IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 371 OF 2025

BETWEEN:

1. KRISHNA MURTHY
CONSTRUCTIONS
A REGISTERED PARTNERSHIP
FIRM, HAVING ITS OFFICE AT
NO.185, 6TH CROSS, 4TH MAIN
6TH BLOCK, 3RD STAGE
BANASHANKARI
BANGALORE - 560 085
REPRESENTED BY ITS
MANAGING PARTNER:
K. MANJUNATH
S/O LATE M. KRISHNA MURTHY

...APPELLANT

(BY MS. VAIBHAVI, ADVOCATE FOR
SRI NANJUNDA GOWDA D., AND
SRI K.S. NARAYANA SWAMY, ADVOCATES)

AND:

1. PERFECT ELECTRICALS
A PROPRIETORY CONCERN OF:
P.V.KUMARASWAMY
NO.12, 3RD MAIN
SOMESHWARA NAGARA
CHIKKA BOMMASANDRA LAYOUT

GKVK POST
BANGALORE - 560 065

2. SRI P.V. KUMARASWAM
PROPRIETOR: PERFECT ELECTRICALS
NO.12, 3RD MAIN
SOMESHWARA NAGARA
CHIKKA BOMMASANDRA LAYOUT
GKVK POST
BANGALORE - 560 065

3. SRI S.R. SOMASHEKARA
RETIRED DISTRICT AND
SESSIONS JUDGE
ARBITRATION CENTRE
KARNATAKA (DOMESTIC AND INTERNATIONAL)
RACE COURSE ROAD
BENGALURU - 560 001

…RESPONDENTS

(MS. LEKHA JAIN, ADVOCATE FOR
SRI SIDDHARTH SUMAN, ADVOCATE FOR R-1 & R-2)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE THE ORDER DATED 01.03.2023 PASSED BY THE X ADDITIONAL DISTRICT AND SESSIONS JUDGE, BANGALORE RURAL DISTRICT, BENGALURU IN COM.A.P. NO.3/2022 TO THE EXTENT IS DISALLOWS THE CLAIM OF THE APPELLANT AND FAILS TO MODIFY THE AWARD TO THE EXTENT THE APPELLANT WAS HELD TO BE ENTITLED BY THE COMMERCIAL COURT AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The present appeal is filed after a substantial delay. The appellant has explained the delay on medical grounds. The appellant states that his wife was suffering from cancer and was admitted to the hospital on several occasions after the date of the impugned order. She had also undergone a kidney operation during the said period. Given the mitigating circumstances, we condone the delay. IA 1/2025 is, accordingly, allowed.

2. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] read with Section 13(1A) of the Commercial Courts Act, 2015 impugning an order dated 01.03.2023 [**impugned order**] passed by the X Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru [**Commercial Court**] in Commercial A.P No.3/2022. The appellant had filed the said petition under Section 34 of the A&C Act seeking the setting aside of the arbitral award dated 16.12.2018 [**impugned award**] passed by the Arbitral Tribunal.

3. The appellant was the claimant before the Arbitral Tribunal and had filed a statement of claim claiming an aggregate amount of ₹1,16,78,822/- under various heads. The appellant is a firm engaged in the construction business. The dispute between the parties arose from a contract for the construction of a factory building at plot No.152 of Dabaspet, Somapura Industrial Area, Nelamangala Taluk, Bengaluru Rural District. Respondent No. 1, which is a proprietorship concern of Respondent No. 2, had invited tenders for the execution of the said works. The appellant had quoted its rates, which were accepted by the respondents, and the contract for the construction of the factory building was awarded to the appellant at a contract price of ₹2,14,49,542.46. Respondent No.1 had issued a Letter of Intent dated 02.05.2014 for the said works, and the parties had thereafter entered into a formal agreement (Articles of Agreement) on 05.05.2014.

4. The appellant had raised running bills [**RA**] from time to time. Initially, the bills, as certified by the architect, were cleared. The appellant claims that the final bills for the construction work as well as plumbing work were submitted and certified by the architect on 23.01.2016. Under the said bill, a net amount of ₹48,96,964.51 was

certified as against a sum of ₹61,39,440/- as claimed by the appellant.

5. The appellant had also claimed certain other amounts which remained outstanding. The disputes between the parties, which related to the appellant's monetary claims, were referred to arbitration.

6. Before the Arbitral Tribunal, the appellant filed a statement of claims raising the following claims:

"A	Towards VIII & Final Bill	Rs.46,02,808-00
B	Towards Sanitary Work Bill	Rs.56,332-00
C	Towards Difference of Cost (Cement)	Rs.1,67,010-00
D	Towards Refund of Security Deposit	Rs.12,13,290-00
E	EMD Amount	Rs.1,00,000-00
	Total:	Rs.61,39,440-00
F	Towards Loss of Profit on remaining work said to have been completed by the defendants.	Rs.3,69,493-00
G	Extra claim for height difference (Height of the building increased to 1.35 Mtrs)	Rs.7,72,052-00
H	Steel Work (Difference of cost)	Rs.5,17,704-00
I	Interest @ 18% from 17.08.2015 till date.	Rs.30,41,488-00
J	GST @ 18% since applicable for payment to be made now	Rs.8,38,645-00
	GRAND TOTAL	Rs.1,16,78,822-00"

