IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

ARBITRATION APPEAL NO. 03 OF 2022

1 National Highways Authority of India
(Ministry of Road Transport and Highways)
Through its Project Director,
Project Implementation Unit – 1, Nagpur,
Office at Hill Top, Nagpur, Tah. & Dist. Nagpur.

2 Secretary, Government of India
(Ministry of Road Transport and Highways),
Dwarka, New Delhi.

.. Appellants

Versus

1. The Additional Commissioner, Nagpur and
Arbitrator under the National Highways
Act,1956.
Having office at Old Secretariat Building,
Civil Lines, Nagpur – 440 001.

2. The Deputy Collector, Land Acquisition
(General)
and Competent Authority, National Highway
Authority, Collector Compound, Nagpur.

3. Shri Nareshchandra Maheshchandra Agrawal,
Aged about 60 years, Occ.: Business,
R/o. Plot No.150, Agrawal Bhavan,
Ravi Nagar Square, Amravati Road, Nagpur.

4. Smt. Nirnjana Haridas Wasani
Aged about 68 years, Occ.:Agriculturist,
R/o. Plot No.26, Athwa Mile, Amravati Road,
Behind Bank of India, Dawalamethi, Nagpur.

5. Mrs. Neeta Hetal Kariya,
Aged about 40 years, Occ.: Housewife,
R/o. B-405, Sai Shivam, Cabin Road,
Behind National Diary, Sai Nagar,
Thane – 401105

.. Respondents

6. Mrs. Bharti Kamlesh Thakkar
Aged about 44 years, Occ.: Housewife,
R/o.13/4, Dr. P.K.B. Road, Hora Corporation,
Hora, West Bengal – 711101.

7. Mrs. Heena Ajay Baraliya
Aged about 47 years, Occ.: Housewife,
R/o. Raghukul, Small Ayachit Mandir,
Kumbharpura, Mahal, Nagpur.

8. Shri Hitesh Haridas Wasani
Aged about 42 years, Occ.: Agriculturist,
R/o. Plot No.26, Athwa Mile,
Amravati Road, Behind Bank of India,
Dawalamethi, Nagpur.

Mr.A.A.Kathane, Advocate for appellants.
Ms.T.H.Khan, AGP for respondent Nos.1 & 2.
Mr.C.S.Kaptan, Senior Advocate assisted by Mr.A.V.Khare, Advocate for respondent Nos.3 to 8.

CORAM : MANISH PITALE, J.
RESERVED ON : 30/06/2022
PRONOUNCED ON : 20/08/2022

JUDGMENT

Heard. **Admit.** Heard finally with the consent of the learned counsel for the rival parties.

(2) By this appeal, National Highways Authority of India and the Government of India, through the Ministry of Road Transport and Highways(appellants) have challenged judgment and order dated 21/12/2020, passed by the Court of Principal District Judge, Nagpur (PDJ) in arbitration application filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (Act of 1996). By the said judgment and order, the PDJ has partly allowed the application and set aside Award passed by the Arbitrator, only to the extent of granting additional 10% amount on total compensation to the contesting respondent Nos.3 to 8 for loss of easementary rights, as per Section 3-G(2) of the National Highways Act, 1956 (Act of 1956).

(3) The appellants undertook the process of acquisition of lands of respondent Nos.3 to 8 through the respondent No.2 – Land Acquisition Collector and Competent Authority, under the provisions of the Act of 1956, pertaining to the land located in village Ketapar, Tah. Kalmeshwar, Dist. Nagpur. The said land was acquired for Saoner–Dhapewada–Kalmeshwar–Gondkhairi section of National Highway No.7. Pursuant to the proceedings of acquisition undertaken by the respondent No.2 under the provisions of said Act, on 31/03/2018, the

said respondent pronounced Award/Order, offering compensation to respondent Nos.3 to 8. Aggrieved by the same, the said respondents invoked Section 3-G (5) of the said Act, as a consequence of which, arbitration proceeding was initiated before the respondent No.1 – Additional Commissioner/Arbitrator.

