

Order below Exi.- 1

(1) By filling present review application applicant contended that applicant filed application u/s 34 of the Arbitration and Conciliation Act, challenging the final award of arbitrator dated 22/05/23. The said application was rejected on 6/04/24. Against said judgment, applicant filed present review application on the ground that there is error apparent on face of record, therefore allow present review petition and set aside the order dated 6/4/24 & matter be remanded to the arbitrator for re fixation of the price.

(2) On service of notice respondent no. 1 appeared and filed written submission vide Exh. 5.

(3) Ld. Advocate for the applicant give written arguments vide Exh. 10 & 14 whereas respondent no.1 gave written arguments vide Exh. 13.

Grounds for the review application are as under :

1. In the judgment Ld. Court has not consider record of arbitration proceedings as record of four village were not came to court, so without considering record award was confirmed.

2. Ld. Court has not consider interim award which was modify by Hon'ble High Court and same was confirmed by Apex Court. So, without considering interim award arbitrator rejected their application and same was confirmed by the court under sec.34 proceedings which is error apparent on the face of the record.

3. Submission of applicant mention in petition and written arguments were not mention & consider in judgment by the Ld. Court while confirming award of arbitrator.

4. Arbitrator award was without jurisdiction. As per railway amended act 2016 appointment of present arbitrator was not legal and same was opposed by the applicant. It is argued that said issued was pending before arbitrator and and without deciding same, final award has been passed.

5. Arbitrator has pass common award for nine village which is apparent mistake on record. For each village separate award has to be pass as evidence of each village are different.

6. Observation of the arbitrator regarding compensation decided as

per the provision of sec.20(G)(5) of Railway Act is incorrect. Compensation was awarded as per value of Jantri. So, competent authority as well as arbitrator not consider market value of acquired land. It is submitted that market value were not decided or price of adjoining area were not considered.

7. In final award it has been mention that heirs were joined but notices were not served and legal heirs were not heard before passing award.

8. Initial award of competent authority was wrong as their is discrimination while considering value of government land and private land .

9. Applicant produced affidavit in chief for four village which was unchallenged by the respondent. Though respondent did not adduced any evidence without considering their evidence arbitrator confirmed award pass by the competent authority which is wrong.

10. Judgment of Hon'ble Allhabad High Court regarding considering market value at the time of acquisition of land by Railway authority was not consider by arbitrator and by this court also.

(4) So, without considering above grounds Ld. Court rejected their application filed under sec. 34 which is mistake apparent on face of record hence review application be allowed and remand matter for fresh hearing. In support of argument relied on following judgment.

1. Karnataka High Court, Revision petition no. 251/02, Bangalore authority v/s P Anjanappa by Lrs.
2. Supreme Court, Civil Appeal No. 340/1960, Bank of Bihar v/s Mahabir lal
3. Supreme Court, Civil Appeal No. 1562 of 1962, Gulam Abbas and others v/s Mulla Adbul Kadar Through his executors.

(5) Ld. Advocate for the respondent argued that the Arbitration Act is a self contained code sets out a its own procedure, so applicability of general legal procedure would be implicitly excluded. So, present review petition is not maintainable. In support of her argument relied on following judgment.

1. 2010 SCC 437, Kalabharati Advertising V/S Hemant vimalnath

Narichania

2. Joyti warehousing v/s State of Gujarat in SCA 6034/2015 with other petitions.

3. SCA 18145/2023, Ishwarsinh Rathod decd. v/s Competent Authority and Land Acquisition officer

(6) I have gone through application, submission and judgment cited by respective parties.

(7) Ld. Advocate for the respondent raised question regarding maintainability of review petition in Arbitration proceedings. I have gone through judgment cited by Ld. Advocate for the respondent. In the case of Joyti warehousing v/s State of Gujarat in SCA 6034/2015 with other petitions & in case of Ishwarsinh Rathod decd. v/s Competent Authority and Land Acquisition officer in SCA 18145/2023, competent authority modify its award, wherein Hon'ble High Court held that competent authority can not review it's on award. So, I completely agree with the ratio laid down in both the cases. I do agree that in arbitration proceedings arbitrator can not review it's own order.

(8) Here, it is required to note that present review petition is filed against order pass in proceedings filed under sec 34 of the Arbitration Act. This court decided application filed under Sec.34 of the Arbitration Act. On this point I have gone through judgment of **Hon'ble Supreme Court in the case of Municipal Corporation of Greater Mumbai and another Vs. Pratibha Industries Limited and others (supra)**, wherein the Supreme Court referred to inherent powers of the High Court under Article 215 of the Constitution of India as a Court of record and in that context, the High Court being justified in exercising power of review in the context of orders passed under the Arbitration Act.

(9) I have also gone through judgment of **Bombay High Court in the case of review petition no.12665/24 in Commercial Arbitration Application No.1 of 2024 , Shailesh Ranka and others v/s Windsor Machines Limited and another** wherein held that

" 18. The position of law with regard to the review power being exercised, only if it is so provided by the statute, is certainly applicable to authorities and bodies that are creations of the very statute. In the present

case, this Court, as a High Court, exercised its power while disposing of the application filed by the petitioners under Section 11 of the Arbitration Act. If an error apparent on the face of the record is indeed pointed out by the review petitioners, as a court of record enjoined with the inherent power to correct its own record, there can be no impediment in this Court exercising the power of review. The change in law post the amendment with effect from 23.10.2015, completely changes the scenario and in that context, the judgments relied upon by the review petitioners clearly indicate that the objection with regard to maintainability of the present review petition cannot be upheld. Therefore, it is held that the present review petition is maintainable."

(10) Hence, considering same I am of the view that review petition is maintainable against judgment & order passed under Sec. 34 of Arbitration Act. But scope of review is very limited. There has to be discovery of new and important evidence or matter, which after exercising due diligence was not in the knowledge of the person seeking review; mistake or error apparent on the face of record and any other ground which analogous to the aforesaid two grounds. **A mistake or error which the party pleads for seeking review must be one which is self-evident, if a matter is required to be first reheard and then corrected, it would be an appeal under the guise of review. Hon'ble High Court & Apex court time and again emphasized on the narrow difference which exists between an appeal and a review. The courts exercising review jurisdiction have been time and again cautioned to not to walk on the path of reassessment of the judgment while hearing review application. An erroneous decision on merits cannot be a ground of review. It is further settled that the power of review is to be exercised for "correction of mistake" and not for "substitution of view". In *Ajit Kumar Rath v. State of Orissa*, (1999) 9 SCC 596, the apex court observed that a review cannot be claimed for fresh hearing of the matter or for correction of an erroneous view taken on earlier point of time. The error of law or fact of which correction is being sought must "stare in the face" without needing an elaborate argument for establishing same.**

(11) I have gone through grounds of the review. All these grounds were mention in application filed under sec.34 of the Act. Original record were not present before this court can not consider error apparent on record. So, far as grounds agitated in review petition were already mention in application filed under sec.34. This court pass reason order for application filed under sec. 34. So, this court can not re appreciate it's own findings. As discuss above under the guise of review this court cannot rehear the original matter. It is settled law that power of review cannot be confused with appellate power.

(12) Hence, I am of the view that applicant is failed to prove any apparent error on record, so I pass following order.

ORDER

1. Present review application is dismissed.
2. No order as to cost.

Pronounced in the open Court today on this 07th day of December, 2024 at Petlad.

Date :07-12-2024

Place : PETLAD

(Zankhana V. Trivedi)
3rd Additional Sessions Judge
Petlad,
JUDGE CODE - GJ-00676