



CGHC010156132005



2026:CGHC:30412

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved on 16-6-2026

Pronounced on 17-7-2026

MA No. 1490 of 2005

- Madhusudan Agrawal s/o Shri Jagdish Prasad Agrawal, aged about 35 years r/o. Bajrang Chowk, Newra, Tahsil Tilda, District Raipur, Chhattisgarh.

... Appellant/non-applicant/objector

versus

1. Galaxy Exfeen Ltd. (Presently Sunita Finlies Limited) through managing Director, Registered Office in front of Rajkumar College, G.E. Road, Raipur, Chhattisgarh

(Applicant/claimant)

2. Yogesh Agrawal, Proprietor Usha Car Service, Samta Colony, Raipur, Chhattisgarh.

(... Non-Applicant No.2.)

For appellant. : Mrs. Shraddha Mishra, Advocate appears on behalf of Mr. Prateek Sharma, Advocate.

For Respondents No.1 & 2 : Mr. Mayur Khandelwal, Advocate.

(Hon'ble Mr. Justice Narendra Kumar Vyas)

C A V Order

1. This appeal has been filed by the appellant/objector under Section 37 of the Arbitration & Conciliation Act, 1996 (for short, "the Act, 1996") against the order dated 1-10-2005 passed by the District Judge,

Raipur in Miscellaneous Civil Case No. 133 of 2005 (Madhusudan Agrawal Vs. Galaxy Exfeen Limited & others) by which an application filed under Section 34 of the Act, 1996 by the appellant for setting aside the award dated 2-1-1999 passed by the Arbitrator has been rejected.

2. The record of the case would demonstrate that the notice to respondent No. 2 remained unserved despite direction of this Court to issue fresh notice to respondent No. 2 on the correct address on payment of process fee as per rules vide order dated 13-06-202 as no efforts have been made by the appellant to get service of notice upon respondent No. 2 on the correct address. The record of the case would further demonstrate that this Court has issued a fixed date SPC for appearance of respondents No. 1 and 2 vide order dated 24-03-2026 fixing the matter on 16-04-2026. On 16-04-2026, vakalatnama was filed on behalf of respondent No. 1, but SPC issued to respondent No. 2 was unserved due to incorrect address of the respondent No. 2 and no efforts were made by the appellant to get correct address of respondent No. 2. Thus, from above factual matrix derived from the record would clearly demonstrate that the appellant is not interested to serve the notice upon respondent No. 2. Therefore, there was no option for this Court, except to hear the argument on behalf of the appellant and respondent No. 1 only on 16-06-2026.
3. This Court has called the record of the Arbitration case as well as record of the learned District Judge and following facts have been revealed which are as under:

- (A) An agreement of hire purchase was executed between respondent No.1/Finance Company and respondent No.2 Yogesh Agrawal, who was guarantor of third party ie., appellant for providing finance for purchase of new vehicle and the terms and conditions were enumerated in the hire purchase agreement. As per Clause 3 of the Hire Purchase Agreement executed on 27.08.1996, a sum of Rs. 56,282/- was initially payable by the hirer ie., appellant and a sum of Rs. 1320/- as service charges both of which shall become the absolute property of the owner and total sum of Rs. 1,76,484/- is payable by the finance company for purchase of the vehicle.
- (B) Clause No. 21(a) of the Hire Purchase Agreement (hereinafter referred to as "Agreement") provides that all disputes, differences and or claims, arising out of this Agreement whether during its subsistence or thereafter shall be settled by arbitrator in accordance with the provisions of Indian Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the Sole Arbitration of an arbitrator nominated by the Managing Director of the owner. Clause 21 (a) and 21(b) of Hire Purchase Agreement is reproduced as under:

“(21)(a) All disputes, differences and/or claims, arising out of this Hire Purchase Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provision of Indian Arbitration Act, 1940 or any statutory amendments thereof and shall be referred to the sole Arbitration of an arbitrator nominated by the Managing Director of the Owner. The award given by such an Arbitrator shall be final and binding on all the parties to this agreement. It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred dying or being unable to act for any

reason, the Managing Director of the Owner, at the time of such death of the arbitrator or his inability to act as arbitrator, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

21(b) The venue of arbitration proceedings shall be at Raipur (M.P.). The constants of the aforesaid Agreement were read out, explained to the Hirer and to the Guarantor/s in their own language after the said Agreement was fully filled in and understood by the Hirer and the Guarantor/s and thereafter the signatures of the Hirer and Guarantor/s were taken on this Agreement.”

