IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]
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PRESENT: HON'BLE JUSICE TIRTHANKAR GHOSH
AND
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

FMAT (ARBAWARD)/07/2024
IA No. CAN/2/2024

THE EXECUTIVE ENGINEER,
SRI VIJAYA PURAM SOUTH DIVISION, APWD *... APPELLANT*

VERSUS

M/S SURENDRA INFRASTRUCTURE PRIVATE LIMITED
...RESPONDENT

For the Appellant	: Mr. Rakesh Kumar
For the respondents	: Mr. Tapan Kumar Das
Heard on	: 16.03.2026, 19.03.2026 & 20.03.2026
Judgment on	: 23.03.2026

CHAITALI CHATTERJEE (DAS), J.

1. This application has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the judgement and order dated February 27, 2024 passed in Other Suit No. 2 of 2019 by the learned District Judge, Port Blair affirming the award dated October 15, 2018 passed by the learned Arbitrator Shri A.K Sarin in the Arbitration Case.

2026:CHC-PB:66-DB

FACTUAL MATRIX

2. An agreement bearing No. 300/A/EE/2006-07 was executed between the petitioner and the respondent with respect to the work of construction of Transit Accommodation for 22 families of the APWD, Sri Vijaya Puram. The said work order was awarded by the Executive Engineer, Sri Vijaya Puram South Division, Andaman and Public Works Department vide letter dated November 21, 2006 for a tendered amount of Rs. 2,99,26,176/-. In the agreement the time of completion of work was stipulated as twelve months with the starting date of work on January 13, 2007 and date of completion of the work as January 12, 2008. The work was actually completed on April 15, 2010. Therefore, there was a delay of two years over which dispute arose on account of prolongation of contract and other issues. Seventeen claims were raised by the contractor/respondent which was referred to the Arbitral Tribunal. The learned Arbitrator passed award after adjudication by registering a claim No. 3, 5,7, 9, 10, 12, 13, 15 and 17 and partially allowed the claim sum of money against claim No. 1, 2, 4, 6, 7, 8, 11, 14 and 16. The award was received on October 29, 2018 and accordingly the same was challenged under Section 34 of the Arbitration and Conciliation Act before the Court of learned District Judge.

3. The learned District Judge refused to interfere with the said award with the observation that the award was not perverse or

opposed to the public policy as required to set aside the award under Section 34 of the Arbitration and Conciliation Act. Being aggrieved thereby this application has been filed under Section 37 of the Arbitration and Conciliation Act.

4. The learned advocate appearing on behalf of the appellant raised the issues that the respondents has imposed liquidated damages of Rs. 2,19,957/- for the alleged delay in completing the works for fifteen days @ 1.5% per month which is wrongful and illegal. It is further submitted that the liquidated damages of Rs. 2,19,957/- levied by the respondent is arbitrary and wrongful and illegal as the work was completed on April 15, 2010 against the stipulated completion of the work within January 12, 2008. Provisional extension of time was granted by the respondent up to March 31, 2009 without prejudice to the right of the government to recover liquidated damages. A Show Cause Notice was issued to reply within fifteen days regarding delay in completion of work which was replied by the claimant refuting the delay on account of the claimant.

5. It is further argued that a contract cannot provide that one party will be the Arbitrator to decide whether it committed breach or the other party committed breach. The question can only be decided by only adjudicator forum i.e. the Court of an Arbitrator. It is further argued that there cannot be two contrary views with regard to validity of contract and relied upon the decision of **Sepco Electric Power**

