R 2023:KHC-D:3547-DB

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 17TH DAY OF MARCH, 2023

PRESENT

THE HON'BLE MR JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO.101142 OF 2015 (AA)
C/W
MISCELLANEOUS FIRST APPEAL NO.103185 OF 2015 (AA)

In M.F.A.No.101142/2015:

BETWEEN:

NATIONAL HIGHWAY AUTHORITY OF INDIA,
PROJECT IMPLEMENTATION UNIT,
CHITRADURGA (UNIT DHARWAD),
SRI. A. K. JANBAZ,
BY ITS PROJECT DIRECTOR AND GENERAL MANAGER,
NHAI, 2ND CROSS, SATTUR COLONY,
VIDYAGIRI, DHARWAD – 580 004.

...APPELLANT

(BY SHRI. SHIVASAI .M. PATIL, ADVOCATE)

AND:

1. SRI. DURGAPPA S/O. SHEENAPPA MALAGI,
AGE : 48 YEARS,
OCC: AGRICULTURIST & BUSINESS
RESIDING AT TEVARAMELIHALLI VILLAGE,
SAVANUR TALUK,
HAVERI DISTRICT.

2. THE DEPUTY COMMISSIONER HAVERI
& ARBITRATOR FOR
NATIONAL HIGHWAY AUTHORITY
OF INDIA, HAVERI – 581 110.

….RESPONDENTS

(BY SHRI. LAXMAN .T. MANTAGANI FOR R1;
R2 - served)

M.F.A.No.101142/2015 FILED UNDER SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1966, PRAYING TO CALL FOR THE RECORDS OF THE CASE A.S. NO.1/2013, ON THE FILE OF THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, AT HAVERI, AND AFTER LOOKING INTO THE LEGALITY AND VALIDITY OF THE JUDGMENT AND ORDER DATED 03-02-2015, BE PLEASED TO QUASH AND SET ASIDE THE ORDER AND FURTHER RESTORE THE AWARD OF THE MANAGER (TECH) AND COMPETENT AUTHORITY FOR LAND ACQUISITION, BY DISMISSING THE CLAIM FOR BUSINESS LOSS, OR IN THE ALTERNATIVE REMAND THE MATTER.

In M.F.A.No.103185 OF 2015:

BETWEEN:

DURGAPPA
S/O SHEENAPPA MALAGI,
AGE:50 YEARS,
OCC: AGRL. & BUSINESS,
R/O: TEVARAMELIHALLI,
TQ: SAVANUR, DIST: HAVERI.

...APPELLANT

(BY SRI. LAXMAN .T. MANTAGANI, ADVOCATE)

AND:

1. NATIONAL HIGHWAY AUHTORITY OF INDIA,
REPRESENTED BY SPECIAL LAO,
CHITRADURGA, UNIT DHARWAD,
SATTUR COLONY, 2ND CROSS,
VIDYAGIRI, DHARWAD.

2. THE DEPUTY COMMISSIONER,
AND ARBITRATOR FOR NHAI,
DISTRICT ADMINISTRATIVE OFFICE,
DEVAGIRI-GUDDA, DEVAGIRI,
TQ: & DIST: HAVERI.

....RESPONDENTS

(BY SRI. M. V. KINI, ADVOCATE FOR R1 – ABSENT,
BY SRI. SHIVASAI .M. PATIL, ADVOCATE FOR R2)

M.F.A.NO.103185/2015 FILED UNDER SECTION 37(1) OF THE ARBITRATION AND CONCILIATION ACT, 1966, PRAYING TO MODIFY THE AWARD PASSED BY THE COURT OF PRL. DISTRICT AND SESSIONS JUDGE AT HAVERI IN ARBITRATION SUIT NO. 2/2013 DATED 3-2-2015 SUITABLE BY ENHANCING THE AMOUNT OF COMPENSATION FROM RS. 1,03,125/- TO RS. 1,50,000/- PER MONTH WITH INTEREST @ 9% PER MONTH ALLOW THE ABOVE MISCELLANEIOUS FIRST APPEAL.

THESE MISCELLANEOUS FIRST APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 11.01.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***UMESH M ADIGA J.,*** DELIVERED THE FOLLOWING:

JUDGMENT

Plaintiff in Arbitration Suit No.1 of 2013 has filed M.F.A.No.101142 of 2015 challenging the judgment and award passed in the said suit dated 03.02.2015 by the Principal District and Sessions Judge, Haveri, on the ground that compensation awarded by Arbitrator was untenable and highly excessive. Plainitff in A.S.No.2/2013 has filed M.F.A.No.103185/2012 against Award of Arbitrator dated 03.02.2015 challenging the amount of compensation awarded and prayed for enhancement. Both the cases are taken up together for disposal, since they are inter connected.

