NEUTRAL CITATION

2026:GUJHC:39415

Reserved On : 23/04/2026
Pronounced On : 29/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1309 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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Approved for Reporting	Yes	No
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JWIL INFRA LTD. (PREVIOUSLY KNOWN AS JITF WATER INFRASTRUCTURE LIMITED)
Versus
AQUAFIL-WINTECH JV & ORS.

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Appearance:
MR MIHIR THAKORE SENIOR ADVOCATE WITH MR GAURAV K LAKHWANI(9520) for the Petitioner(s) No. 1
MR NILESH P UDERNANI(9050) for the Petitioner(s) No. 1
MR MITUL SHELAT SENIOR ADVOCATE WITH MR RUTUL P DESAI(6498) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

CAV JUDGMENT

[1] By way of the present petition under Article 227 of the Constitution of India, the petitioner has invoked the supervisory jurisdiction of this Court, challenging the legality and validity of the order dated 13th December 2025 passed by the learned Arbitrator in

Civil Appeal No.46 of 2025 arising out of GCCI-ADC/No.042/2018. By the impugned order, the learned Arbitrator rejected the petitioner's application seeking recall of the claimant's witness, Mr. Hitesh Babulal Shah, for the purpose of cross-examination.

[2] The petitioner was the original respondent, whereas the respondents herein were the original claimants in the arbitral proceedings. For the sake of convenience and to avoid confusion, the parties shall hereinafter be referred to according to their respective status before the learned Arbitrator.

[3] The facts giving rise to the present petition, shorn of unnecessary details, may be stated thus:

[3.1] M/s. Guwahati Metropolitan Development Authority (GMDA) entered into an agreement dated 13.03.2012 with the respondent for execution of the Guwahati Water Supply Project (37 MLD), comprising design, supply, installation and commissioning of intake facilities, transmission mains, water treatment plant and reservoir for the North Zone together with operation and maintenance for five years, for an aggregate contract value of

Rs.80,89,39,834/-.

[3.2] In the year 2014, the respondent floated a Request for Proposal on a back-to-back basis. Pursuant thereto, M/s. Aquafil Polymers Pvt. Ltd. and M/s. Wintech Engineering Pvt. Ltd., both registered as Micro and Small Scale Industries, constituted an informal Joint Venture under the name "Aquafil-Wintech JV" through a Consortium Agreement dated 02.08.2014 for participating in the tender process. The claimant submitted its bids on 18.07.2014 and 25.07.2014 for Package C-01 valuing Rs.79.47 Crores, and consequently, a back-to-back subcontract dated 08.08.2014 came to be executed between the respondent and the claimant.

[3.3] According to the claimant, the respondent first terminated the portion of the contract relating to the design of the intake well on 18.02.2017 and thereafter terminated the civil and structural work relating thereto on 09.03.2017. Ultimately, by notice dated 08.01.2018 purportedly issued under Clause 19.2.2 of the agreement dated 08.08.2014, the respondent terminated the

entire contract. The claimant disputed the legality of such termination by its reply dated 08.02.2018.

[3.4] Initially, the respondent appointed Hon'ble Mr. Justice A.K. Patnaik, former Judge of the Supreme Court of India, as Sole Arbitrator on 26.02.2018. However, before commencement of the arbitral proceedings, the claimant asserted that it was an MSME registered under the Micro, Small and Medium Enterprises Development Act, 2006 and opted to pursue its statutory remedy under the said Act. Accordingly, the arbitral proceedings were kept in abeyance.

[3.5] Thereafter, the claimant filed a reference before the Micro and Small Enterprises Facilitation Council, Gandhinagar on 25.05.2018. Upon failure of conciliation under Section 18(2) of the MSMED Act, the Council, by order dated 30.06.2018, referred the dispute for arbitration to GCCI-ADRC under Section 18(3) of the Act. The respondent challenged the said order by filing Special Civil Application No.11169 of 2018, which came to be dismissed by this Court on 09.09.2019. The challenge carried further by way of

Letters Patent Appeal No.1667 of 2019 also did not result in any interim stay of the arbitral proceedings.