(4) The respondent Nos.3 to 8 raised various grounds in their application seeking enhancement of compensation. They relied upon the ready reckoner concerning the said lands and also asserted that the land had non-agricultural potential, being located adjacent to the highway. The respondent Nos.3 to 8 also referred to relevant guidelines pertaining to the ready reckoner and stated the basis for their claims towards enhanced compensation. The appellants opposed the claims of respondent Nos.3 to 8 before the Arbitrator.

(5) The respondent No.1 Additional Commissioner/ Arbitrator considered the material placed on record by the rival parties and by Award/Order dated 30/11/2019, partly allowed the application of the claimants i.e. respondent Nos.3 to 8. The operative portion of the Award/Order of the Arbitrator reads as follows: -

"Order

i. *The application is partly allowed.*

ii. *The non-applicants are directed to pay to the applicants an amount of Rs.2630/- per Sq. Mt. for the acquired lands of 0.4530 H.R., 0.0720 H.R. & 0.0870 H.R. i.e. total 0.6120 H.R., i.e. 6120 Sq.Mtrs which comes to Rs.1,60,95,600/-.*

iii. *The non-applicants are directed to pay 100% solatium to the applicants on the amount of total compensation, less the amount already granted/received by the applicants towards land component.*

iv. *The non-applicants are also directed to pay to the applicants an additional amount of 10% of the total compensation amount for the loss of easement rights as per section 3-G(2) of the National Highways Act, 1956, if not already paid.*

v. *The non-applicants are further directed to pay the applicants an interest @9%p.a. on the enhanced compensation w.e.f. the date of notification under section 3-D of the said Act till the date of payment of the enhanced compensation.*

vi. *The non-applicants are directed to pay to the applicants additional component @12% per annum of the enhanced component as per the RFCTLARR Act, 2013.*

vii. *Order may be communicated to all the parties concerned."*

(6) Aggrieved by the said Award/Order passed by the respondent No.1 – Additional Commissioner/Arbitrator, the appellants filed application invoking Section 34 of the Act of 1996. Various grounds of challenge were raised, claiming that the Award deserved to

be set aside on the parameters specified in Section 34 of the Act of 1996. The respondent Nos.3 to 8 filed their replies and opposed the said application.

(7) By the impugned judgment and order dated 21/12/2020, the PDJ rendered findings in favour of respondent Nos.3 to 8 on all the aspects of the matter, except the aspect of payment of additional amount of 10% on the total compensation for loss of easementary rights as per Section 3-G (2) of the Act of 1956. It was found that the Arbitrator failed to appreciate that there was no evidence placed on record on behalf of respondent Nos.3 to 8, to demonstrate that due to acquisition of part of their lands, they were finding it difficult in developing the same. Accordingly, the PDJ partly allowed the application filed by the appellants and partly set aside the Award of the Arbitrator to the aforesaid extent.

(8) Aggrieved by the impugned order, the appellants filed the present appeal in which notice for final disposal was issued on 10/04/2022. The respondent Nos.1 and 2 were represented by the Additional Government Pleader, while learned counsel having instructions waived service on behalf of respondent Nos.3 to 8. Upon replies being filed, the appeal was taken up for final disposal.

(9) Mr. Kathane, learned counsel appearing for the appellants submitted that the PDJ committed a grave error in partly setting aside the Award passed by the Arbitrator. It was submitted that when the PDJ found that a ground was made out by the appellants for setting aside the Award, the same could not have been partly set aside and the Award in its entirety ought to have been set aside, leaving the parties to go for arbitration afresh, if so advised. It was submitted that partial setting aside the Award was not contemplated and the same amounted to modifying the Award of the Arbitrator. The learned counsel for the appellants further submitted that the PDJ, while exercising power under Section 34 of the Act of 1996, having found that the Award did deserve interference, the entire Award ought to have been set aside.