- (C) It is also revealed from the record that Respondent No.1 / Galaxy Exfleen Limited (hereinafter referred to as “Finance Company”) is a registered Finance Company and respondent No.2 Yogesh Agrawal, who is proprietor of Usha Car Services, Raipur has got financed the vehicle Maruti Van on installment for appellant by receiving margin money of Rs. 56,180/- on 25-8-1996 from the appellant for total sale consideration of Rs. 1,88,000/-. As per the Agreement executed between Madhusudan Agrawal and respondent No. 2 Yogesh Agrawal who was guarantor of the appellant, the financed amount has to be repaid by the appellant with interest in 23 equal installments. Accordingly, the appellant has given 23 blank cheques bearing serial Nos. from 154878 to 154900.
- (D) It is also a case of the appellant that respondent No.2 is a man of confident of respondent No.1 and on his assurance finance was made, but Maruti Van was not provided to the appellant/objector despite the payment of margin money on 20-2-1997, as such the Finance Company in connivance with respondent No.2 Yogesh

Agrawal has committed fraud. It is also the case of the appellant that the respondent No. 1 has given demand draft to respondent No. 2 and also recovered first installment of Rs. 7,750/- despite this Maruti Van was not provided to the appellant.

- (E) It is also the case of the appellant that since respondent No.2 has not provided the Van therefore, the appellant sent a legal notice dated 17-02-1997 alleging the fraud committed by respondent No. 1 and also lodged a complaint before the Police Station, Azad Chowk thana on 30-04-1997. In the meantime the Finance Company /respondent No.1 invoking its power appointed Suresh Jain as Sole Arbitrator for resolving the dispute. The Sole Arbitrator on his appointment as Arbitrator has issued notice to the appellant. Respondent No. 1 filed his claim alleging that finance was made to the appellant for purchase of Maruti Van which was payable to Maruti Udyog New Delhi and the respondent has given first installment on 25-09-1996 which was bounced, as such they made demand for payment of installment, as such he has violated the terms of Agreement. It is also the case of respondent No. 1 that after obtaining the loan he has not purchased the vehicle, but utilized the same for own purpose, thus it has been prayed for passing the award of Rs. 1,68,484/- with interest from 27-08-1996. Since the appellant could not appear, therefore, the Sole Arbitrator passed an ex parte award on 02-01-1998.
- (F) The appellant has filed an application under Section 14(2) of Arbitration Act, 1940 for setting aside ex parte award before the

learned Third Additional District Judge Raipur who vide order dated 30-11-1998 has set aside the ex parte award and directed the appellant to appear before the Sole Arbitrator on 21-01-1999.

(G) After remand, the appellant raised objection regarding the procedure to be followed while conducting the Arbitration award proceeding and also regarding appointment of Suresh Jain being an employee of respondent No.1 as Arbitrator and also submitted reply on merit denying the claim of the respondent No.1. This Court to avoid repetition is not mentioning the averments in detail as in the appeal also same grounds have been raised by the appellant which will be discussed by this Court in subsequent paragraphs. The learned Arbitrator rejected the objections and passed the award on 14-03-2001 which has been challenged by the appellant by filing an application under Section 34 of the Act, 1996 before the learned District Judge, Raipur. The learned District Judge Raipur vide impugned order dated 01-10-2005 has rejected the same. Being aggrieved with this order the appellant has preferred this appeal under Section 37 of the Act, 1996.

4. Learned counsel for the appellant would submit that since the Arbitration Act, 1940 has already been repealed and new Act has already been enacted, therefore, proceeding under Arbitration Act, 1940 is illegal. It has been further contended that no consent of the applicant was obtained before engagement of Arbitrator, therefore, engagement of Suresh Jain as Arbitrator is illegal. Learned counsel for the appellant would further submit that the Sole Arbitrator Mr. Suresh Jain was paid employee of the Company as he was working as

Company Secretary and friend of respondent No.1, therefore, in view of Section 12 (1) of the Act, 1996, he cannot be appointed as Arbitrator, as such the entire award passed by the learned Arbitrator is void *ab initio*. It has been further submitted that no proper opportunity of hearing to take defence has been given to the applicant, therefore, the award should have been set aside by the learned District Judge while hearing the application filed under Section 34 of the Act, 1996. He would further submit that learned District Judge should have considered that the ground raised by the applicant falls within the ambit of Section 34 of the Act, 1996 where the Court can interfere in arbitration award. It has been further contended that the documents and evidences have not been properly appreciated by the learned trial Court while dismissing the application filed under Section 34 of the Act, 1996, as such the order dated 01-10-2005 is illegal and same is liable to be set aside by this Court.