[3.6] Pursuant to the reference, GCCI-ADRC appointed Hon'ble Mr. Justice A.K. Patnaik as Sole Arbitrator, who accepted the appointment and entered upon the reference. The first arbitral meeting was held on 11.10.2019. Though duly served, the respondent remained absent. Consequently, the Tribunal framed the procedural schedule directing the claimant to file its Statement of Claim by 11.11.2019 and the respondent to file its Statement of Defence together with counter-claim, if any, by 10.12.2019. The claimant sought a short extension and ultimately filed its Statement of Claim on 18.11.2019, which was subsequently taken on record.

[3.7] On 20.02.2020, the respondent appeared before the Tribunal through learned advocate Mr. Rasesh H. Parikh and sought stay of the arbitral proceedings on the ground of pendency of the Letters Patent Appeal. By a reasoned order, the Tribunal rejected the stay application. Since neither any request for extension of time nor any Statement of Defence or Counter Claim

had been filed, the Tribunal, by Procedural Order No.3, closed the respondent's right to file the Statement of Defence and Counter Claim and directed the claimant to file affidavit of evidence.

[3.8] The claimant accordingly filed the affidavit of evidence of Mr. Hitesh Shah on 16.03.2020. Owing to the COVID-19 pandemic, the hearing was thereafter conducted through video conferencing. Although the respondent sought adjournment on the ground that another stay application had been filed before the Division Bench and that its counsel was not conversant with conducting cross-examination through video conferencing, the Tribunal rejected the request by a detailed order dated 30.05.2020. On the same day, the Tribunal framed the issues, recorded the examination-in-chief of Mr. Hitesh Shah, and in the absence of the respondent or its advocate, who chose not to participate despite due notice, completed the evidence without any cross-examination and discharged the witness.

[3.9] Thereafter, the respondent continued to file successive applications seeking stay of the arbitral proceedings, all of which

were rejected by the Tribunal. During the interregnum, an application filed by M/s. Wintech Engineering Pvt. Ltd. seeking impleadment came to be withdrawn.

[3.10] On 21.07.2020, the respondent filed an application seeking reopening of the stage for filing the Statement of Defence and Counter Claim, besides permission to cross-examine the claimant's witness. The claimant opposed the said application by filing a detailed reply, whereafter the respondent filed its rejoinder as well as an additional affidavit stating that it did not intend to challenge the jurisdiction of the Tribunal and seeking indulgence on the ground of sufficient cause.

[3.11] Upon considering the rival contentions, the learned Tribunal, by a detailed order dated 29.11.2020, rejected the said application with exemplary costs of Rs.5,00,000/-.

[3.12] Aggrieved thereby, the respondent preferred Special Civil Application No.1107 of 2021 before this Court. The said petition came to be dismissed by a Coordinate Bench vide order dated 12.03.2021.

[3.13] Thereafter, the respondent filed Civil Application No.33 of 2021 under Section 29A(4) of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the learned Sole Arbitrator on the ground that the arbitral award had not been rendered within the prescribed period. The said application came to be decided by the learned Tribunal by order dated 27.12.2024.

[3.14] Subsequently, the respondent preferred Civil Application No.46 of 2025 dated 13.03.2025 seeking recall of the claimant's witness, Mr. Hitesh Babulal Shah, for the purpose of cross-examination. The learned Tribunal, by the impugned order dated 13.12.2025, rejected the said application with costs of Rs.5,00,000/-, observing that the application was frivolous and intended only to consume the valuable time of the Tribunal. It is this order which is the subject matter of challenge in the present petition.

[4] Being aggrieved and dissatisfied by the aforesaid, the respondents have approached this Court by way of this petition

under Article 227 of the Constitution of India on various grounds and for appropriate reliefs.

