

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 20th January, 2023**

+ **FAO (COMM) 20/2023 & CM APPL. 2925-2928/2023**

MUNICIPAL CORPORATION OF DELHI **Appellant**
Through: Mr. Sanjeev Sagar, Standing Counsel for
MCD with Ms. Nazia Parveen, Adv.

Versus

MR NARINDER KUMAR **Respondent**
Through: None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J.: (ORAL)

1. Appellant (Municipal Corporation of Delhi), the original respondent¹ before the learned Sole Arbitrator, through this appeal under *Section 37* of The Arbitration and Conciliation Act, 1996² seeks to challenge the impugned judgment dated 31.08.2022 whereby in a petition under *Section 34* of the Act filed by it, the learned District Judge (Commercial Court)-02, Patiala House Court, New Delhi³ has upheld the Arbitral Award dated 27.11.2020 passed by the learned Sole Arbitrator in favour of the respondent, the original claimant⁴ before the learned Sole Arbitrator.

¹ Hereinafter referred to as "MCD"

² Hereinafter referred as "Act"

³ Hereinafter referred to as "learned Trial Court"

⁴ Hereinafter referred as "allottee"

2. This Court, after hearing detailed arguments addressed by the learned Standing Counsel for MCD at length, prior to issuing notice and without entering into the merits of the disputes involved in the present petition, is of the opinion that in view of the settled position of law regarding the interpretation and limited scope of interference by the appellate Court under *Section 37* of the Act, especially in view that the MCD is, *once again*, seeking to reagitate the very same contentions which have already been refuted after due consideration by two forums being the learned Sole Arbitrator and the learned Trial Court below, by two detailed/speaking orders separately, the petition in the present form is not maintainable under *Section 37* of the Act.

3. It is thus that this Court, hereinbelow, is elucidating only the broad and essential facts involved in the present dispute, without going into any specific details with respect to time or date or event, more so, as the same are irrelevant for the purposes of the adjudication of the present appeal in terms of what follows hereunder.

4. Record of the present appeal reveals that pursuant to invitation of sealed tenders for allotment of parking site, the allottee was allotted car/scooter parking site at Jwala Heri Market, Paschim Vihar, New Delhi⁵ for a period of five years. As such, though the possession of the said parking site was claimed to be handed over to him on a particular date, however, physical possession thereof was actually handed over to him subsequently. As the allottee faced non-cooperation in operating the said parking site from various entities and as he was handed over only a part thereof instead of what was allotted to him, the allottee faced difficulties. Moreover, despite the allottee repeatedly taking up his cause

⁵ Hereinafter referred as “**parking site**”

with the MCD and the local Police, from time to time, MCD served Demand Notice(s) and issued Show Cause Notice(s) upon him for payment of outstanding dues for different periods.

5. Because a sizable chunk of the parking site originally allotted to the allottee could not be made operational as some portions thereof were deleted by the Traffic Police and as no amount was owing on his behalf, he initiated arbitral proceedings against MCD before the learned Sole Arbitrator claiming refund of the excess amount of Rs.47,08,815/- along with interest @ 15% p.a. along with a declaration to the effect that he was not liable to pay any amount to MCD towards alleged licence fee and cost of arbitration. Interestingly, as MCD failed to file its Statement of Defence thereto despite due service, its right to file the same stood waived by the learned Sole Arbitrator. Mysteriously, though MCD was duly represented by its counsel, no challenge was made to it. Additionally, as there was no response from MCD and no admission/denial of documents filed by allottee were carried out, it resulted in the non-framing of issues, however, despite the aforesaid flaws by the MCD, the allottee led its evidence and produced his witness, who, needless to say, was duly cross-examined for long durations repeatedly by learned counsel for MCD.

6. It was thence that the learned Sole Arbitrator, after holding that nothing substantial came out of the lengthy cross-examination of the witness of the allottee and disapproving the judgements relied upon by MCD being *S.K. Pandey vs. MCD*⁶ and *Delhi Jal Board vs. M/s. Dev Raj Kataria*⁷, rejected all the pleas/ defences raised by MCD with respect to authority of the witness, length of the parking site allotted to the allottee, the site map and taking note of

⁶ 2012 SCC OnLine Del 254

⁷ 2015 SCC OnLine Del 14058

the admitted 'File Noting' produced by the allottee, which indicated the approval from the Additional Commissioner (Rev.) and after considering the relevant material and evidence, especially the admitted position that the parking site was reduced to a great extent resulting in deprivation of the complete area allotted at the time of possession to the allottee and further noting that the claim of allottee for remission was due to reduction in the total parking area and not due to declining of potential customers or other extraneous or unforeseen reasons, vide the Arbitral Award dated 27.11.2020 awarded an amount Rs.47,08,815/- along with interest as per what is set out therein.

7. Aggrieved thereby, under the aforesaid circumstances, MCD filed objections under *Section 34* of the Act against the Arbitral Award, *once again*, reiterating the same contentions and relying upon the same two judgments which already stood refuted by the learned Sole Arbitrator. Alas, MCD was unable to overcome its flaws and the learned Trial Court, taking note of the fact that the MCD could not be allowed to urge a new ground which was never raised before the learned Arbitrator, and further holding that while adjudicating a petition under *Section 34* of the Act, the Court cannot reappraise facts and is not expected to interfere with an award if the conclusion of the learned Arbitrator is based on a plausible view and is in consonance with the terms of the contract as well as public policy, dismissed the said objections. The learned Trial Court also held that in any event, the acts of the MCD disclosed that it was well aware of the hindrances with respect to the allotted parking site faced by the allottee and further that the allottee was not an unauthorized occupant of the parking site.