(10) In this regard, the learned counsel for the appellants relied upon the judgments of the Hon'ble Supreme Court in the case of *National Highways Authority of India(NHAI) Vs. M. Hakeem and another (2021) 9 SCC 1*, *State of Chhattisgarh and others vs. Sal Udyog Private Limited (2022) 2 SCC 275*, *Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private Limited, (2021) 7*

SCC 657 and Mcdermott International Inc. Vs. Burn Standard Co. Ltd. & Ors. (2006) 11 SCC 181.

(11) Apart from the aforesaid contention, the learned counsel for the appellants submitted that sufficient material was placed before the PDJ to demonstrate that the entire Award passed by the Arbitrator was vitiated, because the guidelines pertaining to the ready reckoner, particularly guideline No.16(b) was not appreciated in the correct perspective by the Arbitrator. It was submitted that a slab system was contemplated under the said guidelines, which ought to have been applied to the facts of the present case, but the Arbitrator failed to apply the same, resulting in exorbitant compensation paid to respondent Nos.3 to 8.

(12) It was further submitted that the direction to pay interest @9% p.a. on the enhanced compensation was granted from incorrect date, because it was payable from the date of taking over possession and not from the date of the notification. On this basis, it was submitted that the entire Award was vitiated on the touchstone of the grounds available under Section 34 of the Act of 1996, for interference in arbitral Awards. It was submitted that therefore, the

entire Award ought to have been set aside, which the PDJ completely failed to appreciate while passing the impugned judgment and order.

(13) On the other hand, Mr. C. S. Kaptan, learned Senior Counsel appearing for respondent Nos.3 to 8 submitted that the impugned order passed by the PDJ under Section 34 of the Act of 1996, could not be said to be modification of the Award of the Arbitrator and therefore, there was no substance in the contention raised on behalf of the appellants that the parties ought to be relegated to arbitration afresh. By referring to order dated 26/08/2021, passed by this Court in Arbitration Appeal No. 28 of 2019 (*Shri Sarjuprasad s/o Sangmlal Gupta vs. National Highways Authority of India and others*) and connected appeals, it was submitted that even applying the law laid down by the Hon'ble Supreme Court in the case of *NHAI vs. M. Hakeem* (supra), as also other judgments indicated by the learned counsel for the appellants, it could not be said that the impugned order passed by the PDJ amounted to modification of the arbitral Award.

(14) Insofar as the merits of the matter are concerned, the learned counsel submitted that the basis for enhanced

compensation granted by Award/Order of the Arbitrator was reasonable and sound. It was based on public document in the form of ready reckoner. The limited scope available under Section 34 of the Act of 1996 to interfere in an arbitral Award, indicated that the appellants had failed to make out sufficient grounds for interference with the Award on merits. The Arbitrator had taken into consideration the ready reckoner, as well as guidelines, including guideline No.16(b), while holding that respondent Nos.3 to 8 were entitled to compensation @Rs.2630/- per square meter for the acquired lands and the conclusions rendered therein could not be said to be perverse or open to interference in the limited scope available under Section 34 of the Act of 1996. On this basis, it was submitted that the appeal deserved to be dismissed.

(15) Heard learned counsel for the rival parties and perused the material placed on record. The foremost contention raised on behalf of the appellants pertains to the aspect of scope and extent under Section 34 of the Act of 1996, to interfere with an arbitral Award. The contention of the learned counsel for the appellants is that once the Court, under Section 34 of the Act of 1996, finds that there is

a ground made out for interference in the arbitral Award, the entire Award must be set aside and the parties can be relegated for arbitration afresh, if so advised. Much emphasis was placed on the aforementioned judgments, to claim that the manner in which the impugned order was passed by the PDJ, it amounted to modification of the arbitral Award, which was wholly impermissible.

