IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

APOT 10 of 2025
WITH
AP 780 OF 2012
GA 1 of 2025
GA 6 of 2026

Jay Bharat Construction
Vs.
Union of India

For the Appellant	: Mr. Sarosij Dasgupta, Adv. Ms. Suranjana Chatterjee, Adv.
For the Respondent	: Mr. Sukanta Ghosh, Adv.
Hearing Concluded on	: August 24, 2026
Judgement on	: September 2, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated September 10, 2024 passed in AP 780 of 2012 and EC No. 3 of 2024 by the learned Single judge.

2. By the impugned judgment and order, learned Single Judge has allowed AP 780 of 2012 which was challenged under Section 34 of the Arbitration and Conciliation Act, 1996

directed against the award dated May 24, 2012 and dismissed the Execution Petition being EC No. 3 of 2024.

3. Learned advocate appearing for the appellant has contended that, appellant participated in a tender issued by the South Eastern Railway. He has contended that, a contract dated May 5, 2005 was entered into for construction of RCC Shed, heavy duty flooring, apron, inspection pit, Gantry Girder, etc., in connection with the construction of Electric Loco Shed to home 100 Locos at Bokaro Steel City Station of South Eastern Railway.

4. Learned advocate appearing for the appellant has contended that, the appellant sought extension of time to execute the contract. The respondent had granted such extension on December 8, 2006 without imposing any liquidity damages. He has contended that, consequent upon the extension granted on December 08, 2006, the contract stood extended till June 30, 2007.

5. Learned advocate appearing for the appellant has contended that, during the validity period of the contract, the respondent issued a notice dated April 17, 2007 requiring the appellant to restart the work under the contract. Respondent

had issued a letter dated May 03, 2007 purporting to give seven days' notice. Thereafter, respondent had issued a letter dated May 23, 2007 allowing 48 hours to the appellant to show cause. Thereafter, respondent had issued the notice of termination dated May 29, 2007.

6. Learned advocate appearing for the appellant has submitted that, disputes and differences arose between the parties with regard to the contract. Appellant had submitted a statement of claim. Appellant had submitted a revised statement of claim. Thereafter, the respondent had filed a statement of defence before the Arbitrator.

7. Learned advocate appearing for the appellant had drawn the attention of the Court to the award dated May 24, 2012. He has contended that, the award contains appropriate and adequate reasons for dealing with every claim of the respective parties. He has pointed out that learned Arbitrator did not allow all the claims made by the appellant.

8. Learned advocate appearing for the appellant has drawn the attention of the Court to the impugned judgment and order. He has contended that, the impugned judgment and order proceeds on the basis of the alleged failure of the

learned Arbitration in not framing issues with regard to the termination of the contract. He has relied upon ***2019 (15) SCC 131 (Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI))***, ***2025 (7) SCC 1 (Gayatri Balasamy vs. ISG Novasoft Technologies Limited)***, ***2021 (9) SCC 1 (Project Director, National Highways No. 45 E and 220 National Highways Authority of India vs. M. Hakeem and Another)*** on such aspect. Relying upon ***2021 (9) SCC 1 (Project Director, National Highways No. 45 E and 220 National Highways Authority of India vs. M. Hakeem and Another)*** learned advocate appearing for the appellant has contended that, Court exercising powers under Section 34 of the Act of 1996 cannot modify the award.

9. Learned advocate appearing for the appellant has relied upon ***2019 (7) SCC 236 (Parsa Kente Collieries Limited vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited)*** on the proposition that, error of fact allegedly committed by the Arbitrator cannot be looked into by a Court exercising jurisdiction under Section 34 of the Act of 1996. Relying upon ***2022 (1) SCC 131 (Delhi Airport Metro***

Express Private Limited vs. Delhi Metro Rail Corporation Limited) learned advocate appearing for the appellant has contended that, the award cannot be termed as to be patently illegal.

