by the learned counsel for the respondent the said

judgment will not be applicable to an appeal under Section 37 where the matter is remitted back to the learned District Judge for deciding the 34 objections fresh. The judgment deals with Section 34 (4) of the Act which speaks about opportunity to the Arbitral Tribunal to resume the arbitration proceedings and take other action as is necessary to eliminate the grounds of challenge. This power is to be exercised by District Judge where it is of the opinion, either on its own or on an application made by a party that any defect in the award is capable of being cured. The Judgment is clearly inapplicable.

10. As regards the judgment in the matter of ***Prabhubhai Jadhavji Rathod (supra)***, the said judgment is also inapplicable in as much as the claim was decided by the Arbitral Tribunal on merits and the District Judge deciding the application under Section 34 did not find any reason to interfere with the award. In this backdrop, this Court has held that in exercise of appellate jurisdiction under Section 37, this Court should not normally interfere with concurrent findings by the Arbitral Tribunal and the District Judge. In the present case, the judgment delivered by the learned District Judge is being set aside on the ground that it has exceeded its jurisdiction under Section 34 in re-appreciating the evidence and recording findings on merits for the

first time. The said judgement is therefore clearly inapplicable.

11. In view of the above, the appeal is partly allowed. Judgment and order dated 10.08.2009 passed by the learned Principal District Judge, Aurangabad in M.A.R.J.I No.297 of 2005 and M.A.R.J.I.No.328 of 2005 is quashed and set aside.

12. The matter is remitted back to the learned Principal District Judge for deciding the cases afresh having regard to the statutory mandate of Section 34 of the Act, 1996.

13. Party shall appear before the learned District Judge on 14.07.2025 for which separate notice will not be issued.

14. Court fee be refunded as per the Rules.

15. Pending Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]