(16) This Court is aware that the Supreme Court in various judgments, including *Mcdermott International Inc. Vs. Burn Standard Co. Ltd.* (supra) and judgments thereafter, culminating in the aforesaid judgment in the case of *NHAI vs. M. Hakeem* (supra) has categorically held that the Court exercising power under Section 34 of the Act of 1996, does not have power to modify an arbitral Award. It is specifically held that the Court does not consider an appeal under Section 34 of the Act of 1996 and that it performs a supervisory role, wherein it cannot correct the errors of the Arbitrators. The Court can only quash the Award, leaving the parties to go for arbitration afresh, if so advised. In the case of *NHAI vs. M.Hakeem* (supra), in this context, it has been held as follows :-

> ***"48.*** *Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the*

Lakshman Rekha and doing what according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over."

(17) There can be no quarrel with the aforesaid proposition, but the question that arises for consideration in this case is, whether the impugned order passed by the PDJ amounts to modification of the arbitral award or that the Award is partially set aside. The operative portion of the impugned order passed by the PDJ reads as follows: -

"O R D E R

i. *The application is partly allowed.*

ii. *The Award passed by learned Arbitrator in Arbitration Case No.95/ARB/2018-19, Mauza Ketapar, Tahsil Kalmeshwar, District Nagpur, dated 30th November 2019 is partly set aside to the extent granting the additional amount of 10% of total compensation amount for the loss of easement rights as per Section 3G(2) of the National Highways Act, 1956.*

iii. *The non-applicant Nos.3 to 8 to bear the costs of the applicants.*

iv. *R & P be returned to the learned Arbitrator.*

Dictated and delivered in open court."

(18) A perusal of the above quoted portion of the impugned judgment and order clearly shows that the PDJ has partly set aside the Award passed by the Arbitrator. Therefore, the question that really arises for consideration is, as to whether the Court, exercising power under Section 34 of the Act of 1996, can partially set aside an Award of the Arbitrator. In other words, even when the Court is convinced that the Arbitrator has erred only on specific issues and the Award is otherwise sustainable, is the Court mandatorily required to set aside the entire Award, leaving the parties for fresh round of arbitration, if so advised.

(19) None of the counsel brought to the notice of this Court the relevant judgments or the position of law in this regard. While the learned counsel appearing for the appellants emphasized upon the aforementioned judgments of the Supreme Court starting from *Mcdermott International Inc. Vs. Burn Standard Co. Ltd.* (supra) and *NHAI vs. M. Hakeem* (supra) which pertain to the question of power of the Court under Section 34 of the said Act to modify an Award of the Arbitrator, the learned Senior Counsel appearing for respondent Nos.3 to 8 only referred to the said order dated

26/08/2021 passed by this Court in Arbitration Appeal No.28/2019, (in the case of Sarjuprasad s/o Sangmlal Gupta Vs. National Highways Authority of India and others) with connected appeals. The said order of this Court also pertained to the aspect of modification of the Award by the Court. On facts, in that case it was found that the Court while exercising power under Section 34 of the Act of 1996 had, in fact, not set aside the Award, but modified the same on certain aspects. But, none of these judgments could be said to be directly relevant for the issue sought to be raised on behalf of the appellants, to the effect that while exercising power under Section 34 of the Act of 1996, the Court cannot partly set aside the Award and or that the Award must be wholly set aside.

(20) The said question had been engaging attention of this Court and it was found that there were divergent views of Division Benches of this Court, leading to the question being referred to a Full Bench of this Court in the case of ***R.S. Jiwani (M/S.) Vs. Ircon International Ltd., (2010) 1 Mh.L.J. 547***. The Full Bench of this Court framed following questions for consideration : -

> *"(1) Whether doctrine of severability can be applied to an award while dealing with a Petition under section 34 of the Arbitration and Conciliation Act, 1996?*

(2) What is the scope of proviso to section 34(2)(iv) and whether its application is restricted to clause (iv) alone or it applies to the whole of section 34(2) of the Act?"