2. Brief facts of the case of both the parties before the Trial Court were as under:

It was the case of appellant in A.S.No.1 of 2013 that the appellant had acquired Sy.No.53/1 measuring 50 sq.mtrs and in Sy.No.49/1 measuring 100 mtrs. of Ranebennur under Section 3-D of National Highways Act, 1956 (for short, NH Act) and 1088 sq.mtrs as per Consent Sale Deed. Appellant

valued said land and paid compensation of Rs.150.70 per sq.mtr, to the said land and consent award was passed in this respect. Thereafter, the Respondent No.1 has filed a petition before the Respondent No.2-Abitrator for enhancement of the compensation for the loss of business income under Section 3-G(7)(c) of the NH Act. Respondent No.2, after hearing both sides, passed an award dated 01.04.2008 and enhanced the compensation for loss of business.

3. Aggrieved by the said award, NHAI filed Arbitration Suit No.1/2008 before the Principal District Court, Haveri praying to set aside the award passed by the Arbitrator dated 01.04.2008 and claimant-plaintiff has filed Arbitration Suit No.2/2008 for enhancement of compensation amount. The matter was heard by the learned Principal District Judge, Haveri and set aside the said award passed on 01.04.2008 and remanded the matter to the Arbitrator with certain observations and to reconsider the award, in accordance with law. Thereafter, Arbitrator issued notice to both the parties

and re-heard the matter; and passed an order dated 26.09.2012 assessing the amount of compensation to be payable to Respondent No.1. The same was challenged by appellant herein before the Principal District Court, Haveri in Arbitration Suit No.1 of 2013.

4. The learned Principal District and Sessions Judge, Haveri clubbed Arbitration Suit No.1 of 2013 with Arbitration Suit No.2 of 2013 and passed impugned common judgment dated 03.02.2015, and dismissed both the suits holding that compensation awarded by the Arbitrator was just and proper and there was no need to interfere with the said findings under Section 34 of the Arbitration and Conciliation Act. Being aggrieved by the said judgment and award, this appeal was filed under Section 37 of the Arbitration and Conciliation Act, 1996.

5. We have heard the arguments of the learned Advocate for appellant and Respondent No.1. The learned Advocate for the appellant has contended that Respondent

No.1 had not commenced the business in the property, which was acquired for expansion of National Highway. This fact was not at all considered by the Arbitrator as well as the learned Principal District Judge, Haveri, in the impugned order. The compensation amount was assessed as per the whims and fancies of Arbitrator and it was confirmed by the learned Principal District Judge, Haveri. Without there being any business conducted by Respondent No.1, loss of business income was assessed by the Arbitrator on the basis of report given by some third party. Therefore, finding of the Arbitrator was erroneous. When the matter was challenged before the learned Principal District Judge, Haveri, the learned Principal District Judge has also not properly appreciated the said evidence and erroneously held that award passed by the Arbitrator was just and proper. Therefore, prayed to set aside the award passed by the Arbitrator by allowing this appeal.

6. The learned Advocate for Respondent No.1 has vehemently contended that under Section 34 of the A & C Act,

1996, the jurisdiction of the Court is very limited. It cannot sit as Appellate Court and re-appreciate the evidence. The learned Principal District Judge, Haveri, under Section 34 of the A & C Act has to consider the Award passed by the Arbitrator within framework of Section 34 of the A & C Act. The learned Principal District Judge, Haveri in the impugned judgment has referred to Section 34 of the A & C Act, 1996 and within the framework of Section 34 of the A & C Act, 1996 has dismissed A.S.No.1 of 2013, which does not call for interference by this Court under Section 37 of the Act. Therefore, prayed to confirm the same. However, prayed to allow M.F.A.No.103185 of 2015 by enhancing compensation.