10. Learned advocate appearing for the appellant has relied upon ***2023 SCC OnLine Del 317 (Uttam Singh Duggal & Sons vs. Union of India and Others)*** for the proposition that, implied termination is a valid termination. He has relied upon ***2015 (4) SCC 136 (Kailash Nath Associates vs. Delhi Development Authority and Another)*** for the proposition that, security deposit cannot be forfeited.

11. Learned advocate appearing for the respondent has relied upon ***2025 (7) SCC 1 Gayatri Balasamy vs. ISG Novasoft Technologies Limited)*** for the proposition that, an award can be severe. According to him, in the facts and circumstances of the present case, learned Single Judge has rightly severed the wrong portions from the award.

12. Respondent had floated the tender being T No. CE/CON/GRC/15/2004 for construction of electric loco shed to house 100 locos at Bokaro Steel City Station. The respondent had awarded the contract to the appellant by a

writing dated October 19, 2004. Parties had executed the contract agreement on May 5, 2005.

13. The value of the contract with the party had entered into was Rs. 7,32,91,835/-. The contract had stipulated the time for completion of the contract to be 24 months from the date of issue/acceptance of letter.

14. Contract between the parties had reciprocal obligations. Respondent had to issue a lay out and GAT drawings for the appellant to make the construction.

15. Appellant had by several letters requested for drawings. Apparently, respondent had failed to make over all the drawings. Respondent by several letters had required the appellant to expedite the work.

16. Appellant had from time to time had obtained extension of the time to complete the contract. Respondent had granted such extension without invoking liquidated damages clause.

17. By letter dated April 19, 2007, respondent had called upon the appellant to mobilise balance materials and to commence work immediately. Appellant had replied thereto on

April 24, 2007 requesting closure of the contract under clause 61 of the General Conditions of Contract.

18. Respondent had issued a seven days' notice on May 3, 2007 and a 48 hours' notice on May 23, 2007. On May 29, 2007, respondent had terminated the contract under clause 62 of the General Conditions of Contract.

19. The contract had an arbitration clause. Disputes and difference having arisen between the parties, the same were referred to arbitration. Before the Arbitral Tribunal, appellant had submitted a statement of claims while the respondent had submitted a statement of defence. Before the Arbitral Tribunal, appellant had lodged 13 heads of claims while respondent had lodged 7 heads of counter claims. Out of the 13 heads of claims of the appellant, the Arbitral Tribunal had allowed the amount due on account of work done, refund of security deposit and an amount towards price escalation, price variation. The Arbitral Tribunal had rejected all other claims of the appellant.

20. Out of the 7 counter claims of the respondent Arbitral Tribunal had allowed the claim on account of risk and costs, claims on account of royalty payable to the Jharkhand

Government and claim on account of value of balance materials available with the appellant. The Arbitral Tribunal had rejected all other counter claims of the respondent.

21. Respondent before us had assailed the award dated May 24, 2012 under Section 34 of the Act of 1996 being AP No. 780 of 2012 while the appellant had filed for execution of the award being EC No. 3 of 2024.

22. By the impugned judgment and order, the learned Single Judge has arrived at a finding that, the respondent never accepted the unilateral request of the appellant to close the contract and that, the respondent had validly terminated the contract. Appellant had failed to resume the balance work despite the notice. Learned Single Judge has noted that the Arbitral Tribunal did not hold the termination of the contract to be bad or contrary to the contract. In such circumstances, learned Single Judge has held that, since the termination was valid, respondent was entitled to forfeit and retain the security deposit.

23. Learned Single Judge after noting that, the termination being valid and that the Arbitral Tribunal did not arrive on the issue of the validity of the termination has proceeded to hold

that the award directing release of the security deposit was patently illegal and contrary to Section 28(3) of the Act of 1996 as being de hors.

