

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 4628 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2023****In R/FIRST APPEAL NO. 4628 of 2023**

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BOARD OF TRUSTEES OF DEENDAYAL PORT THROUGH EXECUTIVE  
ENGINEER (H)

Versus

M/S. SHANTILAL B. PATEL & ANR.

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Appearance:

AISHVARYA(8018) for the Appellant(s) No. 1

for the Defendant(s) No. 2

PARAS K SUKHWANI(8284) for the Defendant(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE  
SUNITA AGARWAL**

and

**HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

**Date : 19/02/2024**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE)**

1. The present First Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 ["Act of 1996" for short]. The appellant awarded the contract vide work order No. CM-I/WK/2110-A/88 dated 22.8.2003 to the respondent No.1 - contractor with the timeline to complete the same within 12 months. The said contract came to be executed by the respondent No.1. The appellant herein vide its letter dated 13.10.2004 informed the respondent No.1 to prepare the final bill and invited the respondent No.1 for signing the final bill. The respondent No.1 disputed the final bill and requested to consider its additions as per the Clause-25 of the Tender

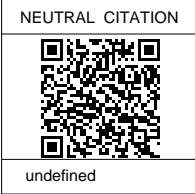


document, which it had raised against the appellant. Since there was a dispute, sole Arbitrator came to be appointed to adjudicate the same. On 29.6.2013, the learned Arbitrator published the award directing payment of Rs.11,10,000/- along with the interest at the rate of 6% p.a. till the date of payment.

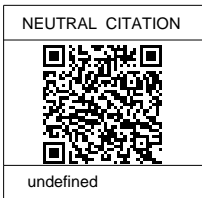
1.1 Aggrieved, the appellant herein preferred the petition under Section 34 of the Act of 1996 challenging the said award dated 29.6.2013 passed by the learned Arbitrator. By the judgment and order dated 28.4.2014, the Additional District Judge, Gandhidham, District: Kutchchh was pleased to dismiss the said Civil Misc. Application.

1.2 Aggrieved, the appellant has filed the present appeal.

2. The learned counsel for the appellant Ms. Aishwarya Gupta submitted that the respondent No.1 had raised 21 claims for the work of reclamation of OSG/Back up area. She further submitted that the appellant had filed a detailed reply dated 23.8.2006 whereby it was categorically stated that none of the claims were maintainable. In support thereof, the appellant had also produced the relevant documents before the learned Arbitrator. She further submitted that the learned Arbitrator allowed only three claims of the respondent No.1 and rest of the claims came to be rejected. She submits that claim No.2 came to be



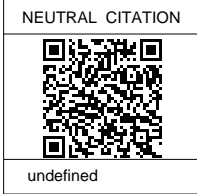
allowed for Rs.6,00,000/- towards cutting and re-filling of segmental bund above +7 mtr. level; that claim No.7 was allowed for Rs.4,98,000/- for providing bunders and B.T. metals; and claim No.19 was allowed for Rs.12,000/- for providing the mesh in the area of 120 mt near the end of jetty. She submits that the learned Arbitrator also erred in awarding Rs.15,000/- towards the costs. She submits that reasoning given by the learned Arbitrator while allowing the said claims were contrary to the special conditions and specifications of work as agreed between the parties and thus, is illegal and opposed to the public policy of India. She submits that the learned Arbitrator has proceeded on the basis that all the averments made by the respondent No.1 are correct, and without recording any reasons in respect of the same, the learned Arbitrator has arrived at the conclusion in favour of the respondent No.1. It is her contention that the award is passed in contravention of Section 28(3) of the Act of 1996 which provides that the Arbitral Tribunal has to decide the dispute in accordance with the terms of the contract. Further contention is that the arbitral award is passed in contravention of Section 31(3) of the Act of 1996, which mandates that the arbitral award shall state the reasoning upon which it is based. It was submitted that the claims which were allowed by the learned Arbitrator are merely based on the recording of the submissions of the respondent No.1 for such claims and the learned Arbitrator has



not given any independent reasons as to why such claims are allowed. She, therefore, submitted that the award dated 29.6.2013 be set aside.

3. *Per contra*, the learned advocate Mr. Paras Sukhwani appearing for the respondent No.1 has submitted that cogent reasons have been given by the learned Arbitrator in allowing the said three claims of the respondent No.1. He submits that the learned Arbitrator has neither travelled beyond the scope of the agreement nor the terms of the contract, and certain claims have been decided on the basis of the site visit and are based on appreciation and interpretation of the conditions which have been properly interpreted by the learned Arbitrator. He submits that the scope of Section 34 of the Act of 1996 for interference in an arbitral award is, now, very limited. The learned trial Court has rightly appreciated the legal position while dismissing the petition under Section 34 of the Act of 1996. He submits that the appellant herein has not made out any ground as required by Section 34 of the Act of 1996 to challenge the award and instead, has challenged the award on merits, which is not permissible in law. He, therefore, submits that the present appeal be dismissed.

4. Heard learned counsels for the parties and perused the documents on record.



5. It is trite law that the Court cannot sit in appeal over the arbitral award and re-examine the merits. It is further not permissible to re-appreciate the evidence on record. By a catena of decisions of the Apex Court, the scope of interference under Sections 34 and 37 of the Act of 1996 is very limited. Further, it is well settled that the award cannot be interfered with where on interpretation of any contract or document, two views are possible, and the learned Arbitrator has accepted one view.

6. In the present case, the learned counsel for the appellant could not make out any case with respect to any illegality in arbitral award. The emphasis of the learned counsel for the appellant was on re-appreciation of evidence, which is not permissible under Sections 34 and 37 of the Act of 1996. No case is made out in respect of contravention of any law related to the public policy or public interest or in respect of any patent illegality in the arbitral award. With respect to the contention of the learned counsel for the appellant that the arbitral award has been passed in contravention of the provisions of Sections 28(3) and 31(3) of the Act of 1996, no case has been made out from the documents on record. Further, the learned counsel for the appellant could not demonstrate as to how the learned Arbitrator has travelled beyond the conditions of the agreement or terms of the contract for the claims which have been



allowed by the learned Arbitrator. Further, the findings of the learned Arbitrator are based upon the proper appreciation and interpretation of the prevalent conditions and the site inspection along with the documents on record. Further, no error could be pointed out by the learned counsel for the appellant in the impugned judgment and order.

7. For the aforesaid reasons, no ground is made out within the parameters of Section 34 or Section 37 of the Act of 1996 to show any illegality, irrationality or perversity in the arbitral award. The present First Appeal is accordingly, dismissed. No order as to costs.

In view of dismissal of the main First Appeal, the Civil Application for stay also stands disposed of.

**(SUNITA AGARWAL, CJ)**

**(ANIRUDDHA P. MAYEE, J.)**

KAUSHIK D. CHAUHAN