2026:DHC:8494-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 24.09.2026**
Judgment pronounced on: 30.09.2026

CNR No. DLHC010123892023

\+ FAO (COMM) 86/2023 & CM APPL. 17066/2023

M. K. CONSTRUCTION .....Appellant

Through: Mr. L.B. Rai, Mr. Kartk Rai, Mr. Satvik Rai and Mr. Vinesh Tyagi, Advs.

versus

MAJ. GEN. HOSHIAR SINGH (RETD) AND ANR. .....Respondents

Through: Mr. Arunav Patnaik, Ms. Pragya, Mr. Shailaditya Gopal Krishna an Mr. Viay Misra, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

AVNEESH JHINGAN, J.:

1. The present appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') assailing the judgment dated 07.12.2022 passed by the Commercial Court, Patiala House, Delhi (hereinafter 'the Commercial Court').

2. The brief facts are that the appellant entered into an agreement dated 08.04.2008 with respondent no. 1 for construction of a residential house at

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Greater Noida, Uttar Pradesh. The respondent no. 2 was appointed architect, structural and consultant for the construction. The work was contemplated in two phases under clause 7 of the agreement. The first phase comprised of structure/civil work. The second phase was of finishing work and was to commence upon the satisfaction of the respondent no. 1 of work done in first phase. The stipulated period for completion was eleven months from the commencement of the work reckoned from the seventh day after receipt of the mobilization advance.

2.1 The construction was completed within approximately six months. The appellant applied for the occupancy/completion certificate (hereinafter 'the completion certificate') on 10.10.2008 and it was issued on 22.05.2009. On the basis of joint measurement by the parties the final bill of Rs. 64,90,848/- was raised and the respondent paid Rs. 56,31,000/-.

2.2 On 23.07.2009 respondent no. 1 issued a notice alleging defects, deficiencies in work done and delay in execution of the construction. The arbitration was invoked by respondent no.1 and the sole arbitrator was appointed by this Court on 23.02.2012. Respondent no. 1 raised claims to the tune of Rs.16,55,000/- whereas the appellant raised a counter claim of Rs.14,59,484/-. The arbitration proceedings culminated in the award dated 06.02.2014. The claims of the respondent no. 1 were rejected and the counter claim was allowed to the extent of the balance payment as per the final bill i.e. Rs.8,59,484/- along with interest @9% per annum. Professional charges of Rs.60,500/- and arbitration cost of Rs.57,966/- were awarded.

2.3 The challenge to the award by the respondent no.1 under Section 34

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of the Act was dismissed by the Commercial Court. In FAO No. 140/2016, this Court on 05.10.2016 set aside the award dated 06.02.2014. The matter was remanded for fresh adjudication after inspection and measurement by a government approved architect to be appointed as Local Commissioner (for short 'LC'). The operational para of the decision dated 05.10.2016 is reproduced as under:

> "14. In the light of the above, the impugned order is rendered unsustainable and while allowing appellant's application under Section 34 of The Arbitration and Conciliation Act, 1996 the impugned Award is set aside with direction to learned Arbitrator to appoint a Government approved Architect as Local Commissioner (to be chosen by the learned Arbitrator), who shall inspect the site after putting the parties to notice of date and time of inspection and submit a report to learned Arbitrator. The fee of Government approved Architect/Local Commissioner be quantified by learned Arbitrator which shall be initially borne by appellant and it would be adjusted in the costs while passing the Award afresh."

2.4 The report dated 09.03.2017 of the LC was considered by the arbitrator and the impugned award dated 06.09.2018 was passed. An amount of Rs.3,50,189/- and interest up to August 2018 was held recoverable by respondent no.1, after adjusting of the counter-claims allowed towards the covered area and extra item work. Further for mental agony, architect fee, arbitration expense and legal expenses a sum of Rs.1,00,000/-, Rs.1,00,000/-, Rs.92,966/- and Rs. 75,000/- respectively were awarded besides future interest @18% per annum.

2.5 The objections under Section 34 of the Act filed by the appellant challenging the award dated 06.09.2018 were dismissed by the Commercial

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Court *vide* judgment dated 07.12.2022. The future interest of 18% per annum was reduced to 10% per annum simple from the date of the award till realization. Hence, the present appeal.

3. Learned counsel of the appellant vehemently argues that respondent no.1 admitted that work was completed. From completion of work in August 2008 till issuance of the completion certificate on 22.05.2009, respondent no.1 raised no objection with regard to the work carried out. Reliance is upon the affidavit of admission/denial filed by the respondent no.1 wherein the joint measurements of the work done was admitted.

