IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Appeal No.13 of 2016
Reserved on: 01.04.2026
Decided on: 24.04.2026
Uploaded on: 24.04.2026

M/s United India Insurance Company ....Appellant

Versus

M/s Kishan Singh & Others ....Respondents

Coram
The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
The Hon'ble Mr. Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant	:	Mr. Suneet Goel, Senior Advocate with Mr. Vivek Negi, Advocate.
For the Respondents	:	Ms. Shreya Chauhan, Advocate, for respondent No.1.

G.S. Sandhawalia, Chief Justice.

The present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to asthe 'Act, 1996') filed by the M/s United Insurance Company takes exception to the judgment dated 26.06.2015, passed by the learned Single Judge in Arbitration Case No.48 of 2007 titled ***M/s United India Insurance Company Vs. M/s Kishan Singh & Co.***

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[1] Whether reporters of Local Papers may be allowed to see the judgment?

Pvt. Ltd. & others, wherein the challenge against the Award dated 17.03.2001 by the Arbitral Tribunal was repelled.

2. The learned Single Judge while relying upon the judgments of the Apex Court in ***Navodaya Mass Entertainment Limited Vs. J.M. Combines (2015) 5 SCC 698*** and ***Swan Gold Mining Limited Vs. Hindustan Copper Limited (2015) 5 SCC 739*** has held that even if two views are possible, view taken by the Arbitrator would prevail and reappraisal by the Court is not permissible and the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the face of it erroneous or patently illegal or in contravention of the provisions of the '1996 Act' or opposed to public policy.

3. The learned Single Judge came to the conclusion that the claim for the cost of reconstruction of loss of 67 meters span of the bridge had been assessed at Rs.62,00,265/- and similarly the cost of repair, strenghtening and replacement of numbers and load testing of other 53.6 meters span of the bridge had been assessed at Rs.7,64,920/-. Whereas the claim No.3, the cost of balance work i.e. deck slab, railing, footpath etc., had been rejected to the tune of Rs.20,76,000/- and similarly the claim for compensation on account of death of 16 workmen was

rejected by the Arbitral Tribunal. Therefore, the total compensation which had been awarded was Rs.44,00,622/- plus interest @ 12% per annum from 01.02.1994 with future interest at the same rate from the date of award till actual payment with cost of Rs.90,000/- and learned Single Judge came to the conclusion that the view taken by the Arbitrators were not liable to be substituted as they had applied their mind after appreciating the evidence and it could not be termed to be perverse.

Arguments of counsel for the appellant:-

4. Learned Senior Counsel for the appellant has raised the primary contention that there was a Surveyor Report as such before the Arbitrators which had been superceeded by them and therefore there was no justification as such for the Tribunal to substitute the opinion of surveyor and thus challenged the Award while placing reliance upon the judgment of the Apex Court in ***Sikka Papers Limited Vs. National Insurance Company Limited and Others (2009) 7 SCC 777*** that the weightage had to be given to the report and therefore the award was liable to be interfered with.

5. Counsel for the respondents-beneficiary/Contractor and the M/s National Hydro-Electric Power Corporation Limited on the other hand put forth the arguments that the appellate

Court's scope was narrow and intereference under Section 37 of the '1996 Act' can only be in exceptional cases and there had to be patent illegality or the award had to be against public policy. It was further argued that the surveyor's report as such was not sacrosanct and if the view taken by the Arbitrators was a plausible view, therefore this Court would not substitute the view as such taken by the Arbitrators.

6. Reliance was placed upon the judgments of the Apex Courts in ***Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (2019) 15 SCC 131, PSA SICAL Terminals (P) Ltd. Vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin (2021) SCC Online SC 508, Haryana Tourism Ltd. Vs. Kandhari Beverages Ltd. (2022) 3 SCC 237, Indian Oil Corporation Ltd. Vs. Shree Ganesh Petroleum (2022) 4 SCC 463, Delhi Airport Metro Express (P) Ltd. Vs. DMRC (2022) 1 SCC 131, UHL Power Company Ltd. Vs. State of Himachal Pradesh (2022) 4 SCC 116, Indian Oil Corporation Limited Vs. Sathyanarayana Service Station (2023) SCC Online SC 597*** and ***Reliance Infrastructure Limited Vs. State of Goa (2023) SCC Online SC 604*** apart from the recent judgments of the Apex Court in ***AC Chokshi Share Broker Private Limited Vs. Jatin Pratap Desai***

& Another (2025) 5 SCC 321, Ramesh Kumar Jain Vs. Bharat Aluminium (2025) SCC Online SC 285 and ***Municipal Corporation of Greater Mumbai Vs. R.V. Anderson (2026) SCC online SC 354*** to defend the view taken by the Arbitrators and duly upheld by the learned Single Judge.