7. The respondents filed their statement of defence and also raised the following counterclaims:

A	Penalty Compensation for delaying the construction.	Rs.41,32,477-00
B	Interest on project loan @ 1.5% p.a. of interest on the amount of Rs.4,16,00,000-00	Rs.1,12,32,000-00
C	Towards Loss of business	Rs.3,59,28,930-00
D.	Construction cost incurred by the respondent for completing the construction inclusive of water and electricity charges	Rs. 92,48,087-00
E	Construction cost to be insured in the future.	Rs.60,00,000-00
F	Towards Damages and Mental Agony suffered by the 2nd respondent on account of loss of time and delay in executing the project by the claimant.	Rs.1,00,00,000-00
	TOTAL	Rs.7,65,41,494-00

8. The Arbitral Tribunal framed the following issues for consideration:

> "1. Whether the claimant proves that it is entitled in all, to a sum of Rs.1,16,78,622/- under various heads mentioned in para No.10(A) to (I) to the claim petition?
>
> 2. Whether the claims at para No.10(E) to (I) are outside the scope of this reference as contended by the respondents in para no.25 of the statement of objections?

> 3. Whether the claimant is entitled to current and future interest at 18% per annum as stated in para no.10 (page No.12) of the claim petition?
>
> 4. Whether the respondents prove that they are entitled by way of counter-claim, in all, to a sum of Rs.7,65,41,494/- under various heads mentioned at sl.nos.1 to 6 in para no.41 of the statement of objections?
>
> 5. Whether the respondents are entitled to interest @ 18% per annum from the date of the counter-claim till payment/realization as claimed by them?"

9. As against issue No.1, that is, the appellant claims for the work done, the Arbitral Tribunal awarded a sum of ₹17,12,425.97 along with interest at the rate of 18% per annum on the said amount from 17.08.2015 till the date of the award. Issue No.1 framed was also answered in the said terms. As against the counterclaims, the Arbitral Tribunal awarded an amount of ₹10,72,477/- in favour of the respondents. Issue No.4 was answered in the said terms. The Arbitral Tribunal also awarded interest at the rate of 18% per annum on the said amount from 01.05.2016 till the date of the award.

10. Aggrieved by the award, the appellant filed a petition under Section 34 of the A&C Act, which was allowed by the impugned order.

11. The learned Commercial Court found that the respondents had paid ₹2,25,34,081/- to the appellant up to the VII Bill, and that there was an excess payment of ₹1,93,510/-. The said excess amount was required to deducted from the final certified amount of ₹48,96,965/- and, the net amount payable to the appellant was ₹47,03,455/-. The learned Commercial Court held that the amount of ₹47,03,455/- was payable on account of the final bill. The relevant extract of the impugned order is set out below:

> "77. It is opined above that the plaintiff is entitled for Rs.48.96,964.51 as certified by the architect which can be rounded to Rs.48,96,965/-. It is held above that the defendants have paid Rs.2,25,34,081/- to the plaintiff up to VII bill and there was an excess payment of Rs.1,93,510/- to the plaintiff till VII bill. The said amount is liable to be deducted from the Final certified amount. On deduction of Rs. 1,93,510/- from Rs.48,96,965/-, the net amount payable to the plaintiff comes to Rs.47,03,455/-. Thus, the amount payable to the plaintiff in respect of claims 10 A to D'is Rs.47,03,455/- and not Rs.17,12,425.97. The amount awarded to the plaintiff by the learned Arbitrator is against the evidence on record and as such the impugned Award is patently illegal, arbitrary and unsustainable."

12. The learned Commercial Court faulted the Arbitral Tribunal for awarding an amount of ₹10,72,477/- along with interest to the respondents and held that the same was contrary to the oral and

documentary evidence on record. In view of the above, the learned Commercial Court set aside the impugned award.

13. Although the appellant has succeeded in its petition, it is aggrieved, as the amount awarded in its favour has also been set aside. The learned counsel appearing for the appellant earnestly contended that the impugned order is erroneous inasmuch as it also sets aside the part of the claim that was allowed in favour of the appellant. She submits that, consequently, the appellant is once again required to commence the arbitral proceedings, including for the amount that was awarded in its favour.

14. Whilst the appellant may feel aggrieved, the impugned order cannot be faulted. Section 34 of the A&C Act contemplates an application to set aside the arbitral award. The examination by the court is confined to determining whether the arbitral award is required to be set aside. The court does not have the power to modify the award, except to the limited extent as explained by the Supreme Court in **Gayatri Balasamy vs ISG Novasoft Technologies Ltd.**

15. It is also well settled that an award may be set aside partially if the portion that is liable to be set aside is severable. However, in the present case, the award in favour of the appellant is the principal claim, which the learned Commercial Court found to be patently illegal. Thus, the award in favour of the appellant is not severable in view of the Commercial Court's finding that the award was vitiated by patent illegality. The Commercial Court rightly set aside the award.

16. The appeal is unmerited and is accordingly dismissed. The appellant is relegated to agitate its claim afresh.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB
List No.: 1 Sl No.: 24