3.1 Learned counsel for the appellant submits that the arbitrator erred in awarding an amount of Rs.22,500/- towards damages on account of delayed possession despite no such claim being made by respondent no.1. The contention is that the relief granted was beyond the claim and pleadings made. Further the contention is that the delay was not attributable to the appellant.

3.2 The grievance is that the adjustment of Rs.2,48,085/- towards the cost of wood and iron gate was erroneous. The wood was procured by respondent no.1 and there was no occasion to adjust the amount from the bill of the appellant. The submission is that the award of Rs.1,00,000/- for mental harassment is contrary to the earlier award dated 06.02.2014 wherein it was rejected. Learned counsel relies upon the decision of the Madras High Court ***TRULIV Properties and Services Private Limited v. C. Ravishankar*** 2025:MHC:2307 decided on 06.10.2025 to lend support to the argument that an arbitral award is liable to be set aside in case there are material contradictions.

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3.3 Lastly, it is argued that the proceedings were not concluded within the stipulated period by the High Court. The argument is that the mandate of the arbitrator had expired after six months of receipt of the LC report and the award is void.

4. *Per contra* the scope of interference under Section 37 of the Act is narrow and circumscribed. The appellate court cannot sit in appeal over the factual findings recorded by the arbitrator while passing a detailed award and cannot undertake re-appreciation of the evidence. The issues beyond the grounds available under Section 34 of the Act cannot be introduced for the first time in an appeal under Section 37 of the Act.

4.1 The challenge to the award of Rs.22,500/- being beyond the claim made is refuted by stating that no such plea was raised in the petition filed by the appellant under Section 34 of the Act.

4.2 The adjustment of Rs.2,48,085/- towards the cost of wood is defended stating that the cost of wood is rightly adjusted by the arbitrator in accordance with the terms and conditions agreed between the parties.

4.3 Lastly, it is submitted that the arbitral proceedings had commenced prior to the 2015 amendment to the Act and the amended provisions of Section 29A of the Act are not applicable. It is contended that the direction of the High Court was to make an endeavour to conclude the proceedings within six months.

5. Heard learned counsel for the parties at length. Though written submissions have been filed by the learned counsel for the parties but only the issues noted above were pressed during the course of arguments.

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6. The parameters of interference under Section 37 of the Act is well defined and the scope of interference is limited. A reasonable interpretation of the contract by the arbitrator cannot ordinarily be disturbed and a mere trivial error is insufficient for interference. The appellate court cannot re-appreciate the evidence or independently examine the merits of the award and is confined to examining whether the Section 34 Court has exercised its jurisdiction within the permissible limits. Reference in this regard be made to the following decisions of the Supreme Court.

6.1 In ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani*, (2024) 7 SCC 218** it was held:

> "**23.** We need not dwell on the limited scope of interference in the petition under Section 34 of the Arbitration Act. That position is very well settled. However, as far as the appeal under Section 37(1)(*c*) of the Arbitration Act is concerned, in *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , in para 14, this Court held thus : (SCC p. 167)
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> > "*14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision*. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb





such concurrent findings."

24. In another decision of this Court in *UHL Power Co. Ltd.* v. *State of H.P.* [*UHL Power Co. Ltd.* v. *State of H.P.*, (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401] , in para 16, it was held thus : (SCC pp. 124-25)

> "*16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.* In *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)
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> ***
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> **26.** The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."

6.2 In ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills,***

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2024 SCC OnLine SC 2632 it was held:

> "**16.** It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.
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> **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."

6.3 ***In Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472*** it was held:

> "**15.** The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "*illegality must go to the root of the matter and cannot be of a trivial nature*"; and that the Tribunal "*must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground*" [ref : *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."
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> (*emphasis supplied*)



7. Clauses 6 and 7 of the agreement provides for a time-bound completion i.e. within eleven months from the commencement of the work reckoned from the seventh day after receipt of the mobilization advance. The work commenced on 18.04.2008 and both the phases were completed on 10.10.2008. The completion certificate was issued on 22.05.2009.

8. The completion of work and the issuance of completion certificate is one aspect of the matter but the claim of the respondent no.1 that the requisite work as per the terms and conditions agreed between the parties was not fully executed and suffered from substandard quality execution. The completion certificate issued by the statutory authorities was concerned with compliance of the statutory requirement for issuance of the certificate and it does not certify that the work was completed by the appellant in accordance with the terms of the agreement. The delay of approximately seven months in raising the objections is not fatal to the claim as was rightly dealt with by the arbitrator and upheld by the Commercial Court.