24. With regard to the award on account of risk and costs in favour of the appellant learned Single Judge has held that, the award is perverse to such extent. In arriving at the finding or perversity, learned Single Judge has held that, since the claim on account of risk and costs made by the appellant was sought to be substantiated on the basis of Annexures A and B and since, Annexure B indicated that the work could have been done even without drawings, according to the learned Single Judge, the Arbitral Tribunal had acted with patently illegality and perversity in overlooking such documents and awarding risk and costs in favour of the appellant. The learned Single Judge has allowed counter claims of the respondent on account of risk and costs.

25. ***Ssangyong Engineering and Construction Company Limited (supra)*** has explained the expression "public policy of India" contained in Section 34 and 48 of the Act of 1996. It has held that, the expression "public policy of India" would mean the "fundamental policy of Indian Law" as

explained in paragraphs 18 and 27 of ***2025 3 SCC 49 (Associate Builders Vs. Delhi Development Authority).*** It has held that, it was no longer permissible to interfere with award on the ground that the arbitrator did not adopt a "judicial approach". It has held that, what is not subsumed within the fundamental policy of Indian Law, namely the contravention of a statute not linked to public policy or public interest, the same cannot be brought in by the backdoor when it comes to setting aside the award on the ground of patent illegality. Ground of most basic notions of justice qua contravention of the public policy of India can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notion or the principles of justice.

26. ***Gayatri Balasamy (supra)*** has held that, the modification award of the Arbitral Tribunal by Court is permissible on limited ground. It has held that, Arbitral Tribunal can be modified when the award is severable by severing invalid portion from the valid award, by correcting any clerical, computational or typographical errors which appears erroneous on the face of the record as well as other

manifest errors provided such modification does not necessitate merit-based evaluation post award interest.

27. ***Project Director, National Highways No. 45 E and 220 National Highways Authority of India (supra)*** has held that Section 34 of the Act of 1996 does not vest the Court with the jurisdiction to modify an Arbitral award. It has held that, power of the Court under Section 34 of the Act of 1996 to set aside the award does not include the power to modify such an award.

28. ***Parsa Kente Collieries Limited (supra)*** has held that, when Section 34 of the Act of 1996 applies the test of public policy to an Arbitration Award it does not act as a Court of Appeal and consequently errors of fact cannot be corrected.

29. ***Delhi Airport Metro Express Private Limited (supra)*** has held that, while deciding application under Section 34 of the Act of 1996, the Court is mandated to act in accordance with and within the confines of Section 34 of the Act of 1996 refraining from appreciation or re-appreciation on matters of fact as well as law.

30. The Delhi High Court in ***Uttam Singh Duggal & Sons (supra)*** has considered the necessity of the Arbitral Tribunal giving reasons when, the party agreed to arbitration to arbitrator who shall indicate his finding along with the sums awarded separately on each of the dispute. While construing the arbitration clause therein, the Delhi High Court held that, Arbitral Tribunal should not be set aside the patently on the ground of no reason having regard to the nature of the arbitration clause.

31. ***Kailash Nath Associates (supra)*** has dwelt upon the law of compensation for breach of contract under Section 34 of the Indian Contract Act.

32. It is trite law that, a Court exercising jurisdiction under Section 37 of the Act of 1996 is required to evaluate as to whether or not, the Court disposing of a petition under Section 34 of the Act of 1996 applied the correct parameters to test the challenge to the award. Section 34 of the Act of 1996 does not permit a Court to re-evaluate the evidence and to arrive at a different finding than that of the Arbitral Tribunal. Section 34 Court cannot act as a Court of Appeal and substitute the findings of the Arbitral Tribunal.

33. In the facts and circumstances of the present case, the Arbitral Tribunal has discussed every claim and counter claims of the parties in the award. Arbitral Tribunal has given reasons as to its decision on every claim and counter claims put forward before it. The views that the Arbitral Tribunal has expressed and recorded in the award are plausible views and cannot be termed as perverse.