5. On the other hand, learned counsel for respondent No.1/Finance Company would submit that the learned District Judge after considering the entire facts and law has passed the well reasoned order and the applicant is unable to make out any permissible ground wherein the Court can interfere in the award, as such the impugned order passed by the learned District Judge is legal and justified which does not warrant any interference by this Court. It is also contended that from perusal of Clause 21(a) and 21(b) of the Act, it is quite vivid that an employee can be appointed as Arbitrator unless the applicant is able to establish that he has vested or personal interest in the agreement. He would further submit that at the relevant time, law does not prohibit the appointment of an employee as Arbitrator. It has also

been contended that as per the agreement Clause 21 (a)(2), it is quite vivid that the dispute or claim will be settled by arbitration in accordance with Arbitration Act, 1940 or any statutory enactment thereof whereas the Arbitration Act, 1940 was repealed on 16-08-1996. Section 85 of the Act also provides repeal and saving clause which provides that the Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognize and Enforcement) Act, 1961 are hereby repealed and Sub-section 2 provides that notwithstanding such repeal the provision of said enactment shall apply in relation to arbitration proceeding which commence before this Act came into force unless otherwise, agreed by the parties, but this Act shall apply in relation to arbitration proceeding which commence on or after this Act comes into force. Thus, the proceedings have to be governed by the Arbitration and Conciliation Act, 1996 which has been rightly conducted by the learned Arbitrator. It has also been contended that the learned Arbitrator while passing the impugned award has mentioned that the dispute is determined as per Indian Arbitration Act, 1940 or the statutory amendments made in the provisions and has also taken note of Section 19(1) and 19(4) of the Act, 1996, therefore, it cannot be held that proceeding has been conducted under the Arbitration Act, 1940. Thus, this objection raised by the appellant may be rejected.

6. So far as denial of opportunity of hearing is concerned, it has been contended that the respondent No.1 has appeared before the Arbitrator and he has participated in the proceeding, therefore, it cannot be said that the notice or consent has not been obtained from the respondent as the appellant without any reservation has

participated in the proceeding, as such, it cannot be held that no consent of the applicant was obtained before the proceedings initiated by the Arbitrator or with regard to appointment of the Suresh Jain as Sole Arbitrator.

7. Lastly, he would submit that the impugned award passed by the learned trial Court rejecting the application filed under Section 34 of the Act, 1996 is legal and justified which does not warrant any interference as no permissible ground available to him under Section 34 of the Act, 1996 is made out by the applicant and would pray for dismissal of the appeal.
8. I have heard learned counsel for the parties and perused the record of the trial Court as well as Arbitrator with utmost circumspection.
9. The point emerged for consideration of this Court is whether the award passed by the Arbitrator is legal and justified and order passed by the learned District Judge rejecting the application under Section 34 of the Act, 1996 is legal, justified warranting interference by this Court?

Submission regarding applicability of the Indian Arbitration Act, 1940 or Arbitration & Conciliation Act, 1996:

10. Now this Court is examining whether the proceeding initiated by the learned Arbitrator has been conducted under the Act of 1940 or Act, 1996. From perusal of the Arbitration award dated 14-03-2001 passed by the Sole Arbitrator, it is quite vivid that arbitration proceedings were conducted under the Act of 1996 as the Arbitration Act, 1940 was repealed on 16-08-1996 and the Agreement was executed on 27-08-1996. Clause 21 of the Agreement provides that the arbitration proceedings will be conducted as per Act of 1940 or as per statutory

amendments made therein, thus the proceeding has to be governed as per new Act of 1996 which has rightly been initiated by the learned Arbitrator as in the impugned award of Sole Arbitrator has considered the procedures provided in Section 19 of the Act, 1996 which provides determination of rule of procedure and also observed that as per this provision it will not be bound by the Code of Civil Procedure or Indian Evidence Act, accordingly, it has held that it has power to regulate the procedure. The learned Arbitrator has also observed in the award that since both the parties have not given consent to regulate the procedure and power conferred upon him under the Act, 1996, it has regulated the procedure, thus, it is quite vivid that the arbitration proceedings have been initiated under the Act, 1996, therefore, the objection raised by the respondents that the proceedings have been conducted under Act of 1940 is misconceived and deserves to be rejected.