7. Counsel for the respondents has also pointed out that in the reply filed before the Tribunal, it had been specifically averred that the claim had been settled for Rs.22,64,963/- and not for the full amount of Rs.1,51,96,286.37/- and the present appellant-M/s United Indian Insurance Company had specifically averred in the reply that they had been ready and willing to pay the amount as assessed by M/s Mita Marine and General Survey Agencies as per the report dated 06.03.1995. The Insurer had approved the claim for a sum of Rs.22,64,963/- to the Contractor on the submission of the No Objection Certificate (NOC) and if both the Contractor and the Agency fulfilled certain other requisites before the payment could be made to the NHPC.

8. It is thus aruged that the liability has been acknowledged as had been assessed by the surveyor and there was justifiable reasons given by the Tribunal regarding why it had chosen to grant the amount as per its award to the tune of Rs.44,00,622/- under various heads/claims after giving the

benefits of the payment of compensation which has been directed to be paid vide its interim order on 20.02.1999 **(Annexure P-C)** which was duly complied with on 14.03.1999 in view of the admitted stand as such. It is thus contended that the benefit of salvage of Rs.2,99,600/- which had been also received by sale and had also been accordingly deducted from the total amount which had been assessd and therefore the amount of Rs.44,00,622 had been directed to be paid with interest at the rate of 12% for loss of compensation alongwith the future interest also at the same rate.

Basis of the Dispute:-

9. A perusal of the Award dated 17.03.2001 passed by the three learned Arbitrators (retired Judges of the High Court) would go on to show that the dispute was regarding the work of construction of permanent bridge which had been awarded by the NHPC to the Contractor across the river Siul near village Koti being part of the Chamera Hydro-Electric Project, District Chamba, Himachal Pradesh on 30.08.1991 on a total lump sum basis at a total cost of Rs.131.50 lakhs. The contract between the Contractor and NHPC was signed on 19.11.1991 for the revised contract a sum of Rs.138 lakhs which was further revised to Rs.173 lakhs from Rs.138 lakhs on 25.08.1993. The risk of the

work had been covered by the appellant-M/s United Indian Insurance Company for Rs.1,28,34,000/- with Third Party Liability by the Insurance Policy for the period 15.05.1992 to 31.05.1993 which has been further extended to 31.01.1994. The work of bridge was to be constructed in two spans; one of 53.6 meters cantilever span resting on concrete pier and second 67 meters span resting on tip of cantilever at one end and supported on roller bearing on the other. It was noticed that the first span for 53.6 meters cantilever which had already been constructed was resting on the concrete pier; when the 67 meters span was being launched on 12.12.1993 so that its nose portion would rest on the rollers at the far bank there was a collapse and 67 meters length of suspended portion being launched with 33.5 meters length of the nose fell down in the river over a height of 50-60 meters leading to the death of 16 persons on the spot and five persons being grievously injured. Consequential damage was also caused to the 53.6 meters span already launched and resultantly on 17.01.1994, the tentative claim for the loss of Rs.1,51,30,000/- was made by the Contractor. The Insurance Company had approved the claim of the Contractor for a sum of Rs.22,64,963/- subject to the No Objection Certification (NOC), but as noticed above, the insurer did not reimburse the same to the NHPC

despite reminder issued on 04.07.1998 leading to the setting-up of the Tribunal on the ground that the settlement of the claim was on a very low amount as against the entitlement of the full amount of the sum assured.

Finding of the Arbitrators:-

10. The necessary pleadings on being duly filed and the affidavit by way of evidence was submitted and the admission denial of documents was done and eventually the Tribunal passed the Award by bifurcating the compenstation to the loss of 67 meters, assessing compensation for repairs of the damage caused to 53.6 meters span and reducing amounts of payment of salvage due from NHPC to the insurer and the admitted compensation, the company had agreed to pay. The said break-up reads as under:-

> *"20. As a result of the above, we summarise our finding as under:-*
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> | | |
> |---|---|
> | *Compensation for loss of 67 meters Span of the Bridge.* | *Rs.62,00,265/-* |
> | *Compensaton for repairs of the damaged caused to 53.6 meters span of the Bridge.* | *7,64,920/-* |
> | | *Rs.69,65,185/-* |
> | *Less payment on sale of salvage due from NHPC to the Insurer* | *2,99,600/-* |
> | | *Rs.66,65,585/-* |
> | *Less the payment of compensation already made by the Insurer to NHPC on March 14, 1999* | *Rs.22,64,963/-* |

The net balance amount of compensation required to be paid by the Insurer Rs.44,00,622/-"

11. It has to be noticed that the claim as such by the NHPC was for Rs.2,45,91,796.77/- against five headings including the death of the workmen as liability of the Contractor. The Tribunal had also issued various directions directing the NHPC to sell the salvage as such which was decided by passing various interim orders and thereafter proceeded to decide claim on merits by examining the necessary clauses of the Insurance Policy.

