

19.01.2026
Ct. No. 06
Item No.37
Cp

C.O. No. 4145 of 2025

M/s. Raasi Refractories Limited
Vs.
M/s. Steel Authority of India Limited

Mr. Saptanshu Basu, Sr. Advocate
Mr. Aniruddha Bhattacharya
Mr. Arnab Roy

.....for the petitioner.

Mr. Suddhasatwa Banerjee
Mr. Chayan Gupta
Mr. Sayantan banerjee
Mr. Dwip Raj Basu

.....for the opposite party.

1. The revisional application arises out of an order dated August 29, 2025, passed by the learned arbitral tribunal. The tribunal allowed an application filed by the opposite party/counter claimant, for production of additional evidence at the stage of arguments.
2. Mr. Basu, learned senior advocate for the petitioner, relies on the decisions of this court in the matters of ***Cityscope Developers (P) Ltd. vs. Akla Builders Pvt. Ltd. & Ors.***, reported in ***(2000) SCC Online Cal 327*** and ***Satyendra Nath Ray vs. VCK Share & Stock Broking Services Limited***, reported in ***2021 SCC Online Cal 2096***, in support of the

contention that the arbitrator functions as a tribunal and is amenable to the superintending power of this court under Article 227 of the Constitution of India.

3. Thus, the preliminary objection raised by Mr. Suddhasatwa Banerjee, learned advocate for the opposite party, is being refuted by Mr. Basu on the ground that interlocutory orders passed by the learned arbitrator can be assailed by filing an application under Article 227 of the Constitution of India. He further submits that unless the order is challenged at the first instance, the point cannot be raised at any later stage. Moreover, participation in the proceeding before the learned arbitrator without challenging the order impugned may raise a question of waiver, and the order will attain finality.
4. It is lastly submitted that the order suffers from erroneous exercise of jurisdiction and perversity. Upon recording an admission that the opposite party/counter claimant wanted to fill up a lacuna which was noticed at the stage of arguments, the learned arbitrator allowed additional evidence to be filed, thereby, enabling the opposite party/counter claimant to fill up such gaps in the evidence. Recall of witness and filing additional evidence at such a belated stage is impermissible in the law. The fact

that Order 18 Rule 17A of the Code of Civil Procedure was deleted upon an amendment being made to the Code was completely ignored. The learned arbitrator proceeded on the basis that the documents which were left out were relevant and vital, thereby, also making up his mind as to their probative value, before those were filed before him.

5. Reliance has been placed on the decision of **K.K. Velusamy vs. N. Palanisamy**, reported in **(2011) 11 SCC 275**, in support of the contention that the Hon'ble Apex Court had deprecated the practice of courts allowing production of evidence which could have been produced by the party if due diligence had been exercised. Documents shall not be allowed to be produced at a later stage of the proceeding, only to fill up any lacuna or gap in the evidence already led.
6. Further reliance was placed in the decision of **Bagai Construction vs. Gupta Building Material Store**, reported in **(2013) 14 SCC 1**, in support of the contention that recall of a witness and filing of additional evidence may be allowed for clarification, but if those documents were not placed on record and brought before the court only at the belated stage, much after the conclusion of the evidence, the lacuna could not be filled up.

7. Mr. Banerjee, learned advocate for the opposite party/counter claimant, raises the question of maintainability of the application on the ground that all orders passed by the learned tribunal may be assailed at the final stage, i.e., when the award is under challenge. The Arbitration and Conciliation Act, 1996 is a complete Code. Section 5 of the said Act mandates that courts should adopt a hands off approach. He relies on the decision of ***Deep Industries Limited vs. Oil and Natural Gas Corporation Limited & Anr.***, reported in ***(2020) 15 SCC 706***.
8. The issue before this court is whether the order of the learned arbitrator, permitting the opposite party/counter claimant to file an additional affidavit of evidence of its third witness upon imposition of cost of Rs.50,000/-, is either perverse or without jurisdiction.
9. An interlocutory order under Article 227 of the Constitution of India can be challenged on very limited grounds. In this case, the learned tribunal exercised jurisdiction, inter alia, holding that substantial justice could not be defeated by strictly applying the law of procedure. The opposite party/counter claimant would suffer loss if the evidence was not allowed to be brought on record.

That the delay caused by the opposite party/counter claimant in filing the additional evidence could be compensated by awarding cost to the claimant.

10. It was contended that the learned arbitrator not only pre-decided the issue, but also allowed the opposite party to fill up the lacuna in their evidence. The liquidated damages was to be quantified in terms of money, but such quantification could not have been made as no evidence in that regard towards payment of additional amount etc. was on record. The learned arbitrator allowed the opposite party/counter-claimant to cover up such gap in the evidence by passing the order impugned.
11. Considered the objections raised by the petitioner. It is an admitted position that the application seeking permission to file additional evidence upon recall of the third witness was filed before the learned arbitrator when the opposite party detected that those were mistakenly not brought on record. Although the learned advocate admitted that there was a lacuna, it appears to this court that in paragraphs 57 to 59 of the counter claim sufficient pleadings and averments had been made with regard to the additional cost which was allegedly incurred by the counter claimant in respect of the subject purchase order. Tables 1, 2 and 3 of the

counter claim indicate the total claim and the heads under which same had been made.