(21) After referring to various precedents and discussing the law in detail, the Full Bench of this Court in the aforesaid case held as follows: -

"36. *We may now revert back to the facts of the present case which itself is a glaring example of what devastating results can be produced by accepting the contention which has been raised on behalf of the respondent in the present appeal. Undisputedly claims were adjudicated upon on merits. Parties led evidence, documentary as well as oral, argued the matter before the Arbitrator whereafter the Arbitral Tribunal allowed some claims of the claimants and rejected all remaining claims of the claimants and the counter-claim filed by the company. The claimant was satisfied with the award. An enforceable right by way of decree accrued to the claimant in terms of sections 32,35 and 36 of the Act. The company approached this court by filing a petition under section 34 which partially allowed in the sense that out of 15 claims allowed by the Arbitrator in favour of the claimant, held that other claims were not payable to the claimants but still did not make any observation that the award in so far as it rejects the remaining claims and the counter-claim were unsustainable. However, to conclude, the learned Single Judge despite having upheld the claims in favour of the claimants, set aside the entire award in view of the Division Bench judgment in the case of Ms.Pushpa Mulchandani (supra). Could there be a greater perversity of justice to a party which has succeeded before the Arbitral Tribunal as well as in the court of law but still does not get a relief. Is that what is contemplated and was the purpose of introduction of the Act of 1996. An Act which was to provide expeditious effective resolution of disputes free of court interference would merely become ineffective*

statute. Would not the canon of civil jurisprudence with the very object of the Arbitration Act, 1996 stand undermined by such an approach. The effective and expeditious disposal by recourse to the provisions of the 1996 Act would stand completely frustrated if submissions of the respondent are accepted. Partial challenge to an award is permissible then why not partial setting aside of an award. In a given case, a party may be satisfied with major part of the award but is still entitled to challenge a limited part of the award. It is obligatory on the court to deal with such a petition under section 34(1)(2) of the Act. We may further take an example where the Arbitral Tribunal has allowed more than one claim in favour of the claimant and one of such claim is barred by time while all others are within time and can be lawfully allowed in favour of the claimant. The court while examining the challenge to the award could easily severe the time barred claim which is hit by law of limitation. To say that it is mandatory for the court without exception to set aside an award as a whole and to restart the arbitral proceeding all over again would be unjust, unfair, inequitable and would not in any way meet the ends of justice.

37. *The interpretation put forward by the respondents is bound to cause greater hardship, inconvenience and even injustice to some extent to the parties. The process of arbitration even under 1996 Act encumbersome process which concludes after considerable lapse of time. To compel the parties, particularly a party who had succeeded to undergo the arbitral process all over again does not appear to be in conformity with the scheme of the Act. The provisions of section 34 are quite pari materia to the provisions of Article 34 of the Model Law except that the proviso and explanation have been added to section 34(2)(iv). The attempt under the Model Law and the Indian Law appears to circumscribe the jurisdiction of the court to set aside an award. There is nothing in the provisions of the Act and for that matter absolutely nothing in the Model Law which can debar the court from applying the principle of severability provided it is otherwise called for in the facts and circumstances of the case and in accordance with law. The courts will not get*

into the merits of the dispute. Thus, the interpretation which should be accepted by the court should be the one which will tilt in favour of the Model Laws, scheme of the Act and the objects sought to be achieved by the Act of 1996.

38. *For the reasons afore-recorded, we are of the considered view that the dictum of law stated by the Division Bench in the case of Ms.Pushpa Mulchandani (supra) is not the correct exposition of law. We would predicate the contrary view expressed by different Benches of this court for the reasons stated in those judgments in addition to what we have held hereinabove. It is difficult to prescribe legal panacea which, with regard to the applicability of the principle of severability can be applied uniformally to all cases. We find that the principle of law enunciated by us hereinabove is more in comity to object of the Act, legislative intent, UNCITRAL Model Law and will serve the ends of justice better. Thus, we proceed to record our answers to the questions framed as follows :*