- 11.** The record of the case would further demonstrate that the appellant has filed an application under Section 34 of the Act, 1996 before the learned District Judge Raipur wherein the learned District Judge has also observed in paragraph of 11 of its judgment that the learned Arbitrator has conducted the arbitration proceeding under the Act, 1996 cannot be held to suffer from perversity or illegality warranting interference by this Court.
- 12.** The learned Arbitrator relying upon Clause 21 (b) of the Agreement has conducted the proceedings under the Act, 1996 which is as per the Agreement and the Clause of the Agreement which provides Arbitration has been rightly considered by the Arbitrator and

conducted the proceeding as per the Act, 1996. How the agreement/contract has to be interpreted is always subject matter of examination before the Hon'ble Supreme Court and the Hon'ble Supreme Court in the case of **Disortho S.A.S vs. Meril Life Sciences Private Limited**, reported in **(2026) 2 SCC 599** has held that the interpretation of a contract involves determining of the meaning that a reasonable person with all relevant backgrounds, knowledge available to the parties at the time of contract would deploy from the documents and also held that the law governing the arbitration agreement means its validity, scope and interpretation has to be determined in accordance with the Indian law. Thus, from the Clause 21(b), it is quite vivid that the arbitration has to be governed from the Arbitration Act, 1940 or its statutory amendments made therein, it means through the Act prevailing on the date of agreement which is Act, 1996. Thus, the procedure followed by the Arbitrator has strictly been conducted in accordance with the Act, 1996, as such, the objection/submission raised by the appellant regarding conduction of proceeding deserves to be rejected and accordingly it is rejected. The Hon'ble Supreme Court in **Disortho S.A.S (Supra)** has held in paragraphs 29 to 32 as under:

"29. In *Arnold v. Britton*,³¹ the Supreme Court of United Kingdom observed as under:

"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual

and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease,

(iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions [...].

30. The interpretation of a contract involves determining the meaning that a reasonable person, with all relevant background knowledge available to the parties at the time of the contract, would derive from the document. A similar principle is outlined in *Chitty on Contracts*,³² which, when discussing inconsistent terms, observes:

“Where the different parts of an instrument are inconsistent, effect must be given to that part which is calculated to carry into effect the purpose of the contract as gathered from the instrument as a whole and the available background, and that part which would defeat it must be rejected. The old rule was, in such a case, that the earlier clause was to be received and the later rejected; but this rule was a mere rule of thumb, totally unscientific, and out of keeping with the modern construction of documents. When considering how to interpret a contract in the case of alleged inconsistency, the courts distinguish between a case where the contract makes provision for the possibility of inconsistency and the case where there is no such provision. In the latter case the contract documents should as far as possible be read as complementing each other and therefore as expressing the parties' intentions in a consistent and coherent manner.” 31 2015 AC 1619.

31 Clause 16.5 is clear and unambiguous. It explicitly states that the entire agreement shall be governed by and construed in accordance with the laws of India, and all matters arising from the agreement shall fall under the jurisdiction of the courts in Gujarat, India. Given this, it is reasonable to assume that, when drafting this clause, the parties were fully aware of Clause 18, which provides for arbitration and conciliation under the Arbitration and Conciliation Centre of the Chambers of Commerce in Bogota. In our view, Bogota has been designated as the venue for conciliation and arbitration, while the courts in Gujarat, India, retain exclusive jurisdiction over disputes. This must, unless there is a divergence in *lex arbitri*, include jurisdiction over appointments and act as a conduit for the arbitration in Bogota, Colombia.