12. The additional expenses which were allegedly incurred on account of the failure of the petitioner to fulfil its obligations under the purchase order have been enumerated. Thus, it cannot be said that the counter-claimant was trying to develop a case or create a new case or a better case after closure of evidence, upon discovering that the evidence was deficient or inadequate.
13. This is not a situation which is covered by the ratio of the decision of the Hon'ble Apex Court in ***Bagai Constructions*** (supra). The learned arbitrator was of the conclusion that, although somewhat negligent, the counter-claimant had missed out relevant documents, and if those documents were not produced in evidence, the counter-claimant would suffer irreparable loss and injury and will not be able to prove its case.
14. Thus, the learned arbitrator rightly decided to permit the counter-claimant to substantiate its claim by documentary evidence. The probative value of those documents shall be decided by the learned arbitrator at the final stage. The order impugned only permitted an opportunity to the counter-claimant to substantiate and prove its claim.

Otherwise, procedural stringency could result in injustice. It was an omission on the part of the opposite party. Such omission was rectified by the order. On account of the delay, the learned arbitrator imposed cost. Omission to file the documents is not relatable to gross negligence. A mistake was corrected by the tribunal.

15. It is not a fact that this order was passed in a routine manner. The learned arbitrator applied his judicial mind to the issue and came to the conclusion that *al beit* somewhat negligent, the documents sought to be relied upon should be before the tribunal for proper adjudication of the dispute and a chance should be given to the counter-claimant to prove its claim. Strict adherence to the rules of procedure will prevent ultimate justice.

16. In ***Bagai Construction*** (supra), the original bills were sought to be placed on record after the trial was concluded and judgment was reserved. At that stage, the Hon'ble Apex Court held that the plaintiff could not be permitted to file an application to fill up lacuna in the pleadings and the evidence led by him. In this case, there are sufficient averments in the counter-claim indicating that the counter-claimant had incurred additional costs. Whether

such counter claim will be allowed on the basis of the documents sought to be disclosed in evidence, is a matter of adjudication. It is for the arbitrator to decide. The probative value has not been decided. Only a last opportunity to rely on certain documents, which has been mentioned in the counter-claim, but missed out, has been permitted. Thus, the ratio of ***Bagai Construction*** (supra) will not apply.

17. With regard to ***K. K. Velusamy*** (supra), this Court finds that the Hon'ble Apex Court was of the clear view that an application under Section 151 of the Code of Civil Procedure could be filed despite deletion of Order 18 Rule 17A of the Code of Civil Procedure, if a witness is needed to be recalled and additional evidence is to be adduced. It was further held by the Hon'ble Apex Court that it was the duty of the Court before which an application of such nature was placed, to exercise discretion and consider whether the documents sought to be brought on record in evidence would lead to a just and effective adjudication or not. In this case, the learned Arbitrator held that an opportunity should be given in order to allow the counter-claimant to substantiate its claim. This is not a case where the opposite party wanted to protract the litigation by

filing frivolous applications. It cannot be held at this stage that the opposite party was acting in a mischievous manner or had filed a frivolous application to cover up negligence and lacuna. A mistake on the part of the learned Advocate was noticed by the learned Tribunal and it was held that the counter-claimant should not suffer on account of the mistake committed by the learned Advocate, but must be allowed to plead and prove its case to the fullest, for the ends of justice. Ultimately, if the learned Tribunal finds that the evidence was not genuine or relevant or lacked probative value, the learned Tribunal will deny the claims based on those documents. Such stage has not yet arrived. Secondly, the satisfaction of the learned Tribunal as recorded in the order impugned with regard to the relevance of the materials sought to be brought in by evidence by the opposite party, in my view, are tentative findings. To arrive at a conclusion as to why such evidence should be filed, such observations were made. Those cannot be taken to be the final decision of the learned Tribunal with regard to acceptance of these documents as proof of the counter-claim. The evidence will be weighed at the time of trial and the claimant/petitioner shall have the liberty to argue on those issues and also cross-examine the witness on the documents to be

filed pursuant to the order impugned. Lastly, the award can also be challenged on the ground of patent illegality which includes perversity, and procedural irregularity. The objection that the learned Arbitrator had committed procedural irregularity by allowing belated filing of the evidence, can be also taken at the stage of challenge to the award.

18. Under such circumstances, the order impugned is upheld.

19. However, on account of the delay, this Court imposes an additional cost of Rs.20,000/- to be paid to the petitioner by the opposite party within four weeks from date.

20. Mr. Basu submits that his client may not be in a position to proceed before the learned Arbitrator on 20th January, 2026. Parties are at liberty to pray for adjournment.

21. Accordingly, the revisional application is disposed of. There shall be no order as to costs.

22. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)