



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

ARBITRATION APPEAL NO. 11 OF 2013

Municipal Council, Chandur Railway, through its Chief Officer, Municipal Council, Chandur Railway, District : Amravati	}	.. Appellant
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Versus

Vivek S/o Narhar Oke, Government Contractor, Juna Motor Stand, Chandur Railway, District : Amravati	}	.. Respondent
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Mr. Abhay Sambre, Advocate for the appellant.
 Mr. S.S.Joshi, Advocate for the respondent.

CORAM : ABHAY J. MANTRI, J.

DATED : JULY 30, 2025

ORAL JUDGMENT

(1) The appellant Municipal Council, Chandur Railway being aggrieved by the judgment and order dated 02/08/2013 passed by learned Principal District Judge, Amravati in M.C.A.No.37/2008 whereby confirmed the order passed by Arbitrator in Arbitration case AA and AB, has preferred this appeal under Section 37 of the Arbitration and Conciliation Act (hereinafter referred to as '***the Act***').

(2) The respondent is a government contractor and participated in the tender process that was invited by the appellant. The bid/offer made by the respondent was accepted by the appellant through a letter dated 25 June 1998, and accordingly, the agreement was executed, and a work order was issued. According to the agreement, the work was required to start on 01/11/1998 and be completed within six months (excluding the rainy season). The work was therefore needed to be completed on or before 30/04/1999. The respondent has not completed the work in time and applied for an extension of time for completion of the work under the said contract up to 31/03/2001, but the appellant kept quiet. Accordingly, the respondent has completed the work on 26/04/2002. The appellant has conceded the acts of delay attributable to the Municipal Council. Thereafter respondent vide its letter dated 18/01/2001 demanded the payment of the revised rate, but the appellant neither replied nor complied with the same. Therefore, the respondent has filed the proceedings before the learned Arbitrator.

(3) The learned Arbitrator, after considering the material placed before him, has passed the Award and granted the relief in terms of clause 9.2 of the Award and rejected the alleged counterclaim of the appellant Municipal Council. Being aggrieved by the said Award, the appellant has preferred an application under Section 34 of the Act

before the learned District Judge. The learned District Judge, having gone through the record and material placed before him, dismissed the application on 02/08/2013 against the said judgment and order. Hence, the appellant has preferred this appeal.

(4) Heard learned counsel for both parties. Perused the record and proceedings, and judgment of the Hon'ble Apex Court in ***Gayatri Balasamy vs. M/s. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 986***. The following point arises for determination:-

“ Whether any interference is required in the impugned judgment and order ?”

(5) While determining the controversy between the parties, I would like to refer to the mandate laid down by the Constitutional Bench of the Hon'ble Apex Court in ***Gayatri Balaswamy*** (supra), which thus reads as under :-

“CONCLUSIONS

85. *Accordingly, the questions of law referred to by Gayatri Balasamy (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:*

- I. When the award is severable, by severing the “invalid” portion from the “valid” portion of the award, as held in **Part II** of our **Analysis**.*
- II. by correcting any clerical, computational or typographical errors*

*which appear erroneous on the face of the record, as held in **Part IV** and **V** of our **Analysis**;*

*III. post award interest may be modified in some circumstances, as held in **Part IX** of our **Analysis**; and/or*

*IV. Article 142 of the Constitution applies, albeit the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in **Part XII** of our **Analysis**.”*

The Hon’ble Apex Court, after considering and dealing with the various decisions, held that the Court has a limited power under Sections 34 and 37 of the Act of 1996 to vary or modify the arbitral award.

(6) I would like to reproduce paragraphs 28 and 29 of the said judgment, which read as under :-

*“28. Section 34(2)(a) enumerates specific grounds on which an award can be set aside. These include – the incapacity of a party, invalidity of an arbitration agreement in law, improper notice for appointment of an arbitrator or arbitral proceedings, denying the opportunity to a party to present their case, the award being beyond the scope of submission to arbitration, and the composition of the arbitral tribunal or the arbitral procedure not being by the agreement of the parties in certain circumstances. The proviso to Section 34(2)(a)(iv) outlines the concept of “severability of awards”. This has been addressed separately in **Part II** of our **Analysis**.*

29. Section 34(2)(b) stipulates that an arbitral award may be set aside when the subject matter of the dispute cannot be settled by arbitration per the applicable law or if the arbitral award conflicts with the public policy of India. Explanation I clarifies that an award can conflict with public policy

of India only if (i) the award is induced or affected by fraud, corruption or is in violation of Section 75 or Section 81 of the 1996 Act; (ii) when it is in contravention with the fundamental policy of Indian law; or (iii) when it conflicts with the most basic notions of morality or justice. Explanation 2 mandates that no review on the merits shall be undertaken when determining a contravention of the fundamental policy of Indian law.”