[5] Heard learned Senior Advocate Mr. Mihir Thakore, assisted by learned advocates Mr. Gaurav Lakhwani and Mr. Nilesh Udernani for the petitioner–original respondent, and learned Senior Advocate Mr. Mitul Shelat, assisted by learned advocate Mr. Rutul Desai for the respondents–original claimants.

[6] Having regard to the limited controversy involved and at the request of the learned advocates appearing for the respective parties, the present petition is taken up for final hearing at the admission stage.

[7] Learned Senior Advocate Mr. Mihir Thakore, appearing for the petitioner, while assailing the legality and validity of the impugned order, advanced the following submissions:

[7.1] It was submitted that the impugned order rejecting the petitioner's application seeking recall of the claimant's witness for the purpose of cross-examination is ex facie illegal, arbitrary and

contrary to the settled principles governing arbitral proceedings.

[7.2] It was further submitted that the learned Tribunal has fundamentally misconstrued the doctrine of *res judicata*. According to the learned Senior Counsel, although the earlier application dated 21.07.2020 contained two distinct prayers, namely, (i) reopening of the stage for filing the Statement of Defence and Counter Claim, and (ii) permission to cross-examine the claimant's witness, the Tribunal, while passing the order dated 29.11.2020, adjudicated only upon the former prayer. Likewise, while dismissing Special Civil Application No.1107 of 2021 by order dated 12.03.2021, this Court confined its consideration to the issue relating to reopening of the stage for filing the Statement of Defence. It was, therefore, contended that the prayer seeking recall of the witness for cross-examination was neither adjudicated upon by the Tribunal nor examined by this Court. Consequently, the subsequent application could not have been rejected by invoking the principles of *res judicata.*

[7.3] Elaborating the aforesaid submission, it was contended

that the doctrine of *res judicata* can be attracted only when the issue sought to be raised has been directly and substantially in issue, heard and finally adjudicated by a competent forum. In the present case, although the relief relating to reopening of cross-examination had been prayed for in the earlier application, the same was never adjudicated either by the learned Tribunal or by this Court. In such circumstances, the Tribunal committed a manifest error in rejecting the subsequent application on the ground of *res judicata.*

[7.4] It was next submitted that denial of an opportunity to cross-examine the claimant's witness amounts to a clear violation of the principles of natural justice as well as the mandate contained in Section 18 of the Arbitration and Conciliation Act, 1996. Inviting the attention of the Court to Section 18, learned Senior Counsel submitted that the provision guarantees equal treatment to the parties and obligates the arbitral tribunal to afford each party a full opportunity to present its case. It was, therefore, contended that such statutory mandate extends to every stage of the arbitral proceedings, including the stage of recording evidence, and

consequently, refusal to permit cross-examination of the claimant's witness is contrary to the legislative intent underlying Section 18 of the Act.

[7.5] It was further submitted that permitting the petitioner to cross-examine the claimant's witness would neither cause prejudice to the claimant nor impede the arbitral proceedings. According to the petitioner, the proceedings had already continued beyond the period contemplated under Section 29A of the Arbitration and Conciliation Act, 1996 and, therefore, permitting recall of the witness for cross-examination would neither occasion any substantial delay nor adversely affect the statutory timeline.

[7.6] Learned Senior Counsel lastly submitted that the hearing fixed on 30.05.2020 was scheduled for framing of issues, recording the examination-in-chief of the claimant's witness and his cross-examination. Despite the petitioner's application dated 29.05.2020 seeking adjournment of the hearing, the learned Tribunal proceeded with the matter on 30.05.2020, framed the issues, recorded the examination-in-chief of the claimant's witness

and, in the absence of the petitioner, treated the opportunity of cross-examination as closed. According to the petitioner, the entire exercise was undertaken in undue haste, resulting in denial of a fair opportunity to contest the claimant's evidence and thereby violating the principles of natural justice as well as the statutory guarantee of equal treatment embodied in Section 18 of the Arbitration and Conciliation Act, 1996.