12. Regarding the claim No.1, the cost of reconstruction of 67 meters span of bridge which was of Rs.1,51,96,286.37/- which had been made and it only awarded to Rs.62,00,265/-. It was noticed that the reconstruction on the part of the collapsed of the 67 meters span of the Bridge had been done by another Contractor and the claim made by the NHPC for compensation of full cost of reconstruction was not liable to be granted and not payable by the Insurer in terms of the Insurance Policy. They came to the conclusion that the total loss of 67 meters span of the Bridge and its actual value before the occurrence less the salvage formed the basis of settlement and not the cost of reconstruction of the collapsed span as it exceeded its value before the occurrence of settlement. It has been noticed that the

Insurance Policy was Rs.1,18,34,000/- plus Rs.10,00,000/- for Third Party liability against the work awarded for Rs.1,73,00,000/- of the revised costs and deductions were given for the cost of establishing site to 3% of the total contract lump-sum payment and design of substructure and superstructure was 4% and they came to the conclusion that 93% of the lump-sum costs of the work covered would come to Rs.1,60,89,000/- and the Insurance was of Rs.1,18,34,000/- and resultantly the proportion worked out to be 73.55% of the amount recoverable and in such proportion as the sum insured bore to the cost of work under the insurance cover. Since, it was the admitted position on the record that out of the total lump-sum of Rs.1,73,00,000/-, the payment of Rs.1,51,74,000/- has been made to the Contractor and it meant 87.71% of the work had been completed by the Contractor.

13. The Surveyor's report was examined by Tribunal including the deposition of the Lieutenant Colonel R.K. Sehgal and it came to the conclusion that the determination of the cost of 217.454 meteric tons (MT) of steel used on the suspended span and structural steel on 67 meters span (which totally collapsed) at Rs.28,95,946/- was worked out on an average rate of payment made by the Contractor to the sub Contractor-M/s Deep Brother at Rs.3,784/- per meteric tons (MT). It was held that it is not

clear, however, what was the source of the Surveyor to determine the actual use of steel and for launching which was held to be simply an effort to bring down the cost of the part of the bridge which was lost. The claim made for recovery by NHPC was also discounted to be on the higher side and while working out the proportion it was worked out to 73.55% of the amount recoverable which was calculated on the total payment made and the cost of the 67 meters span of bridge lost by working it out to the tune of Rs.62,00,265/-.

14. The benefit under claim No.2 was also granted regarding the fact that the damage had been caused to the 53.6 meters span while identifying 27 cracks at Rs.10.40 lakhs and Surveyor had only recommended payment of Rs.3,40,180/-. It was noticed that the report of the Surveyor was submitted to the Insurer almost a year later on 6th March, 1995 and by that time the repair work had been completed. The Surveyor as such had ignored his own notice Appendix S & T of his report to down play the extent of damage to 53.6 meters span of bridge on account of the accident and resultantly while working out the proportion of 73.55% to determine the amount of cost of repairs payable under the Insurance Policy, the amount payable by the Insurer was worked out to Rs.7,64,920/-.

15. The claim No.3 regarding the cost of balance work i.e. deck slab, railing, foot path etc., was rejected that this claim did not concern the insurer to the tune of Rs.20,76,000/- and similarly, the claim of the cost of retrieval of salvage of loss of 67 meters span of the bridge and watch ward of retrieved salvage to the tune of Rs.15,81,597/- was rejected due to the interim orders passed regarding the sale of the salvage after deducting the expenditure incurred for watch and ward and granted the benefit of Rs.2,99,600/-.

16. Similarly, the claim No.5, the compensation out of Rs.16,00,000/- on account of the death of the 16 workmen of the contractor who died on collapse of 67 meters span of the bridge was rejected on the ground that workmen or employees of the owner of the contractor are not covered by the Third Party Risk insured.

Legal position:-

17. The position of law as settled is that the Court is not to reappreciate the evidence to come to a contrary finding and is not sitting in the appeal over the award of the arbitrator as has been laid down in the judgment of the Apex Court ***K. Sugukumar and another Vs. Hindustan Petroleum Corporation Ltd. and another (2020) 12 SCC 539.*** It has been held that only in cases

of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity intereference is to be done under Section 34 of the Arbitration Act, 1996.