34. Arbitral Tribunal has allowed claim no. 1 being the amount due on final bill. Respondent had confirmed the amount of the final bill pending as per final measurement. Arbitral Tribunal has noted clause 2.17 of the agreement. Arbitral Tribunal has therefore allowed such claim primarily on the basis of the confirmation of the pending final bill made by the respondent on the final bill of the claim.

35. Arbitral Tribunal has awarded refund of the two security deposits. Arbitral Tribunal has given reasons for this. Arbitral Tribunal has noted that security deposit amounting to Rs. 36,97,936/- had been deposited in two tranches. Arbitral Tribunal has noted the contention of the respondent that the security deposit stood forfeited. However, Arbitral Tribunal has held that, though the appellant should have completed

the part of the work for which drawings were available in a time bound manner before leaving the work site but at the same time the respondent cannot shy away from the responsibility of providing of drawings to the appellant well in advance so that the appellant could have planned its resources to complete the contract within the stipulated period. Arbitral Tribunal has returned the finding that, there was no delay on the part of the appellant in the first 24 months.

36. The reasoning given by the Arbitral Tribunal in allowing the claim on account of refund of security deposit has not been established to be perverse or not plausible. Essentially, the Arbitral Tribunal has held that, the fault of the project remaining incomplete lay on both the parties namely the appellant and the respondent. Arbitral Tribunal has found that, the quantum of fault of the appellant did not permit the respondent to forfeit the security deposit and therefore awarded such claim. View taken by the Arbitral Tribunal being a plausible Court should not have interfered under Section 34 of the Act of 1996.

37. Arbitral Tribunal has allowed the claim of Rs. 3,20,016/- on account of price escalation of PVC. Arbitral Tribunal has found that the PVC was included in the contract and that, there was an escalation in price from October 19, 2004 to June 30, 2007. Arbitral Tribunal has therefore passed an award with regard to the same.

38. Arbitral Tribunal has disallowed other claims of the claimant. Arbitral Tribunal has disallowed claim Nos. 1, 4, 6 and 7 of the counter claims of the respondent. So far as the counter-claim no. 2 is concerned, Arbitral Tribunal has held that, the respondent undertook completion of the project and that the risk and costs for such completion should be borne by the appellant. Arbitral Tribunal has allowed counter claim no. 3 with regard to the payment of royalty to the Jharkhand Government. Arbitral Tribunal has however held that, such amount of royalty recovered from the appellant must be refunded to the appellant on the appellant submitting documents confirming payment of royalty to Jharkhand Government.

39. So far as the counter claim no. 5 is concerned, Arbitral Tribunal has held that, materials belonging to the respondent

and handed over to the appellant was returned by the appellant to the respondent. It has held that it was the responsibility of the appellant to return such materials before leaving from the site which the appellant did not do. In such circumstances, Arbitral Tribunal has awarded the cost for such materials at Rs. 1,46,284/-.

40. So far as the counter claims are concerned which was allowed as also disallowed the Arbitral Tribunal has given cogent reasons for the same.

41. The award of the Arbitral Tribunal therefore, has cogent reasons for the reliefs granted to the respective parties. Learned Trial Judge however has embarked upon an exercise of re-evaluating the evidence and substituting the findings of the Arbitral Tribunal which is not permissible under Section 34 of the Act of 1996.

42. Contract between the parties was one of construction. Contract required discharge of reciprocal obligations for its successful implementation. Arbitral Tribunal found the parties to be in breach of their reciprocal obligations. Arbitral Tribunal while dealing with the respective claims and counter claims evaluated the respective performances and breaches to

allow or disallow a claim or a counter claim. Views expressed and decision taken by the Arbitral Tribunal being plausible and reasoned were not required to be interfered with under Section 34 of the Act of 1996.

43. In view of the discussions above, impugned judgment and order dated September 10, 2024 passed in AP 780 of 2012 is set aside. AP 780 of 2012 is dismissed. Execution petition being EC No. 3 of 2024 is restored to its original file and number.

44. APOT 10 of 2025 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

45. I agree.

[ARYAK DUTT, J.]