[7.7] To substantiate the aforesaid contentions, learned Senior Advocate Mr. Thakore for the petitioner has placed heavy reliance on the following decisions:

(i) **State of Maharashtra and another vs. National Construction Company, Bombay** reported in **(1996) 1 SCC 735;**

(ii) **Ferro Alloys Corpn. Ltd. and another vs. Union of India and others** reported in **(1999) 4 SCC 149;**

(iii) **Serosoft Solutions Pvt. Ltd. vs. Dexter Capital Advisors Pvt. Ltd. [Civil Appeal Nos.51-52 of 2025**

arising out of SLP(C) Nos.26441-26442/2024 decided on 3rd January 2025] reported in **2025 SCC Online SC 22**

[8] By making above submissions, learned Senior Advocate for the petitioner prayed to allow the present petition by quashing and setting aside the impugned order in the interest of justice.

[9] *Per contra,* learned Senior Advocate Mr. Mitul Shelat, appearing for the respondents–original claimants, at the outset, submitted that the present petition is not maintainable in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. It was contended that the petitioner has failed to demonstrate either any jurisdictional error or perversity in the impugned order passed by the learned Arbitral Tribunal. It was, therefore, urged that this Court ought not to interfere with the ongoing arbitral proceedings in exercise of its supervisory jurisdiction. It was further submitted that, in the event an arbitral award is ultimately rendered against the petitioner, all permissible contentions would remain open to be agitated in proceedings under

Section 34 of the Arbitration and Conciliation Act, 1996. Since an efficacious statutory remedy is thus available at the appropriate stage, the present petition deserves to be dismissed.

[9.1] In support of the aforesaid submissions, learned Senior Advocate Mr. Shelat placed reliance upon the following decisions:

(i) Nivedita Sharma v. Cellular Operators Association of India, reported in **(2011) 14 SCC 337 (paragraph 11);**

(ii) Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., reported in **(2022) 1 SCC 75 (paragraph 17); and**

(iii) Deep Industries Limited v. Oil and Natural Gas Corporation Limited, reported in **(2020) 15 SCC 706.**

[9.2] It was further submitted that the impugned order is a well-reasoned order passed after affording adequate and sufficient opportunity to both the parties and does not suffer from any perversity or patent illegality warranting interference under Article 227 of the Constitution of India.

[9.3] Learned Senior Counsel further submitted that the arbitral proceedings have reached an advanced stage, the final arguments on behalf of the claimants having already concluded and substantial arguments on behalf of the petitioner also having been addressed. In such circumstances, the prayer seeking recall of the claimant's witness at the fag end of the proceedings is wholly untenable. It was, therefore, contended that the learned Tribunal was fully justified in rejecting the application and imposing exemplary costs, particularly having regard to the conduct of the petitioner throughout the proceedings.

[9.4] It was submitted that the petitioner's right to cross-examine the claimant's witness stood concluded by the order dated 30.05.2020, whereby the witness was examined and discharged in the absence of the petitioner despite due notice. The said order has admittedly attained finality. It was contended that after nearly five years, the petitioner preferred Civil Application No.46 of 2025 seeking recall of the claimant's witness for cross-examination on the limited issue of authority. According to the respondents, the

timing of the application itself clearly demonstrates that it was filed solely with a view to protract and delay the arbitral proceedings. It was further submitted that the learned Tribunal has rightly taken into consideration the repeated conduct of the petitioner while passing the impugned order.

[9.5] It was next contended that the learned Arbitral Tribunal rejected the petitioner's application not merely by invoking the principles of *res judicata*, but also upon an independent consideration of the merits of the application. Therefore, the impugned order cannot be said to be contrary to law, nor can it be characterised as suffering from any jurisdictional error or perversity warranting interference under Article 227 of the Constitution.