18. In ***Haryana Tourism*** *(supra),* the similar view has been taken that only if it is a patently illegal award as such and it was found against the fundamental policy of Indian Law and against the interest of India or justice and morality, the interference can be done.

19. The settled position is also that in ***MMTC Ltd. Vs. Vedanta Ltd. (2019) 4 SCC 163,*** it has been held that the Court in an appeal under Section 37 would be extremely cautious and slow to disturb such concurrent findings and is not to take an independent assessment of the merits of the award and only ascertain whether the exercise of power by the Court has not exceeded the scope of the provision and it is not sitting as a Court of appeal.

20. In ***AC Chokshi Share Broker Private Limited*** *(supra),* a similar view has been taken that the appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 is also limited. The relevant paragraphs read as under:-

“29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceedings its scope.”

30 to 31xxxxxxx

32. Further, an award can be set aside as being opposed to the “fundamental policy of India” if it is perverse, i.e. the finding is not based on evidence, or the Arbitral Tribunal takes something irrelevant into account, or ignores vital evidence. However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence.

33 to 34xxxxxxx

35. Applying the test for perversity under Section 34 as explained above, it is clear that the High Court while exercising jurisdiction under Section 37, adopted an incorrect apporach. The Arbitral Tribunal’s findings are definitely based on evidence, as has been rightly held by the Section 34 court. The High Court, at the stage of the Section 37 appeal, took an alternative view on this finding of fact by reappreciating evidence. The Arbitral Tribunal’s conclusion was based on oral and documentary evidence regarding the conduct of the parties, which leads to a reasonable and possible view that there is joint and several liability. Hence, the High Court, while exercising jurisdiction under Section 37, has incorrectly held the award to be perverse.

21. Recently, the Apex Court in ***Sepco Electric Power Construction Corporation Vs. GMR Kamalanga Energy Limited (2026) 2 SCC 542*** while upholding the interference that only if the Arbitral Tribunal exceeds the mandate, the interference has to be there and the limited scope under Section 37 was noticed.

22. The arguments raised that the Surveyor's Report as such had been discarded is also without any basis, keeping in view the fact that the Apex Court in ***New India Assurance Company Limited Vs. Pradeep Kumar 2009 (7) SCC 787,*** has held that whether the report of the licence surveyor or loss assessor is final and whether it is the last and final word cannot be held binding upon the insurer or the insured. The Apex Court was dealing with the issue of heavy motor vehicle involved in accident in hilly area during the death of the driver whereby the surveyor had assessed the damages to the vehicle to the extent of Rs.63,771/- against the claim of Rs.1,58,409/- and resultantly it was held that the approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured and resultantly, they had dismissed the appeal as such of the company which had been

preferred against the awards of the Consumer Disputes Redressal Authorities.

23. In ***Sikka Papers Limited*** (supra) also the complainant was aggrieved against the shortfall of the claim regarding the breaking down of the diesel generator set and while placing reliance upon ***Pradeep Kumar*** (supra), it was noticed that the surveyor's report was not sacrosanct and can be departed from, it is not conclusive and there should be a legitimate reasons for departing from such reports.

24. In the present case as noticed the Tribunal has found that the surveyor as such had not specifically determined what was the source to determine the actual use of steel and therefore, they came to the conclusion that an effort had been made to bring down the cost of the part of the bridge which was lost under claim No.1. Similarly under claim No.1 while recording the finding that the reconstruction cost on the part of the collapse of the 67 meters span of the Bridge had been claimed and had also rejected the higher claim as such of the NHPC.

25. Under claim No.2 regarding the damaged portion of 53.6 meters span we notice that the Surveyor had in its cross-exmanitation stated that they were not supposed to know what was the actual cost of the repair work and ignored his earlier

reports and thus it was referred and held as an attempt to down play the extent of damage to 53.6 meters span of bridge with regard to the accident and therefore the deviation had taken place.