7. The following point emerges for our determination:

> *Whether the learned Principal District Judge, Haveri has committed any error in upholding the award passed by the Arbitrator in A.S.No.1 of 2013 and A.S.No.2 of 2013 and does it call for any interference?*

8. To decide real dispute between the parties, it is necessary to refer Section 34 of the A & C Act, which reads as under:

> ***34. Application for setting aside arbitral award. —***
> *(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
> *(2) An arbitral award may be set aside by the Court only if—*
> *(a) the party making the application furnishes proof that—*
> *(i) a party was under some incapacity, or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on*

matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on

which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

9. The learned Principal District Judge, Haveri has also referred the said Section 34 of the A & C Act and discussed the same in the impugned judgment. The learned District Judge while considering petition filed under Section 34 of the A & C Act 1996, held that the Court cannot sit as an Appellate Court and re-appreciate pleadings and evidence

placed on record and pass an order. On perusal of the award, if it is violative of any of the Clauses of Section 34 of the A & C Act, then only the District Judge shall interfere in the said award. Appellants have failed to bring out any grounds, as provided under Section 34 of the A & C Act, to set aside award passed by Arbitrator. In the grounds of appeal, the appellant has not brought out any valid grounds to hold that the impugned judgment passed by learned District Judge is contrary to the provision of Section 34 of the A & C Act, and whether the learned Principal District Judge, Haveri has erred in not interfering in the said finding of Arbitrator?

10. Appellant has produced the judgment passed by the learned Principal District and Sessions Judge, Haveri in A.S.No.1/2008 dated 22.01.2011. In the said judgment, the learned Principal District and Sessions Judge, Haveri has considered the contention of both the parties and held that the Arbitrator has not considered loss of business income suffered by Respondent No.1. Therefore, by the order dated

22.01.2011, Arbitration Application was allowed and award was set aside and the matter was remanded back to the Arbitrator for quantification of the loss of business income suffered by claimant due to acquisition of property, after giving opportunities to both the parties, to putforth their evidence in respect of their respective contentions.

11. The main contention of the appellant in this case is that under Section 3-G, the Court cannot award compensation under the head "business loss/loss of income from business". The compensation has to be assessed only on the immovable properties such as land, building, standing trees, etc., and not on loss of business income. The said contention is legally not sustainable. NHAI has not raised this contention either before the Arbitrator or before the learned Principal District Judge, Haveri in A.S.No.1 of 2008. Moreover, when the learned Principal District Judge in the judgment in A.S.No.1 of 2008 dated 22.01.2011 set aside the award passed by the Arbitrator and remanded back the matter to the Arbitrator for

re-assessment of the loss of business income that order was not challenged by the appellant herein. If really and legally, the Arbitrator cannot assess the loss of business income, NHAI could have challenged the said order passed by the learned Principal District Judge, Haveri in A.S.No.1 of 2008 before appropriate Forum. Thereby, the appellant had impliedly conceded to the findings given by the learned Principal District Judge in A.S.No.1 of 2008.

12. The Arbitrator, i.e., the Deputy Commissioner, Haveri after remand of the matter, as ordered by the learned Principal District Judge, Haveri in A.S.No.1 of 2008, has directed the Respondent No.1 to file Valuation Report of loss of business income from the concerned Department. Accordingly, Respondent No.1 has produced the Valuation Report prepared by the Managing Director, Dr.Babu Jagajivan Ram Leather Industries Development Corporation Limited, Bengaluru under its No.Lidkar.Vya.Ni.Abhivruddhi/2011-12/584 dated 24.06.2011. The Managing Director has

submitted the report of loss of business income of "M/s.Vishwabandhu Marulsidda Khadi Mattu Gramodyoga Kaigarika Sangha", Tevaramellihalli Village and opined that an amount of Rs.75 Lakhs was spent for fixed assets of the business of Respondent No.1. In para-3 of the award passed by Respondent No.2 dated 26.09.2012, these facts are stated in detail and the Deputy Commissioner has assessed business loss as approximately Rs.1,50,000/- per month from 2002 till May, 2011 and total loss assessed by him was Rs.1,66,00,000/-. Considering all the materials on record, the Arbitrator has assessed the loss of business income of defendant No.1 as Rs.29,90,625/- for a period of 29 months, i.e., from the date of Notification issued under Section 3A of the NH Act till the date of taking possession of the acquired land in Sy.Nos.53/1 and 49/1 of Tevaramellihalli Village and also awarded interest at the rate of 9% per annum.

13. The award passed by the Arbitrator was on the basis of report of a business expert. During the arguments, it

was not pointed out by the learned counsel for the appellant-NHAI, as to how far the said finding of the Arbitrator was erroneous, except contending that Respondent No.1 was not entitled for the compensation under the head "loss of business income" so also the amount of compensation assessed by the Arbitrator was on higher side. Nothing is brought out to show that the said award is against law or public policy or law of the land or it was an illegal order.