[9.6] Referring to paragraph 34 of the order dated 12.03.2021 passed by this Court in Special Civil Application No.1107 of 2021, learned Senior Counsel submitted that the petitioner has completely misconstrued the observations made therein. According to him, the liberty reserved by this Court was only to the extent of keeping open the petitioner's right to raise all

permissible contentions in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, if occasion so arose. It was never intended to confer liberty upon the petitioner to file a fresh application before the Tribunal seeking reopening of the stage of cross-examination. Consequently, the reliance placed upon paragraph 34 of the earlier order is wholly misplaced and devoid of merit.

[9.7] Lastly, it was submitted that the power to recall a witness, akin to the principles embodied in Order XVIII Rule 17 of the Code of Civil Procedure, is purely discretionary and is to be exercised sparingly and only in exceptional circumstances. Such power cannot be invoked as a matter of course or claimed as a matter of right, particularly when the application is made at the fag end of the arbitral proceedings after the witness has long since been discharged. It was, therefore, urged that the learned Tribunal committed no error in rejecting the application.

[10] By making above submissions, learned Senior Advocate for the respondents – Claimants requested this Court to dismiss the

present petition.

[11] Heard learned advocates appearing for the respective parties and have gone through the material produced on record. No other and further submissions have been canvassed by learned advocates appearing for the respective parties except what are stated hereinabove.

[12] Having heard the learned advocates appearing for the respective parties and upon perusal of the material placed on record, the principal question that arises for consideration of this Court is whether the learned Arbitral Tribunal, while passing the impugned order dated 13th December 2025 rejecting the petitioner's application seeking recall of the claimant's witness for cross-examination, has acted without jurisdiction, in excess of jurisdiction, or committed any patent illegality or perversity warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

[13] Before examining the rival submissions on merits, it is necessary to bear in mind that the present petition under Article

227 of the Constitution of India arises from an interlocutory order passed by the learned Arbitral Tribunal during the pendency of arbitral proceedings. The scope of interference by this Court in such matters is, therefore, extremely limited.

[13.1] The legal position in this regard is no longer *res integra*. In **Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.**, the Hon'ble Supreme Court has categorically held that the constitutional jurisdiction under Articles 226 and 227 of the Constitution should not ordinarily be invoked to interfere with the arbitral process, except in exceptionally rare cases. The Court has emphasised that judicial interference must remain consistent with the legislative scheme and object of the Arbitration and Conciliation Act, 1996, which envisages minimal judicial intervention. It has further been observed that such extraordinary jurisdiction may be exercised only in exceptional situations where a party is left remediless under the statute or where the proceedings are vitiated by manifest bad faith or circumstances of a similar nature.

[13.2] The same principle has been reiterated by the Hon'ble Supreme Court **in Deep Industries Limited v. Oil and Natural Gas Corporation Limited**, wherein it has been held that while exercising jurisdiction under Article 227, the High Court must act with great circumspection and keep in view the statutory policy underlying the Arbitration and Conciliation Act, 1996. In that case, while dealing with a challenge to an order passed under Section 16 of the Act, the Supreme Court held that the aggrieved party ought to await the final arbitral award and raise all permissible grounds in proceedings under Section 34 of the Act, rather than seek interference at an intermediate stage. The Supreme Court, therefore, deprecated entertaining petitions under Article 227 against interlocutory orders of the Arbitral Tribunal, except in rare and exceptional cases.

[13.3] Thus, the consistent view of the Hon'ble Supreme Court is that supervisory jurisdiction under Article 227 cannot be invoked as if it were an appellate or revisional jurisdiction against every interlocutory order passed by an Arbitral Tribunal. Unless the impugned order is shown to suffer from patent lack of jurisdiction,

manifest perversity, or such exceptional circumstances as would justify departure from the statutory framework, this Court would be slow in interfering with the ongoing arbitral proceedings.