(7) The Hon’ble Apex Court categorically held that the power of judicial review under Section 34 and the setting aside of an award should be read as inherently including a limited power to modify the award within the confines of Section 34. It is further held that the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the Court deciding objections under Section 34. Hence, the contention that the tribunal becomes *functus officio* after the award is set aside is misplaced. The Section 37 court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 court. But the Section 37 court still possesses the jurisdiction to remand the matter to the arbitral tribunal.

(8) Thus, it is apparent that this Court has a limited power while scrutinising the material on record. This Court cannot go into the merits of the matter, but if the material on record demonstrates that it is a fit case to remand the matter, then the Court can interfere in it in

the appellate jurisdiction. However, undisputedly, the learned counsel for the appellant failed to point out from the record that it is a fit case to remand the matter to the learned Arbitrator for fresh consideration.

(9) Learned counsel for the appellant vehemently contended that learned Arbitrator as well as District Court have had erred in considering the clause in the agreement and held that the period of the work was to be completed within six months excluding the days of rainy season, the said finding is contrary to the agreement and therefore, he urged for setting aside the same.

(10) On perusal of the written statement as to reply in para 2 (page 158), it appears that the appellant itself in their written statement has categorically stated as under :-

“4. It is, however, not disputed that work allotted to the claimant was required to be started on 01/11/1998 and was required to be completed within six months (excluding rainy season/days). The work was therefore required to be completed on or before 30th April 1999.”

(11) The said averment itself indicates that the appellant itself has admitted that the period of six months does not include the rainy season. In addition to this, if on perusal of the acceptance letter of the contract dated 25/06/1998, documents No.4 (page 130 of the R & P), it is evident that while accepting the offer of the respondent, the Chief

Officer of the appellant Council has categorically stated that the said work allotted to the respondent was required to be completed within six months (excluding rainy season/days). On conjoint reading of the averments made in the written statement and communication dated 25/06/1998, I do not find substance in the argument advanced by learned counsel for the appellant that the learned District Judge, as well as learned Arbitrator have erred in holding that rainy season was required to be excluded while computing six months period, therefore, I do not find substance in his argument in that regard.

(12) The next point was argued by him that the appellant has filed counter claim to the application, however, learned District Judge, as well as learned Arbitrator has not considered the same in its proper perspective and learned District Judge has erred in holding that the applicant was deprived of the opportunity to reply to the claim, if any, before the matter was referred for Arbitration. Thus, the finding of the learned Arbitrator that the counter-claim is an afterthought is correct and based on the facts of the case. In that regard, a query was put to the learned counsel for appellant to point out where the counter-claim was filed; he failed to point out the counter-claim from the record; however, he tried to point out the additional pleas raised in the written statement (page 173). A bare perusal of the same does not appear to be the same is in the nature of the counter-claim. Therefore, I do not

find substance in his contention that the learned Arbitrator, as well as the District Court, did not consider its counter-claim.

(13) He tried to canvass that the learned Arbitrator has erred in holding that the contract period ended on 30/04/1999 and therefore, the provision therein ceased to be operative from 01/05/1999. Thus, it has become a contract whereby the beneficiary party, i.e. respondent, was bound to pay the contractor/claimant for services rendered as per his demand unconnected with the rates included in the Schedule-B agreement. It is pertinent to note that it is purely a question of fact and in view of the mandate in the case of **Gayatri Balasamy** (supra), it is impermissible to interfere in the finding of the learned Arbitrator or the learned District Court on the factual position and therefore, I do not find substance in the contention in that regard.

(14) Lastly, learned counsel for the appellant Council submitted that the appellant Council has deposited some amount before the Civil Judge, Senior Division, Amravati and in this Court, from time to time and therefore, he submitted that the said amount be adjusted in the final claim of the respondent, for which learned counsel for the respondent does not dispute. Similarly, learned counsel for the respondent does not dispute the above-stated factual position.

(15) Having considered the above discussion and the mandate laid down in ***Gayatri Balasamy*** (supra), in my view, the appellant-Council has failed to make out a case to cause interference in the judgment and Award in the appellate jurisdiction. On the contrary, it emerges that the passing of the impugned judgment and order appears to be just and proper and therefore, no interference is required in it. ***Hence, I answer the point in the negative.*** As a result, the appeal, being bereft of merit, stands dismissed. No order as to costs.

[ABHAY J. MANTRI, J.]

KOLHE