> *1. The judicial discretion vested in the court in terms of the provisions of section 34 of the Arbitration and Conciliation Act, 1996 takes within its ambit power to set aside an award partly or wholly depending on the facts and circumstances of the given case. In our view, the provisions of section 34 read as a whole and in particular section 34(2) do not admit of interpretation which will divest the court of competent jurisdiction to apply the principle of severability to the award of the Arbitral Tribunal, legality of which is questioned before the court. The Legislature has vested wide discretion in the court to set aside an award wholly or partly, of course, within the strict limitations stated in the said provisions. The scheme of the Act, the language of the provisions and the legislative intent does not support the view that judicial discretion of the court is intended to be whittled down by these provisions.*

> *2. The proviso to section 34(2)(a)(iv) has to be read ejusdem generis to the main section, as in cases falling in that category, there would be an absolute duty on the court to invoke the principle of severability where the matter submitted to arbitration can clearly be separated from the matters not referred to arbitration and decision thereupon by the Arbitral Tribunal."*

(22) Thus, it becomes clear that in a given case, the Court, while exercising power under Section 34 of the Act of 1996, can set aside an Award partly, depending upon the facts and circumstances of the case. In this context, reference can also be made to the judgment of the Supreme Court in the case of ***J.G. Engineers Pvt. Ltd. Vs. Union of India and another (2011) 5 SCC 758***.

(23) In the said case also, the doctrine of severability was invoked and it was held that when the Award deals with several claims that can be said to be separate and distinct, the Court can segregate the Award on items that do not suffer from any infirmity and uphold the Award to that extent. Thus, it becomes clear that the contention raised on behalf of the appellants in the present case, that the PDJ ought to have set aside the arbitral Award in its entirety, is not justified.

(24) The aspect of grave inconvenience highlighted in the aforesaid full bench judgement of this Court in the case of ***R.S. Jiwani (M/S.) Vs. Ircon International Ltd.*** (supra), if parties are required to go for arbitration afresh in its entirety, even when the arbitral award is only partly set aside, becomes more relevant in situations like in the present case, which concern statutory arbitration, involving an acquiring body on the one hand and private individuals (claimants) on the other. If such a recourse to go for arbitration afresh is to be adopted on every occasion that the arbitral award is found liable to be set aside on some issues, it would lead to multiple rounds of litigation, going against the very purpose of alternative dispute redressal mechanisms like arbitration. The claimants would be forced to pursue numerous rounds of proceedings before the arbitrator and Courts, which cannot be countenanced, thereby indicating that the contention raised in this regard on behalf of the appellants is unsustainable.

(25) This Court is of the opinion that in the present case, each of the issues decided by the Arbitrator were separate and distinct, particularly the issue pertaining to additional amount to be awarded

for loss of easementary rights and therefore, it cannot be said that the PDJ while passing the impugned order, erred in partly setting aside the Award to that extent.

(26) As regards the contentions raised on behalf of the appellants with regard to the merits of the calculations undertaken by the Arbitrator to ascertain the quantum of enhanced compensation payable, suffice it to say that the PDJ considered the said aspect, being conscious of the limited jurisdiction available under Section 34 of the Act of 1996. The scope and extent of interference in an arbitral Award by the Court, while exercising power under Section 34 of the Act of 1996, has been considered and elaborated in numerous judgments of the Supreme Court, including the judgment in the case of ***Delhi Development Authority Vs. M/s. R.S. Sharma and Company (2008) 13 SCC 80.*** After referring to earlier precedents on the said aspect of the matter, the Supreme Court in the said judgment held as follows: -

> ***"21.*** *From the above decisions, the following principles emerge :*
>
> *(a) An Award, which is*
>
> *(i) contrary to substantive provisions of law; or*
>
> *(ii) the provisions of the Arbitration and Conciliation Act, 1996;*

or

(iii) against the terms of the respective contract; or

(iv) patently illegal; or

(v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(b) The award could be set aside if it is contrary to :

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality.

