

Review Of Judgment/Order Passed Under Section 11 Of The A&C Act Is Not Permissible: Andhra Pradesh High Court

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**IN THE HIGH COURT OF ANDHRA PRADESH
R. RAGHUNANDAN RAO; J.**

30.09.2022

**Rev. I.A.No.1 of 2022 In Arbitration Application No.138 of 2017 Rev.I.A.No.1 of 2022
Nagireddy Srinivasa Rao versus Chinnari Suryanarayana**

Counsel for Petitioner: Sri A. K. Kishore Reddy; Counsel for Respondents: Sri T.V.P. Sai Vihari

ORDER

The respondent in the Arbitration Application is the review petitioner herein. The respondents in this review petitioners are being referred to as the applicants.

2. The applicants had entered into a development agreement dated 14.12.2011 with the respondent for development of land belonging to them for the purpose of constructing apartment complex in the said land in Pata Srikakulam Village, Srikakulam Mandal and District. On account of the disputes that arose between the parties, an application was filed before this Court under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator. This application was allowed on 27.08.2021 and an Arbitrator was appointed to adjudicate the disputes between the parties.

3. After the said order had been passed, the respondent in the arbitration application has filed the present review application. The contention of the review petitioner is that the learned Judge while allowing the application had recorded, in paragraph 14 of the order, the contention of the review petitioner, that the application is barred by limitation and, in paragraph 15 of the order, the contention of the applicants that the application is not barred by limitation and observed, in paragraph 20 of the order, as follows:

"In the instant case, no plea is taken in the counter-affidavit that the dispute raised by the applicants is a stale claim and barred by limitation and, therefore, it is not necessary for this Court to dilate on the aforesaid issue."

4. The review petitioner contends that even though such a claim had been raised by the review petitioner, the learned Judge had not taken the said claim into account, due to which, the right of the review petitioner to object to the arbitration on the ground of limitation is lost.

5. Sri A.K. Kishore Reddy would submit that the counter affidavit filed by the review petitioner had specifically adverted to various dates and even though the express, specific contention, that the application is barred by limitation, may not have been raised, the fact would remain that a reading of the pleadings would clearly show that such a plea has been raised by implication.

6. Sri T.V.P. Sai Vihari, learned counsel appearing for the respondents in the present application would submit that a review petition under Section 11 of the Act is not maintainable.

7. He relies upon the judgment of the Hon'ble Supreme Court in **Jain Studios Ltd., vs. Shin Satellite Public Co. Ltd.**,¹ (paragraphs 6 and 8) for this proposition.

¹ 2006 (5) SCC 501

8. Heard Sri A.K. Kishore Reddy, learned counsel appearing for the review petitioner and Sri T.V.P. Sai Vihari, learned counsel appearing for the respondents in this application.

9. In view of the judgment of **SBP & Co. vs, Patel Engineering Ltd., and Anr.**,² it is now well settled that the proceedings under Section 11 of the Act are judicial proceedings.

10. However, the question – whether a review is available against the orders passed under Section 11 of the Act ?, has to be considered.

11. In **Jain Studios Ltd., vs. Shin Satellite Public Co. Ltd.**, the Hon'ble Supreme Court was considering a case where a review application was moved against an order under Section 11 of the Act. While considering this issue, the Hon'ble Supreme Court had held that by virtue of Article 137 of the Constitution of India, a review is provided against any judicial order of the Hon'ble Supreme Court and as such a review would be maintainable. However, the Hon'ble Supreme Court did not go into the question, whether a review against an order under Section 11 of the Act would be available, de hors Article 137 of the Constitution of India.

12. The present application is before the High Court, which does not have the benefit of Article 137 of the Constitution of India. In such circumstances, it would have to be seen whether such review is permissible on the basis of any provision of law or judgment.

13. The Hon'ble Supreme court, while considering the decision of a quasi judicial authority to set aside an earlier order, on merits, in the case of **Patel Narshi Thakershi v. Pradyumansinghi Arjunsinghi**³, had held as follows:

4. The first question that we have to consider is whether Mr Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr Mankodi was functioning as the delegate of the State Government. The order passed by Mr Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr Mankodi was liable to be set aside.

14. This decision was cited before a division bench of the hon'ble Supreme Court, in **Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal**⁴, at page 425, where the Hon'ble Supreme Court was considering the power of the Industrial tribunal to set aside an ex parte order. The Hon'ble Supreme Court distinguished this judgement by holding as follows:

13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Patel Narshi

² 2005 (8) SCC 618

³ (1971) 3 SCC 844 at page 847,

⁴ 1980 Supp SCC 420 : 1981 SCC (L&S) 309

Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in Section 11. The answer to the question is, therefore, to be found in sub-section (1) of Section 11 and not in sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression “review” is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.

15. The issue, whether an application for review of an order, under section 11 of the Act, would be maintainable, came up before the Hon’ble High Court at Allahabad in **Manish Engineering Enterprises vs. Managing Director, IFFCO, New Delhi & Ors.**⁵. The judgement in this case was followed in **Smt. Chandra Dickshit vs. Smart Builders**⁶. In both the cases, the Hon’ble High Court of Allahabad took the view that the power of review is a creature of the statute and in the absence of such specific power it would not be appropriate to hold that a review is maintainable, unless the review is a procedural review.. The observations of the Hon’ble High Court of Allahabad, on this count, are as follows:

“In Grindlays Bank v. Central Government Industrial Tribunal, reported at 1980 Supp SCC 420 : AIR 1981 SC 606, the Apex Court held that a procedural review, where to remove a wrong suffered by a party for no fault of the party, would be maintainable. In Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd., reported at (2005) 13 SCC 777 : (AIR 2005 SC 1782), the Apex Court has observed in para 19 that where a court or quasi-Judicial authority having Jurisdiction to adjudicate on merits proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. However, if there is a procedural irregularity, the order can be reviewed by exercise what is described as procedural review.”

16. There is no provision in the Arbitration and Conciliation Act, 1996, providing for a review of an order passed under Section 11 of the Act. The provisions of the Act also do not make out a case for holding that such a power of review is available by implication. It is now necessary to see whether the review sought by the review petitioner falls under the category of review, on account of procedural irregularity or a review on merits.

⁵ AIR 2008 All 56

⁶ AIR 2008 All 95

17. In the present case, there is no procedural irregularity in terms of non-service of notice to the affected party or passing of an order without hearing the affected party. The complaint of the review petitioner is on the merits of the order passed by the learned judge. In such circumstances, the review sought by the review petitioner would have to be treated as a review on merits.

18. As a review petition, on merits, is not permissible unless there is a specific provision for such review, the present application would have to be rejected on the ground that this Court does not have the power to undertake the review on merits of an earlier order passed under Section 11 of the Act. Accordingly the review application is dismissed.

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