Construction Corporation vs GMR Kamalanga Energy Ltd. reported in **2025 Livelaw (SC) 963** where it was held that procedural defect and jurisdictional error, modification of contract terms by Arbitral Tribunal without material evidence and reliance on conduct/emails not amounting to unequivocal waiver or valid estoppel, was held to be a jurisdictional error. Further argument advanced that the impugned awards are patently unreasonable and being clear breach of provision of Section 31 (3) or Arbitration and Conciliation Act, 1996 and hence such order are liable to be set aside but the learned District Judge failed to consider that aspect and that both learned Arbitrator as well as learned District Judge completely ignored the facts that the entire claim is time barred since the matter was referred to arbitration after 4 years from 2010 and 6 years from 2008. The arbitration initiated in the month of August, 2014 with a delay of minimum four years and maximum six years without explaining the cause but the learned District Judge failed to consider that the Arbitrator took four years time to pass final award which itself is questionable and more than sufficient to set aside such award as it goes beyond the basic essence of the Arbitration Act specially Section 29 A and 14 of the Arbitration and Conciliation Act, 1996. Accordingly prayed for setting aside the order passed by the learned District Judge as well as the learned Arbitrator and as well as award passed by the learned Arbitrator.

6. *Per contra,* the learned advocate representing the respondents vehemently opposed the contention raised by the appellant and argued that the ground raised by the appellant under Section 34 before the learned District Judge does not come under Section 34 (2) (a) which is dealt by the learned District Judge at length. The law point with respect to the applicability of amendment of October 23, 2015 introducing Section 29A (time limit for arbitral award) raised by the appellant is not maintainable in view of the judicial pronouncement passed by Hon'ble Apex Court. Accordingly put reliance upon paragraph 23, 24, and 25 of the judgement in the matter of **Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd. and etc. AIR 2018 SUPREME CPOURT1549.** Further relied upon para 7, 9.1, 10 of **M/S Shree Vishnu Constructions vs. The Engineer in Chief Military 9TH May, 2023 in Civil Appeal No.3461 of 2023** whereby it was clarified that the amendment act is prospective in nature, and will apply to those arbitral proceedings that commenced as understood by Section 21 of the principal act, or after the Amendment Act, 2015.

7. Heard the submissions of both the learned advocates. The present appeal assailed the important question of maintainability of the claim itself in view of the Amendment Act of 2015 by incorporating Section 29A in the Arbitration and Conciliation (Amendment Act of 2015) This matter was dealt with by the Hon'ble Supreme court in **Board of Control for Cricket in India vs. Kochi**

Cricket Pvt. Ltd. and etc. (supra). The Hon'ble Apex Court took note of the pre amended provisions under Section 36 which is as follows:

> *"PRE-AMENDED PROVISION "Section 36. Enforcement.*
> *Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court." AMENDED PROVISION "Section 36. Enforcement.*
> *(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.*
> *2) Where an application to set aside the arbitral award has been filed in the Court under section 34 the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*
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> > *Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)."*

8. In paragraph 23, 24 and 25 of the said judgement it was observed:

> *"23. All learned counsel have agreed, and this Court has found, on a reading of Section 26, that the provision is indeed in two parts. The first part refers to the Amendment Act not applying to certain proceedings, whereas the second part affirmatively applies the Amendment Act to certain proceedings. The question is what exactly is contained in both parts. The two parts are separated by the word 'but', which also shows that the two parts are separate and distinct. However, Shri Viswanathan has argued that the expression "but means only that there is an emphatic repetition of the first part of Section 26 in the second part of the said Section. For this, he relied upon the Concise Oxford Dictionary on Current English, which states:*
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> > *"introducing emphatic repetition; definitely (wanted to see nobody, but nobody)". Quite obviously, the context of the word "but" in Section 26 cannot bear the aforesaid meaning, but serves only to separate the two distinct parts of Section 26.*
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> *24. What will be noticed, so far as the first part is concerned, which states, "Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree.." is that: (1) "the arbitral proceedings" and their*

commencement is mentioned in the context of Section 21 of the principal Act; (2) the expression used is "to" and not "in relation to"; and (3) parties may otherwise agree. So far as the second part of Section 26 is concerned, namely, the part which reads, "...but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act" makes it clear that the expression "in relation to" is used and the expression "the" arbitral proceedings and "in accordance with the provisions of Section 21 0f the principal Act" is conspicuous by its absence, 25. That the expression "the arbitral proceedings" refers to proceedings before an arbitral tribunal is clear from the heading of Chapter V of the 1996 Act, which reads as follows:

> *"Conduct of Arbitral Proceedings" The entire chapter consists of Sections 18 to 27 dealing with the conduct of arbitral proceedings before an arbitral tribunal. What is also important to notice is that these proceedings alone are referred to, the expression "to" as contrasted with the expression "in relation to" making this clear. Also, the reference to Section 21 of the 1996 Act, which appears in Chapter V, and which speaks of the arbitral proceedings commencing on the date on which a request for a dispute to be referred to arbitration is received by the respondent, would also make it clear that it is these proceedings, and no others, that form the subject matter of the first part of Section 26. Also, since the conduct of arbitral proceedings is largely procedural in nature, parties may "otherwise agree" and apply the Amendment Act to arbitral proceedings that have commenced before the Amendment Act came into force. 2 Section 29A of the Amendment Act provides for time limits within which an arbitral award is to be made. In Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602 at 633, this Court stated:*
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> *"(ii) Every litigant has a vested right in substantive law but no such right exists in procedural law,*
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> *(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.*

In stark contrast to the first part of Section 26 is the second part, where the Amendment Act is made applicable "in relation to" arbitral proceedings which commenced on or after the date of commencement of the Amendment Act. What is conspicuous by its absence in the second part is any reference to Section 21 of the 1996 Act. Whereas the first part refers only to arbitral proceedings before an arbitral tribunal, the second part refers to Court proceedings "in relation to" arbitral proceedings, and it is the commencement of these Court proceedings that is referred to in the second part of Section 26, as the words "in relation to the arbitral

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." It is, inter alia, because timelines for the making of an arbitral award have been laid down for the first time in Section 29A of the Amendment Act that parties were given the option to adopt such timelines which, though procedural in nature, create new obligations in respect of proceeding already begun under the unamended Act. This is, of course, only one example of why parties may otherwise agree and apply the new procedure laid down by the Amendment Act to arbitral proceedings that have commenced before it came into force.

proceedings" in the second part are not controlled by the application of Section 21 of the 1996 Act Section 26, therefore, bifurcates proceedings, as has been stated above, with a great degree of clarity, into two sets of

proceedings - arbitral proceedings themselves, and Court proceedings in relation thereto. The reason why the first part of Section 26 is couched in negative form is only to state that the Amendment Act will apply even to arbitral proceedings commenced before the amendment if parties otherwise agree. If the first part of Section 26 were couched in positive language (like the second part), it would have been necessary to add a proviso stating that the Amendment Act would apply even to arbitral proceedings commenced before the amendment if the parties agree. In either case, the intention of the legislature remains the same, the negative form conveying exactly what could have been stated positively, with the necessary proviso. Obviously "arbitral proceedings" having been subsumed in the first part cannot re-appear in the second part and the expression "in relation to arbitral proceedings" would, therefore, apply only to Court proceedings which relate to the arbitral proceedings. The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to Court proceedings which have commenced on or after the Amendment Act came into force."

9. In the case of **M/s Shree Vishnu Constructions vs the Engineer in Chief Military (Supra)** the point for consideration was as per section 26 read with section 21 of the Amendment Act, 2015, Amendment Act 2015 shall not be applicable in a case where arbitration proceedings as per section 21 of the Arbitration Act, has been commenced prior to the Amendment Act 2015. It was held after taking note of various other judicial pronouncement that in the case of Parmar Construction Company (supra) which is directly on the point it is specifically observed and held that 2015 Amendment Act, which came into force with effect from October 23, 2015 shall not apply to the arbitral proceeding which commenced in accordance with the provisions of Section 21 of the Principal Act, 1996 before the coming into force the 2015 Amendment Act unless the parties otherwise agree. Applying such law laid down in the case of Parmar Construction Company (supra) it was held that the notice invoking

arbitration clause was issued on December 26, 2013 i.e. much prior to the Amendment Act, 2015 and the application under 11 (6) of the Act was filed on April 27, 2016 i.e. much after the Amendment Act came into force, the law prevailing prior to the Amendment Act, 2015 shall be applicable. It was further observed and held that in case where notice invoking arbitration is issued prior to Amendment Act of 2015 and the application under Section 11 for appointment of an Arbitrator is made post Amendment Act 2015 the provisions of Pre Amendment Act, 2015 shall be applicable and not the Amendment Act, 2015. The Hon'ble court further took note of the decision of "*Hitendra Vishnu Thakur vs State of Maharastra, (1994) 4 SCC 602 where the Hon'ble Supreme court stated in para 26,...(iii) Every litigant has a vested right in substantive law but no such right exits in procedural law, (iv) a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished. (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implications".*