32. The law governing the arbitration agreement, being Indian law, means that its validity, scope, and interpretation will be determined in accordance with Indian law. But which national courts—those in India or Colombia—exercise supervisory

jurisdiction over the arbitration proceedings? Does the A&C Act apply to these arbitration proceedings? Upon a consistent reading of the Distributor Agreement, it is clear that only the courts in Gujarat, India, are referenced. While it is acknowledged that the venue for arbitration is Bogota, Colombia, and that the procedural rules of the Arbitration and Conciliation Centre at the Chambers of Commerce in Bogota are to apply, this does not diminish the supervisory powers of Indian courts, as explicitly outlined in Clause 16.5.”

Submission regarding appointment of an employee as Arbitrator:

13. Further submission regarding appointment of Suresh Jain as Sole Arbitrator who was an employee of the company is being examined by this Court. Section 12 of the Act, 1996 provides ground for challenge of appointment of an Arbitrator and Section 12 of the Act, 1996 as it stood prior to amendment on 23-10-2015 at the time of appointment of Sole Arbitrator reads as under:

“12. Grounds for challenge.- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if-

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”

14. From perusal of the said provisions of Section 12 of the Act, 1996 as stood prior to amendment, it is quite vivid that there is no bar regarding appointment of employee as Arbitrator unless the appellant is able to doubt as to independency or impartiality of the Arbitrator. In

absence of any justifiable apprehension about his independency or impartiality, the appointment of Mr Suresh Jain as Arbitrator could not be rendered invalid and enforceable. The record of the case further demonstrates that the Arbitrator in the present arbitration proceeding is neither dealing authority in regard to the contract or was directly subordinate to the officers whose decision is subject matter of dispute. The learned Arbitrator in its award has categorically mentioned that he has orally and in writing intimated the appellant and the respondent that the Sole Arbitrator has no interest over the dispute for which he has been appointed as Arbitrator. Accordingly, it has rejected the said objection regarding his appointment as Arbitrator while passing the award. The record of the case would further clarify that the dispute arose due to Hire Purchase Agreement executed between the appellant, respondent No. 1 and 2, where the Arbitrator has no role to play, thus, the objection regarding appointment of Arbitrator has rightly been turned down by the District Judge. The learned District Judge while rejecting the objection has also taken note of the fact that earlier also the objection regarding appointment of Arbitrator was raised which has been rejected by the learned 3rd Additional District Judge vide its order dated 30-11-1998 which has not been challenged before any higher forum, as such it has attained finality, thus reason of rejection cannot be found faulty warranting any interference by this Court.

15. The objection regarding appointment of an employee as Arbitrator before the amendment on 23-10-2015 has been considered by the Hon'ble Supreme Court in case of **Aravali Power Company Private**

Limited vs. Era Infra Engineering Limited reported in (2017) 15

SCC 32, wherein the Hon'ble Supreme Court has held as under:

“22. The principles which emerge from the decisions referred to above are:-

A. In cases governed by 1996 Act as it stood before the Amendment Act came into force:-

(i) The fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an employee arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate to the officer whose decision is the subject-matter of the dispute.

(ii) unless the cause of action for invoking jurisdiction under Clauses (a), (b) or (c) of sub-section (6) of Section 11 of 1996 Act arises, there is no question of the Chief Justice or his designate exercising power under sub-section (6) of Section 11.

(iii) The Chief Justice or his designate while exercising power under sub-section (6) of Section 11 shall endeavour to give effect to the appointment procedure prescribed in the arbitration clause.

(iv) While exercising such power under sub section (6) of Section 11, If circumstances exist, giving rise to justifiable doubts as to the independence and impartiality of the person nominated, or if other circumstances warrant appointment of an independent arbitrator by ignoring the procedure prescribed, the Chief Justice or his designate may, for reasons to be recorded ignore the designated arbitrator and appoint someone else.

B. In cases governed by 1996 Act after the Amendment Act has come into force:-

If the arbitration clause finds foul with the amended provisions, the appointment of the Arbitrator even if apparently in conformity with the arbitration clause in the agreement, would be illegal and thus the Court would be within its powers to appoint such arbitrator(s) as may be permissible.

23. The observations of the High Court in paragraphs 37-38 as quoted above show that the exercise was undertaken by the High Court, “in order to make neutrality or to avoid doubt in the mind of the petitioner” and ensure that justice must not only be done and must also be seen to be done. In effect, the High Court applied principles of neutrality and impartiality which have been expanded by way of Amendment Act, even when no cause of action for exercise of power under Section 11(6) had arisen.

