



2025:DHC:10446-DB



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

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Judgment reserved on: 03.11.2025

Judgment pronounced on: 26.11.2025

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FAO (COMM) 205/2024 and CM APPL. 60557/2024

JAGDISH KAUR

.....Appellant

Through: Ms. Aastha Dhawan, Adv.

versus

JASBIR SINGH SANDHU & ORS.

.....Respondents

Through: Mr. Bipin Kumar Prabhat and

Mr. Kislaya Prabhat, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal under Section 37¹ of the Arbitration and Conciliation Act, 1996², the Appellant (Petitioner before the learned District Judge) assails the correctness of the Judgment and Order dated 18.07.2024 [hereinafter referred to as 'Impugned Order'], whereby the learned District Judge dismissed the petition [hereinafter referred to as 'Section 34 Petition'] filed by the Appellant under Section 34³ of the A&C Act and upheld the Award dated 05.06.2020 [hereinafter referred to as 'Award'] passed by the learned Arbitrator.

2. Herein, the Appellant contends that the learned District Judge, while passing the Impugned Order, failed to appreciate the patent illegality apparent on the face of the Award, inasmuch as the learned

¹ Section 37.

² A&C Act.

³ Section 34.



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Arbitrator omitted to adjust the amount overpaid by the Appellant against the value of the work executed while determining the final awarded sum. However, readjustment of the amount overpaid was not pleaded before the learned District Judge.

3. Accordingly, the issue that falls for consideration before this Court is whether an arithmetical or computational error in the Arbitral Award can be corrected in proceedings under Section 37, notwithstanding that no such objection had been urged before the Court exercising jurisdiction under Section 34.

FACTUAL MATRIX:

4. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

5. The Appellant, Respondent No. 2 and the Late Mr. Harvinder Singh, entered into an Agreement dated 10.04.2020 [hereinafter referred to as ‘the Agreement’] with Respondent No. 1/Claimant for the construction of their residential property bearing No. E-90, Greater Kailash Enclave-I, New Delhi [hereinafter referred to as the ‘subject premises’].

6. Along with the Agreement, Respondent No. 1 furnished a provisional estimate for the construction of the subject premises in the sum of Rs. 62,14,000/-, which was agreed upon by the parties. In addition thereto, the specifications of the works to be undertaken by Respondent No. 1, along with the materials proposed to be utilized, were also provided. Further, as reflected in the programme schedule executed between the parties, the entire construction was required to



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be completed by Respondent No. 1 on or before 10.01.2011. It is pertinent to note that the aforesaid documents, namely the Agreement, the provisional estimate, and the time schedule, stand admitted by both parties.

7. Pursuant to the execution of the aforesaid documents, Respondent No. 1 commenced the construction work at the subject premises. However, it is the case of the Appellant that Respondent No. 1 not only failed to complete the construction within the stipulated period but also abandoned the work midway, thereby compelling the Appellant and Respondent Nos. 2 to 5, who are the legal representatives of the Late Mr. Harvinder Singh, to engage other contractors to complete the remaining works.

8. Thereafter, Respondent No. 1 invoked arbitration proceedings against the Appellant and Respondent Nos. 2 to 5, the joint owners of the subject premises, and asserted various claims in respect of the amounts allegedly payable to him for the purported works executed at the subject premises. Respondent No. 1 raised the following claims before the learned Arbitrator:

- i. Claim No.1: Sum of Rs.20,18,164/- being the balance payment of work done (final bill).
- ii. Claim No.2: Sum of Rs.51,000/- being the cost of Equipment and Machinery.
- iii. Claim No.3: Sum towards the market rise amount.
- iv. Claim No.4: Sum of Rs.1,98,848/- being the loss and damages.



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- v. Claim No.7: Pre suit interest of Rs.13,96,686/- along with *pendente lite* and future interest @18% p.a.
- vi. Claim No.8: Sum of Rs.3,00,000/- towards the cost of Arbitration.
9. Thereafter, in the Statement of Claim, Respondent No. 1 alleged that the Appellant and Respondent Nos. 2 to 5 failed to make timely payments and caused delays by introducing repeated modifications to the architectural drawings, resulting in purported losses to him. He relied upon Running Bills Nos. 1 to 14, the Pre-Final Bill dated 02.06.2011, and the Final Bill dated 24.09.2011, while also asserting that the construction stood completed on 15.01.2011.
10. In their Statement of Defence, the Appellant and Respondent Nos. 2 to 5 placed on record a detailed list of incomplete and defective works, notice of which had been communicated to Respondent No. 1 *vide* email dated 28.02.2011, and contended that all such works had to be completed or rectified at their own expense through other contractors. It was thus their case that since electrical and sanitary works, plastering, and finishing had not been completed, no claim for the entire contract amount could arise, and consequently, they advanced the following counter-claims in arbitration:
- i. Counter Claim No.1: Sum of Rs.76,904/- towards payment of water bills till April, 2011, which were to be made by the Respondent No.1 as per the Agreement.