[14] Applying the aforesaid principles to the facts of the present case, this Court is of the considered view that the impugned order does not suffer from any jurisdictional error, patent illegality or perversity warranting interference under Article 227 of the Constitution of India.

[14.1] The impugned order essentially reflects the learned Arbitral Tribunal's exercise of discretion in declining the petitioner's request to recall the claimant's witness for the purpose of cross-examination. Whether such discretion ought to have been exercised differently is not a matter for this Court to examine in exercise of its supervisory jurisdiction. If, ultimately, the arbitral award is rendered against the petitioner, it would always be open for the petitioner to assail the correctness of such interlocutory orders, including the present order, in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, to the extent

permissible in law.

[14.2] This Court also finds that while passing the impugned order, the learned Arbitral Tribunal has taken into consideration the order dated 12.03.2021 passed by the Coordinate Bench of this Court in Special Civil Application No.1107 of 2021. The Tribunal has interpreted paragraph 34 of the said order to mean that the petitioner was at liberty to avail of the remedy available before the appropriate forum in accordance with law, namely, by raising all permissible contentions in proceedings under Section 34 of the Act, if occasion so arose. Such an interpretation, in the opinion of this Court, is in consonance with the tenor and context of the order dated 12.03.2021. The observations made therein cannot, by any stretch of imagination, be construed as granting liberty to the petitioner to file a fresh application before the learned Arbitral Tribunal seeking reopening of an issue which had already attained finality.

[14.3] Viewed from any angle, therefore, the learned Arbitral Tribunal cannot be said to have acted beyond its

jurisdiction or to have committed any manifest error of law in rejecting the petitioner's application. Consequently, no case is made out for interference with the impugned order in exercise of the limited supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

[15] Even otherwise, the contention advanced on behalf of the petitioner that it possesses an indefeasible right to seek recall of the claimant's witness for cross-examination cannot be accepted.

[15.1] In a recent decision in **Shubhkara Singh v. Abhayraj Singh and Others [Petition for Special Leave to Appeal (C) Nos.12012-12013 of 2025, decided on 05.05.2025]**, the Hon'ble Supreme Court has reiterated that the power to recall and re-examine a witness under Order XVIII Rule 17 of the Code of Civil Procedure is a discretionary power vested in the Court. Such power is intended only to enable the Court to seek clarification on any ambiguity or to clear any doubt arising from the testimony of a witness. It has been categorically held that no party has an inherent or vested right to seek recall of a witness for the purpose of further

cross-examination or re-examination. The said provision cannot be invoked to fill up omissions in a party's case, to improve its evidence, or to introduce additional material.

[15.2] The Hon'ble Supreme Court has further observed that, in appropriate and exceptional cases, a Court may permit recall of a witness by invoking its inherent powers under Section 151 of the Code of Civil Procedure. However, such power is to be exercised sparingly and only where the interests of justice so demand.

[15.3] Applying the aforesaid principles to the facts of the present case, this Court is of the opinion that the petitioner cannot claim recall of the claimant's witness as a matter of right. The discretion whether to permit such recall squarely rests with the learned Arbitral Tribunal. In the absence of any manifest arbitrariness, jurisdictional error or perversity in the exercise of such discretion, no interference is warranted. Thus, even on this additional ground, the petitioner's contention that it had an enforceable right to seek recall of the witness for cross-examination

deserves to be rejected.

[16] The next contention advanced on behalf of the petitioner is that the learned Arbitral Tribunal erroneously invoked the principles of *res judicata* while rejecting the application seeking recall of the claimant's witness for cross-examination. Having considered the submissions and the material placed on record, this Court is unable to accept the said contention.

[16.1] At the outset, it deserves to be noticed that the impugned order is not founded solely on the principle of *res judicata*. The learned Tribunal has taken into consideration the entire course of the arbitral proceedings and the conduct of the petitioner, which, according to the Tribunal, reflected a consistent attempt to protract the proceedings by filing successive applications. The principle of *res judicata* has been invoked as one of the grounds, and not as the sole basis, for rejecting the application.