14. As already discussed in the above paragraphs under Section 34 of the A & C Act 1996, the Court can interfere in the findings of the Arbitrator only on the ground mentioned under Section 34 of the A & C Act, 1996 and not on any other ground. Under Section 34 of the A & C Act, 1996, the learned Principal District Judge, Haveri who heard the matter, was not sitting as an Appellate Judge. Under Section 34 of the A & C Act, he has no jurisdiction to re-consider and re-appreciate the pleadings and evidence of the parties and give different findings. On the contrary, the

learned Principal District Judge, Haveri under Section 34 of the A & C Act, has to consider whether interference in the findings of the Arbitrator was required as provided under Section 34 of the A & C Act. The learned Principal District Judge, Haveri in the impugned judgment had discussed the facts and jurisdiction of the District Court in re-appreciating the materials on record and rightly dismissed the suit A.S.No.1/2013 and it does not call for any interference.

15. In M.F.A.No.103185/2015, Respondent No.1 in A.S.No.1 of 2013 has challenged the award praying for enhancement of the compensation. As discussed in the above paragraphs, the grounds of appeal mentioned in the appeal memo, do not show that there are reasons to interfere in the finding of either the learned Arbitrator or the learned Principal District Judge, Haveri in the impugned judgment. According to the contention of the appellant, the amount of compensation calculated by the Arbitrator was meagre and on the lower side; It needs to be enhanced. As already stated

above, for enhancement of the compensation is concerned, the learned Principal District Judge, Haveri cannot sit as an Appellate Judge so also this Court cannot sit as Appellate Judge and re-appreciate the evidence as well as the pleadings of the parties and pass orders; That is not permitted.

16. The learned Advocate for the appellant-NHAI relied on a judgment of the Hon'ble Supreme Court in the case of ***National Highways Authority of India Vs. Sri P.Nagaraju @ Cheluvaiah and another***[1] dated 11.07.2022 The facts of that case are totally different from the facts of the present case. In that case, it is held by the Hon'ble Supreme Court that if award passed by the Arbitrator was not in accordance with law and was against the public policy, then the District Court shall set aside the order and remand back the matter to the Arbitrator for re-consideration of the same. In these appeals, earlier the District Judge, Haveri had set aside the award passed by the Arbitrator and remanded back the matter to

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[1] Civil Appeal No.4671 of 2022

the District Judge to re-consider the award since there was no expert evidence to assess the loss sustained by the defendant No.1. That lacuna was cured by the Arbitrator and after obtaining the expert opinion, the Arbitrator has re-calculated the compensation and awarded the same. It was again subject to scrutiny by the learned Principal District Judge, Haveri in the impugned judgment and it was rightly held that the judgment passed by the Arbitrator was in accordance with law and upheld the same. In these circumstances, this Court cannot re-appreciate the pleadings and evidence let in by the parties under Section 37 of the A & C Act, 1996, which is not permissible.

17. In the case of ***DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED Vs. DELHI METRO RAIL CORPORATION LIMITED***[2], the Hon'ble Supreme Court has held that:

> *Arbitration and Conciliation Act, 1996 — Ss. 34 & 37 and S. 5 — Grounds for challenging arbitral*

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[2] (2022) 1 SCC 131

award before Court — Restrictions on – Object of the A & C Act, 1996 – Relevance of, in restricting judicial interference – Approach of Courts in entertaining challenge to awards despite the statutory restrictions – Disapproval of – Reiterated, while deciding applications filed under S.34, Courts are mandated to strictly act in accordance with and within the confines of S.34, refraining from appreciation or re-appreciation of matters of fact as well as law.

"One of the principal objectives of the A&C Act, 1996 is to minimise the supervisory role of Courts in the arbitral process. Judicial interference with the arbitral awards is strictly limited to the grounds in S.34. Held, there is a disturbing tendency of Courts of setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. Further, this approach would lead to corrosion of the object of the A&C Act, 1996 and the endeavours made to preserve this object: which is minimal judicial interference with arbitral awards".