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

With these principles and statutory provisions, particularly, Section 34(2) of the Act, let us consider whether the arbitrator as well as the Division Bench of the High Court were justified in granting the award in respect of Claims 1 to 3 and Additional Claims 1 to 3 of the claimant or the appellant DDA has made out a case for setting aside the award in respect of those claims with reference to the terms of the agreement duly executed by both parties."

(27) Applying the said principles to the facts of the present case, it is found that the Arbitrator while determining the quantum of enhanced compensation payable to respondent Nos.3 to 8, took into consideration the ready reckoner, as well as the relevant guidelines, including the guideline on which the appellants have placed much emphasis. The grounds of challenge raised in the

application filed under Section 34 of the Act of 1996, on behalf of the appellants on the said aspect of the matter do not make out any of the grounds on which the Court of the PDJ could have exercised power in favour of the appellants. As laid down in a series of judgments by the Supreme Court and this Court, the Court while exercising power under Section 34 of the Act of 1996, does not exercise appellate jurisdiction and findings rendered in the arbitral Award can be interfered with only on the touchstone of the principles enumerated in the above quoted judgments. Applying the said principles to the facts of the present case, this Court is not satisfied that a case is made out by the appellants for interference in the Award on the said aspect of the matter. To that extent, the contentions raised on behalf of the appellants cannot be accepted.

(28) But, there is another aspect of the matter and it concerns the direction given in the arbitral Award for payment of interest @9% p.a. on enhanced compensation to respondent Nos.3 to 8, from the date of the notification under Section 3-D of the Act of 1956. The learned counsel for the appellant invited attention of this Court in this context to Section 3-H (5) of the Act of 1956, which reads

as follows: -

> *"**Section 3-H(5)** - Where the amount determined under section 3-G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3-D till the date of the actual deposit thereof."*

(29) A perusal of the above quoted operative portion of the arbitral Award shows that while granting relief to respondent Nos.3 to 8 relatable to Section 3-H (5) of the Act of 1956, the Arbitrator directed as follows: -

> *"(v) The non-applicants are further directed to pay the applicants an interest @9% p.a. on the enhanced compensation w.e.f. the date of notification under Section 3D of the said Act till the date of payment of the enhanced compensation."*

(30) The said direction could be said to be illegal inasmuch as under Section 3-H (5) of the Act of 1956, interest @9% p.a. can be granted by the Arbitrator on the excess amount from the date of taking possession under Section 3-D of the Act of 1956. But, in the above quoted direction given in the arbitral Award, the Arbitrator has directed such amount of interest @9% p.a. to be paid from the date of the notification under Section 3-D of the Act of 1956

and not from the date of taking possession.

(31) But, in this regard amendment of Section 34 of the Act of 1996 w.e.f. 23/10/2015, whereby sub Section (2A) stood added thereto, assumes significance. Section 34(2A) of the Act of 1996, reads as follows: -

> ***"Section 34(2-A)*** *:- An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*
>
> *Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence."*

(32) The proviso to sub Section (2A) of Section 34 of the Act of 1996, clearly indicates that an Award shall not be set aside merely on the ground of erroneous application of law. In the present case, the appellants cannot dispute the entitlement of the respondent Nos.3 to 8, towards payment of interest @9 % p.a. on the excess amount, as Section 3-H(5) of the Act of 1956, clearly provides for the same, but, while granting such relief in clause (v) of the arbitral Award, the Arbitrator has directed payment of such amount from the date of notification under Section 3-D of the Act of 1956, instead of the date of taking possession. This can be said to be, at worst, an

erroneous application of the law, covered under proviso to sub Section (2A) of Section 34 of the said Act. Therefore, this Court is of the opinion that on this ground also the appellants have failed to make out a case in their favour.

(33) In view of the above, this Court is of the opinion that the appellants have failed to make out any case in their favour under Section 37 of the Act of 1996, for this Court to exercise jurisdiction in order to interfere with the impugned judgment and order passed by the Court of PDJ.

(34) Accordingly, the appeal is dismissed. No order as to costs. Pending applications, if any, stand disposed of.

[MANISH PITALE J.]

KOLHE