[16.2] Be that as it may, the factual background assumes considerable significance. By an application dated 21.07.2020, the

petitioner had sought two substantive reliefs, namely, (i) reopening of the stage for filing the Statement of Defence and Counter Claim, and (ii) permission to recall the claimant's witness, Mr. Hitesh Babubhai Shah, for cross-examination. The learned Tribunal, by its order dated 29.11.2020, rejected the application in its entirety. It is true that while detailed reasons were assigned with respect to the prayer relating to the Statement of Defence, there was no independent discussion regarding the prayer seeking recall of the witness.

[16.3] The petitioner challenged the said composite order before this Court by filing Special Civil Application No.1107 of 2021. Significantly, although the petitioner was fully aware that the Tribunal had not separately dealt with the prayer relating to recall of the witness, no contention was urged before the Coordinate Bench regarding such omission. Nor was any request made seeking clarification, modification or remand of the matter for consideration of the said prayer. The challenge was confined to the issues argued by the petitioner, and ultimately the petition came to be dismissed by order dated 12.03.2021.

[16.4] In the opinion of this Court, once the petitioner consciously elected not to urge the grievance regarding non-consideration of one of the prayers contained in the earlier application, it must be held that the petitioner waived its right to agitate that grievance in the said proceedings. The petitioner cannot now, after permitting the order dated 29.11.2020 to attain finality and after its affirmation by the Coordinate Bench, seek to revive one component of the very same application by filing a fresh application nearly five years thereafter.

[16.5] The doctrine of constructive *res judicata* is founded upon the principle that a party ought to raise, at the appropriate stage, every contention which it could and should have raised. If a litigant deliberately omits to raise an available contention and allows the adjudication to attain finality, such contention cannot ordinarily be permitted to be resurrected in subsequent proceedings arising out of the same cause. Equally, the rule of finality of litigation does not permit a litigant to split up a composite challenge and seek successive adjudications on different

facets of the same order.

[16.6] If the petitioner's contention were to be accepted, it would lead to an anomalous situation where a party could challenge a composite order, allow certain aspects of that order to attain finality without objection, and thereafter seek revival of one of the omitted prayers through a fresh application. Such a course would defeat the well-settled principles of certainty, finality and repose in judicial proceedings and would encourage piecemeal litigation.

[16.7] This Court is also of the view that if the petitioner genuinely believed that the Tribunal had failed to adjudicate one of the prayers contained in the earlier application, the proper course was either to seek appropriate clarification, review or modification before the learned Tribunal, if permissible in law, or to specifically urge such grievance while challenging the order dated 29.11.2020 before this Court. Having consciously omitted to adopt either course, the petitioner cannot now maintain a fresh application seeking substantially the same procedural relief arising from the

very same stage of the arbitral proceedings.

[16.8] Viewed from this perspective, even independent of the technical applicability of Section 11 of the Code of Civil Procedure, the principles underlying constructive *res judicata*, waiver, abuse of process and finality of litigation clearly operate against the petitioner. The present application is, in substance, an attempt to secure reconsideration of a part of the very application which stood rejected by the learned Tribunal and whose rejection has already been affirmed by the Coordinate Bench of this Court. Such an exercise cannot be permitted merely by isolating one of the prayers contained in the earlier application and seeking its independent adjudication after the composite order has attained finality.

[16.9] Accordingly, this Court finds no infirmity in the view taken by the learned Arbitral Tribunal in declining to entertain the petitioner's application.

[17] So far as the contention founded on Section 18 of the

Arbitration and Conciliation Act, 1996 is concerned, there can be no quarrel with the settled legal position that every party to an arbitral proceeding must be treated equally and afforded a full opportunity to present its case. The mandate contained in Section 18 is one of the fundamental principles governing arbitral proceedings. However, the said provision cannot be construed in isolation so as to defeat the very object of the Act, namely, ensuring fair, efficient and expeditious resolution of disputes with minimum judicial intervention.

