



IN THE HIGH COURT AT CALCUTTA
REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE DEBANGSU BASAK
AND
THE HON'BLE JUSTICE AJAY KUMAR GUPTA

RVW/3/2026

C. PALANISWAMY ... APPLICANT

VS.

THE UNION OF INDIA ... RESPONDENT

For the applicant : Mr. Tapan Kumar Das

For the Respondents : Mr. V.D. Sivabalan

Heard on : February 26, 2026

Delivered on : February 26, 2026

DEBANGSU BASAK, J.

1. Review is directed against the judgment and order dated February 18, 2026 passed in FMAT(ARBAWARD)/3/2024.

2. Review applicant is the respondent in FMAT(ARBAWARD)/3/2024.

3. Learned advocate appearing for the review applicant submits that, the appellant never raised any counter claim in the arbitration. Therefore, the submissions recorded in paragraphs 2 to 5 of the



judgment and order under review, is an error apparent on the case of the record.

4. Learned advocate appearing for the review applicant refers to Clause 25 of the General Conditions of Contract and submits that, the General Conditions of Contract was not a part of the paper book filed. He draws the attention of the Court to Clause 25 of the General Conditions of Contract and submits that, arbitrator was required to adjudicate only on such disputes which were referred to it. He submits that, the imposition of liquidated damages, was made belatedly. Arbitrator decided on the issue of the belated imposition of liquidated damages on merit of the claim.

5. Learned Advocate appearing for the review applicants relies upon **2012 Volume 12 Supreme Court Cases 581 (State of Goa vs. Praveen Enterprises)** submits that, arbitration can be only in respect of the disputes which are referred to arbitration.

6. Judgment and order under review was passed after hearing the parties elaborately. Judgment was dictated in open Court in presence of learned advocate for the review applicant. It was to the hearing such learned advocate. No objection was taken at the time when judgment was dictated. These grounds were not brought to our notice at that material point of time.



7. Be that as it may, a review is entertainable and maintainable only when there is an error apparent on the face of the record. Error apparent on the face of the record is construed to mean an error both by the learned advocate as also by the Court. However, a review cannot replace an appeal. Under the garb of review the matter cannot be reheard as an appellate court.

8. Review applicant is not contending that, learned advocate made any error so far as the judgment and order under review is concerned. Review applicant contends that, the recording of the contentions of the appellant was incorrect to the extent of counter claim being lodged.

9. We recorded the submissions of the respective parties as made in open Court as our judgment and order under review. Respondent is not contending that its contentions were wrongly recorded in the judgment and order under review.

10. Contentions of the review applicant, is with regard to counter claim. We find from the records that, in the arbitration proceeding, the appellant submitted a statement of defence. In such statement of defence, appellant sought adjustment of liquidated damages leveled on the bills raised by the review applicant. Such fact of appears from



pages 205 and 206 of paper book which are part of the counter statement of the defence submitted before the Arbitral Tribunal.

11. In the judgment and order under review, in the last sentence of paragraph 14, we stated that, major portion of the liquidated damages was adjusted from various bills and security deposits lying with the appellant in respect of the respondent.

12. With the deepest of respect, learned advocate appearing for the appellant, used the word 'counter claim' in the context of the set off claimed in the statement of defence. In such context, the word counter claim was used in the judgment and order under review. No prejudice was caused.

13. On such Count, we do not find that, the judgment and order under review, contains any error apparent on the case of the record.

14. Relevant portion of Clause 25 of the General Conditions of Contract which is pressed into service in this review is as follows :

“ It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs.1,00,000/- the arbitrator shall give reasons for the award.”

15. *Parveen Enterprises (Supra)* is of following view :

“32. The position emerging from above discussion may be summed up as follows:



(a) Section 11 of the Act requires the Chief Justice or his designate to either appoint the arbitrator/s or take necessary measures in accordance with the appointment procedure contained in the arbitration agreement. The Chief Justice or the designate is not required to draw up the list of disputes and refer them to arbitration. The appointment of Arbitral Tribunal is an implied reference in terms of the arbitration agreement.

(b) Where the arbitration agreement provides for referring all disputes between the parties (whether without any exceptions or subject to exceptions), the arbitrator will have jurisdiction to entertain any counter claim, even though it was not raised at a stage earlier to the stage of pleadings before the Arbitrator.

(c) Where however the arbitration agreement requires specific disputes to be referred to arbitration and provides that the arbitrator will have the jurisdiction to decide only the disputes so referred, the arbitrator's jurisdiction is controlled by the specific reference and he cannot travel beyond the reference, nor entertain any additional claims or counter claims which are not part of the disputes specifically referred to arbitration.”

16. One of the contentions is that Clause of 25 of the General Conditions of Contract did not form part of the paper book. The review applicant was represented during in the course of hearing. Review applicant did not produce the General Conditions of Contract at the time of hearing.

17. Be that as it may, the relevant portion of Clause 25 of the General Conditions of Contract which, the review applicant seeks to rely upon, specifies that, disputes which are referred to arbitration are required to be decided by the Arbitrator. Arbitrator is to give reasons if the claims are in excess of Rs. 1,00,000/-.



18. In the facts and circumstances of the present case, all disputes arising out of the relevant contract was referred to the Arbitrator. Imposition of liquidated damages was a claim in terms of the contract. It is not the case of the review applicant that, the claim for adjustment as set off on account of liquidated damages was beyond the contract. Whether or not, the party claiming liquidated damages as and by way of set off by uses of the words 'counter claim', is an issue which was required to be decided by the Arbitrator. It falls within the scope and ambit of Clause 25 of the General Conditions of Contract.

19. On such score also, we do not find any error apparent on the face of the record warranting any interference under review jurisdiction.

20. **RVW/3/2026** is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

21. I agree.

(AJAY KUMAR GUPTA, J.)