The procedure as laid down in unamended Section 12 mandated disclosure of circumstances likely to give rise to justifiable doubts as to independence and impartiality of the arbitrator. It is not the case of the Respondent that the provisions of Section 12 in unamended form stood violated on any count. In any case the provision contemplated clear and precise procedure under which the arbitrator could be challenged and the objections in that behalf under Section 13 could be raised within prescribed time and in accordance with the procedure detailed therein. The record shows that no such challenge was raised within the time and in terms of the procedure prescribed. As a matter of fact, the Respondent had participated in the arbitration and by its communication dated 04.12.2015, had sought extension of time to file its statement of claim.”

Submission regarding consent of appointment for appointment of Arbitrator:

16. Further submission of learned counsel for the appellant that the respondent No. 1 before appointment has not obtained consent of the appellant, therefore, the appointment of the Arbitrator is illegal, as such, the entire award passed by the learned Arbitrator is void *ab initio* is being considered by this Court.
17. The record of the case would show that the objection raised by the appellant regarding consent deserves to be rejected on the count that as per Clause 21(a) of Act, 1996 the Managing Director of the Company has exclusive jurisdiction to appoint the Arbitrator and as per Section 11(2) of Act, 1996 which provides that the parties are free to agree on a procedure for appointing the arbitrator or arbitrators accordingly, as per the agreement the Managing Director is the authority to appoint the Arbitrator which he has appointed, thus, there is no illegality in appointing Suresh Jain as Sole Arbitrator. Learned District Judge while deciding the application filed under Section 34 of the Act, 1996 has taken into consideration the factum of rejection of

objection regarding appointment by the learned Third Additional District Judge in Civil Case No. 6B/1998 vide its order dated 30-11-1998 and recorded its finding that the said order has attained finality, as such issue with regard to appointment of Suresh Jain as Arbitrator cannot be reopened or re-agitated which does not suffer from perversity or illegality warranting interference by this Court, accordingly, this submission also deserves to be rejected and accordingly, it is rejected.

Submission regarding no opportunity of hearing:

18. Further submission of the appellant regarding no opportunity of hearing is being considered by this Court. This Court has requisitioned the record of the case and from perusal of the record, it is quite vivid that after the remand by the learned Third Additional District Judge the appellant appeared along with his counsel before the learned Arbitrator on 21-01-1999 and sought time accordingly, the proceedings were adjourned to 13-02-1999. On 13-02-1999, since the original records from the Courts were not received, therefore, the matter was adjourned to 01-03-1999 and again the matter was adjourned to 20-03-1999. The records were received on 19-03-1999, on 20-03-1999, the appellant appeared and sought time to file reply to the statement of claim filed by the respondent No.1, accordingly proceeding was adjourned to 10-04-1999. The record of the case would show that respondent No.2 was not appearing, therefore, an application was filed for publication of the notice in the newspaper which was considered and allowed. Accordingly, the same was

published in the newspaper on 09-04-1999 and the same was taken on record.

19. The record of the case further demonstrates that an application was filed by the appellant for adjournment and fixing the matter on 24-04-1999. The learned Arbitrator rejected the application for stay of the proceeding in absence of any order of the High Court and fixed the matter on 24-04-1999. Again on 24-04-1999 the respondent moved an application for adjournment and to stay the proceedings. Learned Arbitrator fixed the matter on 08-05-1999 for reply on the said application, on 08-05-1999, the appellant has not appeared therefore, proceedings were adjourned to 22-05-1999. Since no one is appearing, therefore, the learned Arbitrator intimated the date of hearing to the counsel for the appellant over telephone which was accepted by him. On 22-05-1999, arguments were heard, the appellant has also made his submission through his counsel and the proceedings were adjourned to 31-05-1999 for order on this application and finally order was passed on 05-06-1999 rejecting the said application for stay of the proceedings till the matter is finally decided by the High Court. The order sheets show that the appellant intended to install the proceedings on various reasons. Thereafter, on 31-07-1999, the appellant raised an objection regarding continuation of the proceeding which was rejected and again adjournment was sought to file reply to the statement of claim filed by respondent No. 1. The respondent moved various applications to install the proceedings and finally he has submitted reply as well as written argument on 04-03-2001.