[17.1] In the facts of the present case, this Court is unable to accept the contention that the petitioner has been denied a fair opportunity of hearing. The record clearly reveals that the petitioner was afforded sufficient opportunities at every stage of the proceedings. Even after the Tribunal rejected the petitioner's application by order dated 29.11.2020, the petitioner challenged the said order before the Coordinate Bench of this Court, but consciously chose not to raise any grievance regarding the alleged non-consideration of the prayer seeking recall of the claimant's witness. Thereafter, for nearly five years, no steps whatsoever were

taken by the petitioner to seek recall of the witness. It is only in the year 2025, when the arbitral proceedings had reached the stage of final hearing, that the petitioner once again sought recall of the witness.

[17.2] In these circumstances, the petitioner cannot invoke Section 18 to seek yet another opportunity. Section 18 guarantees a fair opportunity to present one's case; it does not confer an unrestricted or perpetual right to reopen proceedings at the instance of a party who has failed to avail of the opportunities already granted. The provision cannot be permitted to become an instrument for prolonging arbitral proceedings or defeating the legislative intent of speedy dispute resolution.

[17.3] It also deserves to be noted that recall of a witness for further examination or cross-examination is not a matter of right. Such power is discretionary and is to be exercised sparingly, only where the interests of justice genuinely so require. It cannot be invoked to fill up omissions in a party's case, to improve its defence, or to delay the proceedings. Where a party, despite

having knowledge of the relevant facts, remains inactive for a considerable period and seeks recall only at the fag end of the proceedings, the Tribunal would be fully justified in declining such request.

[17.4] Viewed thus, the refusal of the learned Arbitral Tribunal to recall the claimant's witness cannot, by itself, be construed as a violation of Section 18 of the Arbitration and Conciliation Act, 1996. On the contrary, the Tribunal has exercised its discretion in a manner consistent with the object of the Act and the need to ensure expeditious conclusion of the arbitral proceedings. Consequently, no interference with the impugned order is warranted on this ground as well.

[18] So far as the decisions relied upon by the learned Senior Counsel appearing for the petitioner are concerned, this Court is of the considered opinion that the said decisions turn on their own facts and the legal issues arising therein. The factual matrix of the present case is materially different.

[18.1] As discussed hereinabove, the distinguishing

feature in the present case is that although the learned Arbitral Tribunal, by its order dated 29.11.2020, rejected the petitioner's composite application without separately dealing with the prayer seeking recall of the claimant's witness, the petitioner, while assailing the said order before the Coordinate Bench of this Court in Special Civil Application No.1107 of 2021, did not raise any grievance regarding such alleged omission. The petitioner neither sought any clarification or appropriate relief in that regard nor questioned the non-consideration of the said prayer. Thereafter, for almost five years, the petitioner remained silent and chose not to pursue the said relief. It was only in the year 2025, when the arbitral proceedings had substantially progressed, that the petitioner once again sought recall of the claimant's witness for cross-examination.

[18.2] It is these peculiar facts and the conduct of the petitioner that distinguish the present case from the decisions relied upon on its behalf. Those decisions, therefore, do not advance the petitioner's case and are of no assistance in the facts of the present matter.

[19] In view of the foregoing discussion, this Court is satisfied that the impugned order dated 13.12.2025 does not suffer from any jurisdictional error, patent illegality or perversity warranting interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India. No case is, therefore, made out for interference. The petition, being devoid of merits, deserves to be and is accordingly dismissed.

[20] It is, however, clarified that the observations made in the present order are confined to the adjudication of the challenge to the impugned interlocutory order. All rights and contentions of the respective parties on the merits of the dispute are expressly kept open to be urged, if so advised, in appropriate proceedings after the conclusion of the arbitral proceedings, in accordance with law.

(NIRAL R. MEHTA,J)

CHANDRESH