26. In ***Ramesh Kumar Jain*** (supra), it has been specifically held that the thin line stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view and the Tribunal is master on question of facts and even an erroneous interpretation of facts would not lead to invoke extra-ordinary jurisdiction under Section 37 of the '1996 Act' and the arbitrator's approach has to be taken as a possible view a reasonable man might take. Resultantly, the judgment passed by the Commercial Court was restored, affirming the award and setting aside the order of the High Court. The relevant paragraphs reads as under:-

> *"41. Further, we have no hesitation to hold that claims in the nature of quantum merit or unjust enrichment can be decided by the arbitrator provided they fall within the scope of disputes referred either explicitly or by necessary implication. For instance, in a situation like the present, claim for payment for such work has been entertained as it relates to the performance of the contract. The measure of compensation under Section 70 is typically the value of the benefit obtained by the other party or the cost incurred by the claimant in doing the act (whichever is reasonable to avoid unjust enrichment). The law does not permit arbitrary awards under Section 70. The award must still be grounded in evidence of*

> *the benefit's value or the expense incurred. Nonetheless, tribunals have a degree of discretion to approximate a fair value, especially when exact evidence is hard to come by, so long as the final figure is reasonable and not pulled from thin air.*
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> *42. The errors pointed out in the impugned judgment, i.e., lack of evidence, percentage-based guess allowances, etc. do not, singly or cumulatively, amount to patent illegality warranting annulment. There were at least some evidence and logical rationale for each award element. The arbitrator's approach was certainly a possible view a reasonable man might take. The High Court, unfortunately, re-appreciated the evidence and came to a different view, which is impermissible. The High Court's scrutinized the award from a stricter standard of proof than arbitration law demands. Arbitrators are not bound by the strict rules of evidence as per Section 19 of the A&C Act and may draw on their knowledge and experience. It is settled that a court should not interfere simply because the arbitrator's reasoning is brief or because the arbitrator did not cite chapter and verse of the contract as long as the path can be discerned by which the arbitrator arrived at his conclusions. Here, the path is discernible and not absurd."*

27. In ***Indian Oil Corporation Limited Vs. Sathyanarayana Service Station (2023) SCC Online SC 597,*** the Apex Court was dealing with the issue of the resignation of the dealership and the withdrawal as such thereafter and it was noticed that though the clause in question did not provide for resignation and only for termination of the agreement but once the clause provided three months notice of terminating the contract by the party, the findings of the District Court as such that the termination had been done on the receipt of the said

request was justified and that the interference by the High Court to order restoration was not justified. Resultantly, it upheld the view the arbitrator had chosen as it was a fact and included acceptance of the notice and it was a plausible view to close the door for the Courts to intervene.

28. Similarly in ***R.V. Anderson*** (supra), it has been held that the interpretation of the term of the contract is within the exclusive purview of the arbitrator and the view taken by the learned Single Judge to reject interference and upheld by the Division Bench under Section 37 of the 'Act, 1996' was held to be a plausible view and no reasonable ground was made out to set aside the arbitral award. Resultantly it was held that as per Clause 8.3(b) of the agreement *inter se* the parties, the appointment of the Arbitrator was lying within the provisions of the same and no interference was required as the two nominees had further appointed a retired Judge as the Presiding Arbitrator. The relevant paragraph reads as under:-

> *"36. Of course, while saying so we are cognizant of the sacrosanct principle of party autonomy and the fact that Courts cannot substitute the commercial wisdom of parties as is borne out from the plain meaning of the words used in the contract. However, Clause 8.3(b) has been rightly interpreted by the learned Arbitral Tribunal in the Section 16 order and the matter has been dealt with in the right perspective by the learned Single Judge in Section 34 and the learned Division Bench in the Section 37 appeal. The law in respect*

> *of the scope of interference permissible in proceedings arising out of a challenge to the arbitral award under Section 34 of the 1996 Act, is well settled. Generally, the scope of interference is quite narrow. The arbitrator is the master of evidence and so also of interpretation of the terms of contract. If the arbitrator has reached at a certain view with respect to interpretation which is plausible, interference is not warranted merely because some other view may also be possible. This is a settled principle of law which has been recently reiterated in the decisions of this Court in Consolidated Construction Consortium Limited v. Software Technology Parks of India and SEPCO Electric Power Construction Corporation v. GMR Kamalanga Energy Ltd. The role of the Court, in the proceedings arising out of Section 34 of the 1996 Act, is clearly demarcated. The approach of the Court must be to respect arbitral autonomy and ensure minimum judicial interference."*

29. Accordingly, keeping in view the above and the law which has been settled conclusively, we are of the considered opinion that the scope of interference under Section 37 of the 'Act, 1996' has been further restricted as such the Tribunal has taken a plausible view to award the compensation amount on account of the fact that not only the loss of span but also damage to the other span by analyzing the evidence on record. It was not for the learned Single Judge also to take a contrary view and therefore, he rightly rejected the challenge to the same.

30. Accordingly, we uphold the judgment dated 26.06.2015, passed by the learned Single Judge and dismiss the

present appeal. Pending miscellaneous application(s) if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Jiya Lal Bhardwaj)
Judge

24th April, 2026
(Munish Thakur)