

**Court No. - 1**

**Case :-** APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 874 of 2023

**Appellant :-** Sushil Kumar Mishra

**Respondent :-** State Of U.P.And Another

**Counsel for Appellant :-** Vinod Sinha, Mahesh Sharma, Sharad Sinha

**Counsel for Respondent :-** S.C.

**Hon'ble Shekhar B. Saraf, J.**

1. This is an appeal filed by the claimant/award holder against the order passed by the District Judge, Kaushambi dated January 15, 2008, wherein the appeal was partly allowed and the rate of interest awarded by the Arbitrator was reduced from 14% to 6% per annum.

2. Counsel appearing on behalf of the appellant submits that the Court does not have the power to modify an award and to buttress his arguments reliance has been placed on the judgements of the Supreme Court in the case of **Project Director Vs. M. Hakeem reported in 2021 (9) SCC 1** and in **S.V. Samudram Vs. State of Karnataka & Anr. in Civil Appeal No. 8067 of 2019 dated January 4, 2024**. Specific reference is placed on paragraph no.46 of the judgement in **Project Manager (Supra)**, which is quoted below:-

*"46. 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."*

3. He further referred to paragraph nos.14, 15 and 16 and 42 of the judgement in **S.V. Samudram (Supra)**, which are quoted below :-

"14. The position as to whether an arbitral award can be modified in the proceedings initiated under Sections 34/37 of the A&C Act is no longer *res integra*. While noting the provisions, more specifically, Section 34(4) of the A&C Act; the decisions rendered by this Court, including the principles of international law enunciated in several decisions recorded in the treatise "Redfern and Hunter on International Arbitration, 6th Edition", this Court in *National Highways Authority of India v. M. Hakeem and Another*, categorically held that any court under Section 34 would have no jurisdiction to modify the arbitral award, which at best, given the same to be in conflict with the grounds specified under Section 34 would be wholly unsustainable in law. The Court categorically observed that any attempt to "modify an award" under Section 34 would amount to "crossing the Lakshman Rekha".

15. On the exact same issue we may also note another opinion rendered by this Court in **Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited** in the following terms:-

"44. In law, where the court sets aside the award passed by the majority members of the Tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34 of the Arbitration Act, the court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2-A) are made out. There is no power to modify an arbitral award. In **McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181]**, this Court held as under : (SCC p. 208, para 52).

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

(Emphasis Supplied)

16. The principle stands reiterated as late as 2023 in **Larsen Air Conditioning and Refrigeration Company v. Union of India & Others.**

42. In our considered opinion, the court while confirming the modification of the award committed the very same mistake which the Court under Section 34 of the A&C Act, made.

The Court under Section 37 had only three options:-

- (a) Confirming the award of the Arbitrator;
- (b) Setting aside the award as modified under Section 34; and
- (c) Rejecting the application (s) under Section 34 and 37."

4. One may also examine the Apex Court judgement in **Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others reported in 2023 SCC Online SC 982**, where the court was examining as to whether the High Court erred in modifying the arbitral award to the extent of reducing the interest, from compound interest of 18% to 9% simple interest per annum. The Supreme Court delineated on the issue of modification as follows :-

*"13. In the present case, given that the arbitration commenced in 1997, i.e., after the Act of 1996 came into force on 22.08.1996, the arbitrator, and the award passed by them, would be subject to this statute. Under the enactment, i.e. Section 31(7), the statutory rate of interest itself is contemplated at 18% per annum. Of course, this is in the event the award does not contain any direction towards the rate of interest.*

*Therefore, there is little to no reason, for the High Court to have interfered with the arbitrator's finding on interest accrued and payable. Unlike in the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established.*

*The scope of interference by the court, is well defined and delineated [refer to Associate Builders v. Delhi Development Authority, Ssangyong Engineering Construction Co. Ltd v. National Highways Authority of India (NHAI) and Delhi Airport Metro Express Pvt. Ltd. v Delhi Metro Rail Corporation Ltd].*

*14. The reliance on Kalsi Construction Company (supra) by the respondent-state, is inapt, given that this court had exercised its Article 142 jurisdiction in light of three pertinent factors - the award had been passed 20 years prior, related to construction of a Paediatrics Centre in a medical institute, and that the parties in that case had left the matter to the discretion of the court.*

*Similarly, in Oriental Structural Engineers (supra) this court held that since the contract stipulated interest entitlement on delayed payments, but contained no mention of the rate of interest applicable - the Tribunal ought to have applied the principles laid down in G.C. Roy (supra), and therefore, in exercise of Article 142, this court reduced the rate of interest awarded by the tribunal on the sum left unpaid.*

*The judgment in Municipal Corporation of Greater Mumbai (supra) no doubt discusses the inherent powers of the High Court as a superior court of record, but relates specifically to the jurisdiction to recall its own orders, and offers little assistance in the present dispute.*

*15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref: Associate Builders (supra)].*

*The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996.*

*This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem:*

*"42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court.*

*Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."*

*16. In view of the foregoing discussion, the impugned judgment warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and future interest.*

*The 18% per annum rate of interest, as awarded by the arbitrator on 21.01.1999 (in Claim No. 9) is reinstated. The respondent-state is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment."*

5. Counsel appearing on behalf of the respondents has submitted that the modification is only in terms of the interest and reasons have been provided in the impugned order for reducing the same.

6. I have perused the documents and the judgements cited by counsel appearing on behalf of the petitioner.

7. It is trite law, settled by a catena of Supreme Court judgements that the Court does not have the power under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") to modify an

award. The Court under Section 34(2) of the Act has the power to sever parts of the award and set aside the same in toto, if the severance does not impact the remaining award that is upheld under Section 34 of the Act. The principle expounded by the Supreme Court in **Larsen Air Conditioning and Refrigeration Company (supra)** is specifically on the point of the modification of the rate of interest and Supreme Court has categorically held that no such modification is permissible under Section 34 of the Act.

8. In the present case, I find that the rate of interest that was awarded to be paid on the principle sum was 14% per annum from 25.3.2000 till the payment was made. In the impugned order this rate of interest has been reduced to 6% without providing any cogent reasons for the same. Reduction of interest is nothing but a modification of the original arbitration award, and accordingly, the same is illegal and against the principles established by the Supreme Court.

9. In the light of the above findings, the impugned judgement and order is quashed and set aside. The appeal is, accordingly, allowed.

**Order Date :- 19.1.2024**

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**(Shekhar B. Saraf,J.)**