



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

**CIVIL APPLICATION (CAM) NO. 15 OF 2024
IN ARBITRATION APPEAL NO. 33 OF 2022**

(Union of India ..vs.. H.N. Singh Construction Company and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Dr. R.S. Sundaram, Counsel for the appellant,
Mr. R. Chhabra, Counsel for respondent No. 1.

CORAM : NIVEDITA P. MEHTA, J.

DATE : 24-09-2025

Heard Mr. Sundaram, learned Counsel for the applicant/
appellant and Mr. Chhabra, learned Counsel for the respondent.

2. This is an application for recalling the order dated 27.01.2023 passed by this Court. By the present application, the applicant is seeking to recall the aforesaid order and thereby to reconsider the grounds as raised in the appeal.

3. The applicant had preferred the present appeal challenging the order passed by the learned District Judge in Civil M.A. No 347/2007 thereby the award of the learned Arbitrator dated 18.09.1996 in terms of Claim Nos. 1, 6 and 7 was granted in favour of the respondent along with other ancillary reliefs, is upheld.

4. On 27.01.2023, this Court heard both the parties and on perusal of the record passed an order whereby, on the contention of learned Counsel for the respondent, the matter was fixed on 03.02.2023 to ascertain the veracity of respective

calculations proposed by the parties. It needs to be mentioned that the learned Counsel for the applicant had vehemently argued *vis-a-vis* the grounds raised in the appeal. The Court had duly considered the same and in view of the fact that scope of interference under Section 37 of the Arbitration and Conciliation Act, 1996 is extremely limited, it was held that the same does not require any interference on account of re-appreciation of evidence or merely because another view is possible.

5. In view of the aforesaid order, the learned Counsels have filed their respective calculations on 03.02.2023. The applicant claims that the total amount payable works out to be Rs. 49,890.40/- and on the same date the applicant has filed another pursis stating therein that only the amount of Rs. 7,16,312.06/- is liable to be paid to the respondent. As against this vide pursis dated 8.09.2023 the respondent claims that despite admission of the liability of Rs. 7,16,312.06 by the applicant it is neither paid nor is deposited in this Court.

6. Be that as it may, the applicant, in March 2024, has filed the present application seeking recall of the order dated 27.01.2023 primarily on the ground that in view of the law settled by Hon'ble Apex Court in *State of Rajasthan vs. Ferro Concrete Construction Pvt. Ltd., (2009) 12 SCC 1* and *Kanchan Udyog Limited vs. United Sprits limited, (2017) 8 SCC 237*, that an award passed without any evidence amounts to legal misconduct. It is pleaded that the Arbitrator has awarded the claim of damages for anticipated profit and loss without any positive evidence put-forth by the respondent. The applicant

claims that this fact is not considered by this Court taking a view that in appeal under Section 37, evidence cannot be re-appreciated. The learned Counsel for applicant submits that the delay caused in preferring the present application is due to administrative exigencies.

7. On the contrary, the learned Counsel for the respondent has submitted that under the garb of the recall of the order the applicant is seeking review and thereby praying for reconsideration of the grounds raised in the appeal, which have already been considered by this Court. It is argued that the application is barred by limitation only in order to delay the payment, to the respondent. Further, it is submitted that the judgments relied on by the appellant is on the different facts and circumstances and under the old Arbitration Act of 1940. The learned Counsel has argued that the appellant is now stopped from seeking recall or review of the order and that if at all it was agreed the same ought to have been challenged before the Hon'ble Apex Court.

8. I have given a thoughtful consideration to the submissions of learned Counsels for the respective parties. It is not in dispute that this Court vide order dated 27.01.2023 has recorded its findings on the merits of the case in paragraphs 4 to 7. It is clear that equal opportunity was given to both the parties. Considering the scope of interference under Section 37 being limited, the Court concluded that the matter does not require any interference as it will amount to re-appreciation of evidence. This is line with the settled position of law.

9. I find substance in the argument for learned Counsel for respondent that if at all the appellant was aggrieved, it ought to have preferred a challenge to the order dated 27.01.2023. After a lapse of more than a year the appellant has preferred the present application on the pretext that the law as laid down in the referred judgments is not considered. So also, the reason of administrative exigencies in order to explain delay cannot possibly be considered. Once this Court has heard the parties at length and on right appreciation the order is passed, unless error apparent on the face of record is pointed out within limitation for review, it is not open to the parties to agitate the same by way of application as the present one for recalling of the order. Reconsidering the arguments as proposed by the applicant to ascertain whether positive evidence was laid or not is nothing but going into the merits of the case, amounting to re-appreciation of evidence which is not permissible. Therefore, the present application has no substance and deserves to be rejected. It is rejected accordingly.

(NIVEDITA P. MEHTA, J.)

MPDeshpande