10. In the present case in this regard and considering the facts and circumstances of the present case it is seen that the ground that the entire claim is time barred in view of the amended provision as

the period was beyond the stipulated time period in terms of Section 29 (A) and 14 of the Arbitration and Conciliation, 1996, cannot be held to be a ground for consideration of setting aside the judgement and order passed in Section 34 of the Arbitration and Conciliation Act by the learned District Judge.

11. That apart the scope and ambit to entertain the application under Section 37 of the Arbitration and Conciliation Act is very limited. The judicial interference is limited to cases of patent illegality in the Arbitral process or the award passed is perverse. It was categorically held by the Hon'ble Apex Court in a catena of decisions that "*the Court's do not sit in appeal over arbitral award, therefore, jurisdiction of the concerned Court is confined to the specific ground as laid down under Section 34 of the 1996 Act like violation of public policy, patent illegality or misconduct'.* It was further held in the decision that it is based on the principle of party autonomy and the need to uphold the finality of an arbitral award. It was iterated that "when parties have through conscious decision making, opted for arbitration as an alternative means of dispute mechanism, the Courts ought to refrain from re-appreciation of evidence or substitution of interpretations, unless the award is perverse, unreasonable or contrary to the mandate of the statue of the decisions of the Court".

12. The Hon'ble Apex Court in **Sepco Electric Power Construction Corporation vs GMR Kamalanga Energy Ltd. (supra)** in paragraph 71 held :

> *"71. The decision in **MMTC Limited (supra)**, as referenced recently by a coordinate Bench of this Court in **Reliance Infrastructure Limited (supra)**, unfolds in an involute manner that a court under Section 37 of the 1996 Act can only determine as to whether the concerned court under Section 34 has not travelled beyond the parameters of the scope therein. No independent evaluation is permitted on the merits of the award. An observation to a similar corollary was also determined by a 3-Judge Bench of this Court in **Konkan Railway Corporation Limited v. Chenab Bridge Project Undertakings**, while assailing the reinterpretation of the contractual terms in the following manner:*
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> > *"25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in Radha Sundar Dutta v. Mohd. Jahadur Rahim [AIR 1959 SC 24], relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified."*

13. It was held in para 72 that "*a juxtaposition of this provision with the jurisprudence of the Code of Civil Procedure, 1908 instantiates it to function akin to a second appeal under the latter. While the initial probe is initiated during a recourse under Section 34 of the 1996 Act,*

and if it further affirms the award, a court exercising the mandate of Section 37 ought to employ caution and reluctance to alter with the concurrent findings".

14. Therefore, in view of the above law laid down by the Hon'ble Supreme Court and considering the facts of the present case, there is no scope of interference with the judgement and order passed by the learned District Judge whereby the learned District Judge refused to set aside the award with the observation that no reasons were found to interfere with the decision taken by the Sole Arbitrator, as the same was not opposed to "public policy". The point of limitation as assailed in this Appeal also on the face of it is not maintainable since the matter is pre amendment Act of 2015 and hence being a procedural law cannot be given retrospective effect.

15. Hence in the light of above discussion, this court do not find any merit in the submission advanced by the appellant and found no reason to interfere with the order passed by the learned District Judge.

16. Accordingly, this **FMAT(ARBAWARD)/07/2024** stands dismissed. The order passed by the learned District Judge in Other Suit No. 2 of 2019 stands affirmed.

17. Pending applications, if any, are consequently disposed of

18. Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on priority basis upon compliance of all legal formalities.

(CHAITALI CHATTERJEE (DAS), J.)

I agree.

(TIRTHANKAR GHOSH, J.)