(2026:HHC:35772)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Appeal No.12 of 2018
Decided on: 22.08.2026

State of Himachal Pradesh & another ....Appellants

Versus

Desh Raj ....Respondent

Coram
The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
The Hon'ble Mr. Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the Appellants	:	Mr. S.D. Vasudeva, Deputy Advocate General.
For the Respondent	:	Mr. Sumeet Raj Sharma, Senior Advocate with Ms. Ritu Raj Sharma, Advocate.

G.S. Sandhawalia, Chief Justice (Oral)

In this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996'), the appellants-State questions the order dated 21.10.2016, passed by the learned Single Judge in ***Arbitration Case No. 26 of 2016,*** titled as ***State of Himachal Pradesh & Another Vs. Desh Raj***, whereby the objections filed under

[1] Whether reporters of Local Papers may be allowed to see the judgment?

Section 34 of the 'Act of 1996' against the award dated 06.05.2015 were dismissed.

2. The learned Single Judge had come to the conclusion that the Award dated 06.05.2015 did not suffer from any infirmity. The dispute had arisen from a public works project for the construction of the Vijaypur, Amarpur, Hadsar Jamman, Ghumarwin road under Agreement No. 10 of 2007–2008, which was awarded to the respondent-Contractor. The learned Single Judge further determined that the Arbitrator's findings could not be termed as perverse. The reason for upholding the Award was that a sum of Rs.11,94,605/- was granted under Claim No. 2 for price escalation under Clause 10CC. Similarly, a sum of Rs.1,66,975/- was awarded under Claim No.8 because a penalty had been wrongly imposed under Clause 2. Thus a total sum of Rs.12,79,304/- was also awarded for the claim. Accordingly, the learned Single Judge had noted that the site was not handed over to the Contractor fully complete in all respects, making the delay solely attributable to State officials rather than the Contractor.

3. Resultantly, placing reliance upon the judgment passed by the Apex Court in ***J.G. Engineers Private Limited Vs. Union of India and another (2011) 5 SCC 758,*** it was held

by the learned Single Judge that one party cannot be the arbiter to decide whether it or the other party committed a breach and that the question can only be decided by an adjudicatory forum, namely a court or an arbitral tribunal. It was further held that the arbitrator had not committed any arithmetical mistake in calculating the amount due and payable to the claimant, and the award did not suffer from any fundamental policy violation that was *ex facie* and patently illegal, which would warrant interference.

4. Counsel for the appellants-State has submitted that awarding 18% post-pendente lite interest was unjustified, given that only 8% simple interest had been awarded for the pendente lite period on the amount of Rs.12,79,304/- for the 18 months from the date of reference to the date of the award. Therefore, he argued that the 18% rate of interest was penal in nature.

5. We are of the considered opinion that this issue does not arise in this case, particularly given the specific facts and circumstances. The award was passed and subsequently received by the appellants-State on 10.06.2015, and they had filed their objections within the limitation period on 28.09.2015. The learned Single Judge had issued a direction on 24.12.2015 to deposit the amount in question along with up-to-date interest

within four weeks, subject to the outcome of the main petition. The said deposit was made on 23.01.2016 by way of a Demand Draft, which would be clear from the record, and a sum of Rs. 15,77,893/- was accordingly deposited with this Court.

6. Counsel for the respondent-Contractor has brought to our notice that after the award was upheld on 21.10.2016 and an application bearing OMP No. 197 of 2017 was filed for release of the award amount of Rs.14,32,820/-. A necessary order was passed on 11.07.2017, and the sum of Rs.14,32,820/- along with up-to-date interest was deposited into the bank account of the respondent-Contractor. It is submitted that the said amount has been received accordingly.

7. Therefore, it is apparent, that in view of the directions issued by the learned Single Judge on 24.12.2015, the appellants-State was careful enough to protect its interests and deposit the amount at the earliest. Furthermore, the petition under Section 34 of the 'Act of 1996' was filed within the period of limitation, and apparently no prejudice has been caused on the grant of 18% for the post award period. Under the facts and circumstances of the case, the said issue does not need to be adjudicated upon.

8. On the merits of the case, the Arbitrator had granted benefits for only two claims: Claim No. 2 (payment of price escalation) and Claim No. 8 (wrong imposition of penalty). No amount was awarded for the other claims. The necessary chart has already been reproduced in paragraph 2 of the judgment under consideration.

9. The reasoning given by the Arbitrator in the award dated 06.04.2015 after hearing both parties and taking into account the documents on record pertains to Claim No.2 and Claim No.8, which reads as follows:-

> ***"Adjudication of claim No.2&8:***
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> *From the record produced by both parties regarding time extension and action under clause 2 of the contract agreement following facts are established:-*
>
> ***1.*** *The land dispute at different RD's have been accepted by the respondents while granting time extension and even in the hearing of the action to levy compensation under clause 2 and on this basis the compensation proposed by the Executive Engineer @ 1% of the tendered amount has been reduced to 0.25%.*
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> ***2.*** *The land disputes and other hurdles have been confirmed by the letters of the respondent/EE No.8808 dated 29-9-2010 and claimant/contractor letters dated 15-7-2009 (annexure C-3), dated 15-3-2010 (annexure C-5) and dated 20-10-2010 (annexure C-5/2).*
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> *In view of the facts listed above, the breach of contract is established to be on the part of respondent/EE as he failed to give hindrance free site to the claimant/contractor and as such the*

action to levey compensation under clause 2 is set aside thus enabling the contractor to the price escalation as per clause 10CC of the contract agreement as well the withheld amount of Rs.41,744/- on account of the said action under clause 2.