20. The record of the arbitration proceedings would further demonstrate that respondent No. 1 was examined before the Arbitrator and the said witness was cross-examined by the counsel of the appellant extensively. The appellant was also examined before the Arbitrator and he was also cross-examined by the respondent No. 1 on 04-03-2001, thereafter, the impugned award was passed by the learned Arbitrator wherein it has recorded its finding that the appellant is unable to pay Rs. 1,68,484/- through 23 installments which has caused financial loss to the respondent No. 1. It has also recorded its finding that the appellant is unable to follow the conditions of the Agreement which is his responsibility.
21. From perusal of the aforesaid facts derived from record of the arbitration case, it is quite vivid that learned Arbitrator has given opportunity of hearing in every aspect of the matter and objections raised by the appellant have also been dealt and thereafter, by a reasonable and possible explanation, it has been decided. Thus, the submission made by learned counsel for the appellant that no opportunity of hearing has been given to the appellant and on this count the impugned award or the order of the learned District Judge deserves to be set aside is misconceived and accordingly, it is rejected.

Submission regarding non-interference in arbitral award by the learned District Judge while deciding the application under Section 34 of the Arbitration and Conciliation Act, 1996:

22. From the above stated discussion and considering the evidence, material placed on record before the Arbitrator who has passed the

well reasoned award dated 04-03-2001, it is quite vivid that neither the impugned award nor the order dated 01-10-2005 passed by the learned District Judge while rejecting the application under Section 34 of the Act, 1996 falls within the circumstances stipulated under Section 34 of the Act, 1996 where this Court can interfere. The Hon'ble Supreme Court in case of **Punjab State civil Supplies Corporation Limited and another vs. Sanman Rice Mill and others**, reported in **2024 SCC Online SC 2632** has held as under:

“12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K.Ahuja*,⁴ it has been observed as under:

“11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an 4 (2001) 4 SCC 86 appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside.”

18. Recently a three-Judge Bench in *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking*⁷ referring to *MMTC Limited (supra)* held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the 6 (2019) 4 SCC 163 7 (2023) 9 SCC 85 courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view

on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”

23. Thus, the submission made by the learned counsel for the appellant that the learned District Judge should have interfered in the award is misconceived and deserves to be rejected and accordingly, it is rejected.

24. Accordingly, the point determined by this Court is answered against the appellant and in favour of the respondent No. 1.

25. From the above factual and legal position, it is quite vivid that there is no patent illegality on the face of the award, secondly the award is speaking award with findings and interpretation based upon reasons. Moreover, there is apparently no violation of fundamental policy of any Indian law or the basic norms of morality and justice to enable the Courts to interfere with the award. The Hon'ble Supreme Court in case of **Jan De Nul Dredging India Pvt. Ltd. v. Tuticorin Port Trust** reported in **2026 INSC 34** decided on 07.01.2026 has held that appeal under Section 37 of Act, 1996 has a must narrow scope of intervention particularly when the arbitration award has been upheld under Section 34 of the Act. The Hon'ble Supreme Court in paragraph 51 has held as under:

“51. Before parting, we consider it proper to note that the Act is a special enactment which aims to resolve contractual/commercial disputes through arbitration with the minimum intervention of the court, if not without the intervention of the court. In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally by means of SLP/Civil Appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act. It is therefore, necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of intervention under Section 34 of the Act. The appeal thereof has a much narrower scope of intervention particularly when the arbitral award has been upheld under Section 34 of the Act. The appellate jurisdiction acquires little significance only when the arbitral award has been erroneously upheld or set aside by the court in exercise of its power under Section 34 of the Act as discussed earlier, but has no authority of law to consider the matter which was before the Arbitral Tribunal on merits.”

26. Thus, there is no patent illegality nor the arbitration award is against the public policy of India which can be interfered by this Court while hearing Arbitration Appeal under Section 37 of the Act, 1996, as such,

the appeal is sense merit, liable to be dismissed and accordingly, it is dismissed.

27. The interim order passed by this Court on 17-01-2006 is vacated.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Raju

Head Note:

The appellate jurisdiction has a much narrow scope of intervention particularly when the arbitration award has been upheld under Section 34 of the Act, 1996.

मुख्य बिंदु:

अपीलीय न्यायालय को मध्यस्थ अवार्ड को हस्तक्षेप करने का सीमित अधिकार प्राप्त है जबकि धारा 34 के आवेदन में मध्यस्थ अवार्ड को स्थिर रखा गया है।

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