18. In the case of ***ASSOCIATE BUILDERS Vs. DELHI DEVELOPMENT AUTHORITY***[3]**,** the Hon'ble Supreme Court has held that:

> *Arbitration and Conciliation Act, 1996 – Ss. 34 and 5 – Merits of arbitral award – When assailable before court under S.34 – only when award is in conflict with public policy of India – Heads under which public policy of India may be violated, enumerated, elucidated and explained in detail – Caution on an limits on power of court to interfere with arbitral award under the various heads of public policy, explained and emphasised – Held, none of the grounds contained in S.34(2)(a) deal with the merits of the decision rendered by an arbitral award – It is only when arbitral award is in conflict with public policy of India as per S.34(2)(b)(ii), that merits of an arbitral award are to be looked into under certain specified circumstances, as given below.*
>
> *- Heads of "Public Policy of India" (with their sub-heads) are:*
>
> *I. Fundamental Policy of Indian Law:(i) Compliance with statutes and judicial precedents; (ii)*

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[3] (2015) 3 SCC 49,

Need for judicial approach; (iii) Natural justice compliance; (iv) Wednesbury reasonableness;

II. Interest of India;

III. Justice of Morality; and

IV. Patent Illegality:(i) Contravention of substantive law of India; (ii) Contravention of A & C Act, 1996; (iii) Contravention of the terms of the contract

-When any of the heads/sub-heads of test of "public policy" is applied to an arbitral award, court does not act as court of appeal – Interference is permissible only when findings of arbitrator are arbitrary, capricious or perverse, or when conscience of court is shocked, or when illegality is not trivial but does to root of the matter – Not when merely another view if possible – Furthermore, arbitrator being ultimate master of quantity and quality of evidence while drawing arbitral award, award based on little evidence or on evidence which does not measure up in quality to a trained legal mind cannot be held invalid – Once it is found that arbitrator's approach is neither arbitrary nor capricious, no interference is called for on facts".

19. In the case of ***MMTC LIMITED Vs. VEDANTA LIMITED***[4]**,** the Hon'ble Supreme Court has held that:

> *13. It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, subsection (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states 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.*
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> *14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under*

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[4] (2019) 4 SCC 163,

Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

15. Having noted the above grounds for interference with an arbitral award, it must now be noted that the instant question pertains to determining whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the Courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of re-assessment of the material on record, but only in terms of the principles governing interference with an award as discussed above.

20. In the case of ***PROJECT DIRECTOR, NATIONAL HIGHWAYS NO.45E AND 220 NATIONAL HIGHWAYS AUTHORITY OF INDIA Vs. M.HAKEEM AND ANOTHER***[5], the Hon'ble Supreme Court has held that:

> *Section 34 of the A & C Act, 1996 provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34 of the A & C Act, 1996. Further, as the marginal note of Section 34 of the A & C Act, 1996 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3) of Section 34 of the A & C Act, 1996. "Recourse" is defined as the enforcement of such truncated right can also be only limited in nature. What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award. This becomes even clearer in view of sub-section (4) of Section 34 of the A & C Act, 1996 under which, on receipt of an application under sub-section (1) of Section 34 of the A & C Act, 1996, the*

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[5] (2021) 9 SCC 3

> *Court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award. Here again, it is the opinion of the Arbitral Tribunal which counts in order to eliminate the grounds for setting aside the award, which may be indicated by the court hearing the Section 34 of the A & C Act, 1996 application.*

21. In view of the law laid down in the above said judgments, the District Judge cannot re-appreciate the facts and pleadings and evidence and upset the findings given by the Arbitrator. Under these circumstances, this Court cannot find fault with the findings of the learned District Judge.

22. In view of the acquisition of portion of land and building belonging to Respondent No.1 in M.F.A.No.101142 of 2015, he could not run his business for a period of three years. It had stated by Respondent No.1 that the officials of the Authority did not allow him to run the business and because of which, he sustained huge financial loss apart from

the investment made in establishing of the business. Therefore, he was entitled for compensation. The Hon'ble Supreme Court in the case of ***UNION OF INDIA VS. TARSEM SINGH***[6] has held that Section 3(j) of the National Highways Authority Act is violative of Article 14 of the Constitution of India, therefore, declared it as unconstitutional. In the said judgment, it is held that compensation has to be assessed for the land acquired under National Highway Authority Act as assessed under the provisions of the Land Acquisition Act as well as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

23. In view of the said reason, Respondent No.1 was entitled for compensation for the loss of business income sustained due to acquisition of land. There is no illegality in the said findings of the Arbitrator as well as the District Judge in the impugned Judgment. In view of the said reasons, we answer the above point and pass the following order:

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[6] (2019) 9 SCC 304

ORDER

i) Appeals in M.F.A.No.101142 of 2015 and M.F.A.No. 103185 of 2015 are dismissed.

ii) The impugned judgment passed by the learned Principal District and Sessions Judge, Haveri in Arbitration Suit Nos.1 of 2013 and 2 of 2013 dated 03.02.2015 are confirmed.

iii) No orders as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

DH