As intimated by the respondent/EE vide his NO.842-43 dated 23-4-2015 the total price escalation as per clause 10CC of the contract agreement work out to Rs.16,65,263/- out of which Rs.4,27,703/- has already been paid and now Rs.12,37,560/- is payable on account of price escalation adding Rs.41,744/- withheld on account of compensation levied under clause 2 which has been set aside, the total amount payable to claimaint contractor becomes Rs.12,79,304/-.

As such a sum of Rs.12,79,304/- is awarded in favour of claimant/contractor against these claims 2&8."

10. As per Claim No. 2, the findings were recorded that neither any notice for the wrongly imposed penalty of 1% was issued nor any prior approval of the Appropriate authority was taken. Extension had been granted from time to time, and the delay was not due to the absence of the Contractor. The delay was further attributed to the respondent-Contractor's faulty pre-tender planning, as the site was not available at various reaches and disputes were raised by private landowners. No objection certificates, transfers by way of gift, and land acquisitions were not undertaken before floating the tender. Various land parcels were involved, and the alignment of thewas changed. In the new alignment, the grade as such was that execution of the work was

not possible, and the same portion has not even been executed after closing the contract, either departmentally or by engaging other agencies. Therefore, the penalty imposed was liable to be set aside. It was in such circumstances that the Arbitrator had ruled in favour of the Contractor.

11. It is the settled principle that the Court is not to reappreciate the evidence to come to a contrary finding and is not sitting in the appeal over the award of the arbitrator as has been laid down in the judgment of the Apex Court ***K. Sugukumar and another Vs. Hindustan Petroleum Corporation Ltd. and another (2020) 12 SCC 539.*** It has been held therein that only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity intereference is to be done under Section 34 of the Arbitration Act, 1996.

12. In ***Haryana Tourism Ltd. Vs. Kandhari Beverages Ltd. (2022) 3 SCC 237,*** the similar view was taken by the Apex Court that only if was is a patently illegal award as such and it was found against the fundamental policy of Indian Law and against the interest of India or justice and morality, the interference could be done.

13. Counsel for the respondent-Contractor has relied upon the recent judgment of the Apex Court in ***Punjab State Civil Supplies Corporation Limited & Another Vs. M/s Sanman Rice Mills & Others,*** decided on 27.09.2024, wherein the Court had settled that the scope of jurisdiction under Section 34 of the 'Act of 1996', is limited and does not constitute a normal appellate jurisdiction. In that case, the High Court had interfered with an arbitral award dated 08.11.2012, in favour of the Corporation for Rs.2,67,66,804/-. Under Section 34 of the 'Act of 1996' petition had been dismissed by the Additional District Judge, but the High Court had set aside both orders. It has further held that if two views are possible, a Court cannot reappraise evidence to adopt a view different from the arbitrator's. The view taken by the arbitrator is normally acceptable and must prevail. Furthermore, the Court observed that the power of an appellate Court under Section 37 of the 'Act of 1996' is akin to a power of superintendence, and an arbitral award should not be interfered with unless a valid ground for interference is strictly made out. The relevant paragaphs reads as under:-

> ***"CONCLUSION:***
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> ***20.*** *In view of the above position in law on the subject, the scope of the intervention of the court in*

arbitral mattes is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of l aw to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be distrubed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.*

22. *In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of marality and justice. It is not held to be against any substantive provision of law or the Act.*

> *Therefore, the award was rightly upheld by the court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the Court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better veiw than the one taken by the arbitral tribunal, is no ground to set aside the award.*
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> ***23.*** *Thus, in our opinion, the Appellate Court committed manifest error of law in setting aside the order passed under Section 34 of the Act and consequently the arbitral award dated 08.11.2012.*
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> ***24.*** *Accordingly, the impugned judgment and order dated 10.01.2017 passed under Section 37 is hereby set aside and the arbitral award dated 08.11.2012 is restored to be implemented in accordance with law.*
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> ***25.*** *The appeal is allowed with no order as to costs.*
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> ***26.*** *Pending application(s), if any, shall stand disposed of."*

14. In ***AC Chokshi Share Broker Private Limited Vs. Jatin Pratap Desai & Another (2025) 5 SCC 321,*** a similar view had been taken that the appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 is limited. The relevant paragraphs read as under:-

> *"29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court*

> *cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceedings its scope."*
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> *30 to 31xxxxxxx*
>
> *32. Further, an award can be set aside as being opposed to the "fundamental policy of India" if it is perverse, i.e. the finding is not based on evidence, or the Arbitral Tribunal takes something irrelevant into account, or ignores vital evidence. However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence.*
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> *33 to 34xxxxxxx*
>
> *35. Applying the test for perversity under Section 34 as explained above, it is clear that the High Court while exercising jurisdiction under Section 37, adopted an incorrect apporach. The Arbitral Tribunal's findings are definitely based on evidence, as has been rightly held by the Section 34 court. The High Court, at the stage of the Section 37 appeal, took an alternative view on this finding of fact by reappreciating evidence. The Arbitral Tribunal's conclusion was based on oral and documentary evidence regarding the conduct of the parties, which leads to a reasonable and possible view that there is joint and several liability. Hence, the High Court, while exercising jurisdiction under Section 37, has incorrectly held the award to be perverse."*

15. Keeping in view the above, we are of the considered opinion that because the Arbitrator gave valid reasons to grant the said claims as reproduced above in para 9 and the view taken by the Arbitrator does not suffer from any committed

manifest error of law, illegality, or perversity that would warrant interference by the learned Single Judge under the limited jurisdiction of Section 34 of the Act of 1996.

16. Resultantly, we do not find any plausible reason to interfere with the impugned order dated 21.10.2016, passed by the learned Single Judge. Accordingly, the present appeal stands dismissed.

17. Pending miscellaneous application(s) if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

22nd August, 2026
(Munish Thakur)