8. Aggrieved thereby, the MCD has now filed another set of objections, this time under *Section 37* of the Act against the impugned judgment of the learned

Trial Court before this Court, *once again*, reiterating the same contentions and relying upon the very same two judgments which already stood refuted twice, once by the learned Sole Arbitrator and thence by the learned Trial Court.

9. It is only after hearing learned Standing Counsel for MCD at considerable length and upon going through the numerous documents on record as also the very same two judgements cited by the learned counsel for MCD, this Court has no hesitation in holding that the opinion recorded hereinbefore is since strengthened with confirmation as the MCD is indeed, through the present appeal, blatantly trying to exhibit the same old dilapidated building albeit with a fresh coating over it for approval again, even though the same has twice been rejected as such. Unfortunately, the MCD by this appeal is trying to reiterate and reagitate the very same issues which warrant no consideration after the concurrent findings of the two forums below. More so, as the Court dealing with a challenge to an order passed by the Court below while disposing of a petition/objection under *Section 34* of the Act has almost 'Nil' scope of interference therewith lest there is something adverse, perverse, contrary to law and/or which actually shocks the conscience of the Court.

10. The law qua maintainability of an appeal under *Section 37* of the Act is well settled and does not require any further clarification as the law thereof is further more stringent and an order under *Section 34* of the Act cannot be interfered with if the two forums below, after exercising their minds, have come to the same conclusion/finding of fact and law. The Court exercising jurisdiction under *Section 37* of the Act cannot and is not allowed to create a new path to render a new finding save and except when something has been left, overlooked and/or ignored. The said view has been affirmed by a Co-ordinate Bench of this Court in *National Highways Authority of India vs. M/s Intercontinental*

Consultant and Technocrats Pvt. Ltd.⁸ wherein it was held as under:-

“8.....Besides the same argument and submissions were gone into by the Tribunal which gave proper justifications for its conclusions. Learned Single Judge also, after careful scrutiny, endorsed that view. Given the limited scope of the Appellate jurisdiction under Section 37 of the Act, interference is not called for....”

11. The same position has once again been reiterated after discussing the broad principles and the scope of the appellate Court while adjudicating a petition under *Section 37* of the Act in detail in another recent decision by a Co-ordinate Bench of this Court in ***Mangalwar Filling Station v. Indian Oil Corporation Limited***⁹, of which, one of us (Manmohan, J.) was a part, wherein is has been held as under:-

“16. Consequently, while exercising appellate jurisdiction under Section 37 of the Act, this Court has similar restrictions as prescribed under Section 34 of the Act i.e. this Court can only ascertain whether the exercise of power by the learned District Judge under Section 34 of the Act was lawful or not. Also, once an arbitral award has been confirmed in an application filed under Section 34 of the Act, the Appellate Court must be extremely cautious in disturbing concurrent findings of the fact and law as they are ordinarily not amenable to interference under Section 37 of the Act. Further, it is settled law that the Appellate Court should generally not interfere unless it is apparent that the perversity of the arbitral award goes to the root of the case, without a possibility of alternative interpretation that might sustain the award.”

12. Needless to say, the Special Leave Petition being SLP(C) No.12125/2021 against the abovementioned order filed before the Hon’ble Apex Court has since been dismissed vide order dated 16.08.2021.

13. Moreover, in view of catena of pronouncements by the Hon’ble Apex

⁸ 2018 SCC OnLine Del 10328

⁹ 2021 SCC OnLine Del 3646

Court in *MMTC Limited vs. Vedanta Limited*¹⁰ and *Haryana Tourism Limited vs. Kandhari Beverages Limited*¹¹ amongst others, it is now a settled position of law that there is hardly any scope for interference under *Section 37* of the Act by the appellate Court and also that such interference by the appellate Court should only be warranted upon due satisfaction expressed/shown by the party challenging the impugned order of disposal of the petition/objection under *Section 34* of the Act by the Court below.

14. Importantly, upon observation of the aforesaid, in the opinion of this Court, a necessary corollary to be noted from the provisions of *Section 34* of the Act and *Section 37* of the Act and the aforesaid established law is that what is not permissible to be gone into by the adjudicating Court below under a petition under the provisions of *Section 34* of the Act can certainly not be permitted to be adjudicated upon by the appellate Court under the provisions of *Section 37* of the Act. Even otherwise, the position across all the Statutes is same and the scope of interference by an appellate Court is statutorily very limited and restricted from that which is provided in the Court of first instance below. It is thus that the legislature, being mindful of the same, in view of all the wisdom at its disposal, has painstakingly provided different contours to both the provisions of *Section 34* and *Section 37* in the same statute. The same is the guiding principle to be borne in mind while dealing with a petition under *Section 37* of the Act.

15. Consequently, the MCD has been unable to overcome its flaws and this leaves no iota of doubt in the mind of this Court that in view of the aforesaid settled principles of law and on consideration of the factual aspects, the MCD

¹⁰ (2019) 4 SCC 163

¹¹ (2022) 3 SCC 237

cannot be allowed to reagitate the same grounds which have already been refuted and rejected by two forums below, especially when perversity and absence of alternative interpretation are not made out, as the same is beyond the scope of adjudication of this Court under the provisions of *Section 37* of the Act. 16. Accordingly, as the present appeal is *per se* not maintainable in law and/or facts and further as the MCD has been unable to make out any ground of interference for this Court to exercise jurisdiction under the said provisions of *Section 37* of the Act to interfere with the impugned order, the present appeal, along with the pending applications, if any, is *dismissed in limine*, leaving the appellant/MCD to bear its own costs.

SAURABH BANERJEE, J.

MANMOHAN, J.

JANUARY 20, 2023

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