9. The contention that an amount of Rs.22,500/- towards delayed possession was awarded beyond the claim made, was not a specific plea raised in the petition filed under Section 34 of the Act. Even otherwise every legal or factual error is not to be interfered with in a petition filed under Section 34 of the Act and more so, not in an appeal under Section 37 of the Act.

10. Clause 9 of the agreement is reproduced below:

> "9. That in consideration to the above, the second party/ contractor has agreed to undertake the said construction on the first party shall pay the second party / contractor

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> Rs.825/- per sq ft for the covered area with all the Structure and Civil works Including "Finishing" works. This amount will include the rate of materials used, payments to the workers and all other expenses incurred or to be incurred by the second party / contractor in completing the construction. The exact covered area shall be determined by a joint inspection by the first party / owner and the second party /contractor or their authorized representatives. Covered area of the building shall be measured from inner face of the building which in no case shall be measured from inner face of the building which in no case shall exceed the dimension indicated in the working drawings. Cladding, if any, shall not form part of the covered area. The charges for completed open area with Kota Stone / Baroda Stone shall be Rs.400/- per sq ft. The rate for projection, balcony, chhajja will be Rs. 415/- per sq. ft. and the boundary wall as per drawing with culvert, entrance ramp and Main Gate Pillars having Granite Tiles (with Light Points on top, Name Plate, Letter Box, Call Bell and such other provisions etc) will be Rs.425/- per running it. The coast of the fancy main gate will be not less than Rs.1200/- As per the approved design the covered garage will be provided with RCC storage racks and best quality steel shutter locking, door without any extra charges."

10.1 Clause 9 of the agreement provides that the cost of raw material for civil work and finishing was to be borne by the appellant. A factual finding was recorded by the arbitrator that the wood was supplied by respondent no.1, consequently the value of the wood was rightly adjusted against the bill submitted by the appellant. It would be apposite to note here that Section 37 of the Act does not confer power upon the Court to sit in appeal over the factual findings rendered by the arbitrator unless suffers from perversity. The appellate jurisdiction under Section 37 of the Act operates within an even narrower field and is directed principally towards



examining the legality of the exercise of jurisdiction by the Section 34 Court and not towards a fresh adjudication of the arbitral dispute.

11. The argument that the award of Rs.1,00,000/- for mental harassment is contrary to the earlier award dated 06.02.2014, is noted to be rejected. The award was set aside by the High Court and the matter was remitted with a direction to the arbitrator to decide the matter afresh. The arbitrator in pursuance to the remand after considering the facts and circumstances and evidence adduced awarded the amount for mental harassment.

12. The decision of the Madras High Court in ***TRULIV Properties*** **(**supra) is misplaced and has no application to the facts of the present case. In that case there was a contradictory finding between the final award and finding recorded while dealing with an application under Section 17 of the Act. In the case in hand the challenge to the amount awarded for mental harassment is on the basis of an award which is no longer in existence.

13. The argument that the failure of the arbitrator to render the award within six months from receipt of the LC's report rendered the award void has not merit. The direction of this Court did not prescribe an inflexible or peremptory time limit for concluding the arbitral proceedings, the expiry of which by itself would terminate the mandate of the arbitrator. The challenge that award is void being not passed within a period of six months from the receipt of the report of the LC was not pleaded in the petition filed under Section 34 of the Act. It would be relevant to mention that the written submissions filed during the course of the arguments do not form part of the pleadings.

14. Another aspect to be considered is the applicability of Section 29A

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of the Act. Section 29A of the Act stipulating the time period of the mandate of the arbitrator was introduced by the 2015 Amendment Act and is not applicable in the present case as the arbitrator was appointed in the year 2012. The earlier award dated 06.02.2014 was set aside by this Court and the matter was remitted to the arbitrator for fresh adjudication meaning thereby it was the continuation of the original proceedings.

15. The arbitral proceedings commenced prior to the 2015 Amendment Act but award was passed after the amendment the provision of Section 29A shall not be applicable unless parties otherwise agree. Reference in this regard be made to the decision of the Supreme Court in ***BCCI v. Kochi Cricket (P) Ltd.*, (2018) 6 SCC 287,** it was held as under:

> "**37.** What will be noticed, so far as the first part is concerned, which states—
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> "**26.** ***Act not to apply to pending arbitral proceedings***.— 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 of the principal Act" is conspicuous by its absence."

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2026:DHC:8494-DB

16. In view of the above discussion, no case is made up for interference under Section 37 of the Act.

17. The appeal is dismissed.

18. Pending application stands dismissed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 30, 2026
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Reportable:- **Yes**

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