

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 CIVIL APPLICATION NO. 1376 OF 2022

IN

ARBITRATION APPEAL NO. 14 OF 2021

NATIONAL HIGHWAYS AUTHORITY OF INDIA PROJECT
IMPLEMENTATION UNIT THR ITS PROJECT DIRECTOR DHULE

VERSUS

KAZI FAYAZODDIN ALLAUDDIN AND ANOTHER

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Advocate for Appellant : Mr. Deepak Manorkar

Advocate for Respondent 1 : Mr. N. L. Chaudhari

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 02/03/2022

PER COURT :

1. Heard the learned counsel for the applicant for some time. Perused the impugned judgment rendered by the Principal District Judge, Dhule dated 29th July 2020 under section 34 of the Arbitration and Conciliation Act, 1996.
2. The learned counsel for appellant/applicant has drawn my attention to the fact that the learned District Judge has exceeded in her jurisdiction while granting excess compensation to the respondent No. 1 at the rate of 6800/- per Sq. Mtrs. which was much more than what has been granted by the Arbitrator at the rate of Rs.1350/- per Sq. Mtrs. The learned counsel would argue that the entire judgment delivered by the learned District Judge is totally against the scope of

section 34 of the said Act. In support he led emphasis on a recent judgment of the Hon'ble Supreme Court in the case of the Project Director, National Highways No. 45 E and 220, National Highways Authority of India Vs. M. Hakeem & Anr. Decided in Civil Appeal Arising out of SLP (CIVIL) No. 13020 of 2020 decided on July 20, 2021. It would be advantageous to extract para Nos. 40 and 46 of the judgment which reads thus :-

“40. It can therefore be said that this question has now been settled finally by at least 3 decisions 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 co-terminus 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.

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. Prima facie, it is apparent that the learned Principal District Judge, Dhule exceeded in her jurisdiction in granting enhanced compensation to respondent No. 1 unmindful of the scope of section 34 of the Act.

4. In that view of the matter, stay needs to be granted to the impugned judgment and order passed by the learned Principal District judge in Civil M.A. No. 111/2014 dated 29.7.2020.

5. As such there shall be ad-interim relief in terms of prayer clause ‘C’ of the application, subject to the appellant deposits 50% amount of the award in the registry of this Court within six weeks.

[PRITHVIRAJ K. CHAVAN, J.]

ssc/