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- ii. Counter Claim No.2: Sum of Rs.2,90,616/- towards payments made for electrical work at the subject premises, which was to be done by the Respondent No. 1 as per the Agreement.
- iii. Counter Claim No.3: Sum of Rs.7,00,000/- towards the payment received, which has not been accounted for.
- iv. Counter Claim No.4: Sum of Rs.1,30,709/- towards sanitary works got done, which was within the scope of work of the Respondent No. 1 as per the Agreement.
- v. Counter Claim No.5: Sum of Rs.12,000/- towards electricity earthing, which was within the scope of work of the Respondent No. 1 as per the Agreement.
- vi. Counter Claim No.6: Sum of Rs.9,14,305/- towards various other works which had to be done in the subject premises, which was within the scope of work of the Respondent No. 1 as per the Agreement.
- vii. Counter Claim No.7: *Pendente lite* and future interest @18% p.a. on all the counter-claims.
- viii. Counter Claim No.8: Rs. 2,00,000/- towards cost of arbitration.

11. Further, upon completion of the pleadings and admission denial of documents, the learned Arbitrator, on 25.01.2016, was pleased to frame the following issues for adjudication:

“1. Whether the Claimant has completed the entire work under the Agreement as per the specifications provided under the Agreement



- and extra works as suggested by the Respondents to the complete satisfaction of the Respondents? OPC*
- 2. Whether the Claimant or the Respondents are responsible for the delay in the execution of the work? OPP*
- 3. To what extent payments have been made by the Respondent to the Claimant? OPP*
- 4. Whether the Claimant is entitled for claims no. 1 to 6 as mentioned in the claim petition? OPC*
- 5. Whether the Respondents are entitled for the counter claims in claim no. 1 to 8 as mentioned in the counter claims? OPR*
- 6. Relief.”*

12. The learned Arbitrator thereafter passed the Award, adjudicating upon and allowing the following claims of the Respondent No. 1 and the counter-claims of the Appellant and Respondent Nos. 2 to 5:

Issue	Contentions of the Claimant	Contentions of the Appellants and Respondent Nos. 2 to 5	Findings/Decision of the learned Arbitrator
Issue No.1: Whether the Claimant has completed the work and extra work to the complete satisfaction of the other party?	The work was completed by him on 15.01.2011, as stated by him in the plaint and the cross-examination.	None of the running bills or final bills were received by the Appellant and Respondent Nos. 2 to 5. Moreover, the Claimant has filed three	Claimant cannot claim that he had completed the entire work as per the Agreement. However, he did the extra works as claimed in the final bills to the complete satisfaction of the



		different final bills and these final bills do not match and have been changed from time to time.	other party. Accordingly, Issue 1 is partly decided against the Claimant and partly in favour of the other party.
Issue No.2: Whether the Claimant or the other party is required for delay in the execution of the work?	There were constant delays from the end of the other party, such as, failure of architect to provide drawings on time, hindrance in unloading the building material, etc.	Claimant abandoned the work in July, 2011 without completing the same.	Claimant has left the work incomplete and has no plausible explanation for the same. Thus, Claimant cannot avoid the responsibility for the delay in the completion of work.
Issue No.3: To what extent	The total amount by the other party to	The total amount that has been paid to the	The amount received by the Claimant from the



payments have been made to the Claimant?	him was Rs.65,50,000/-	Claimant is Rs.75,00,000/-	Respondents is determined at Rs.68,00,000/-
Issue No.4: Whether the Claimant is entitled for claims no. 1 to 6 as mentioned in the claim petition?	Claimant was made to execute work in excess of the estimated areas provided under the Agreement.	This work is far in excess of the sanctioned area. Claimant did not give them the bill for the same and also, abandoned the work in July, 2011.	The actual value of the work constructed excluding the alleged extra work to the extent of Rs.65,44,049/-
Issue No.5: Whether the Respondents are entitled for the counter claims in claim no. 1 to 8 as mentioned in the counter	-	-	All counter claims except Counter Claim 1 and Counter Claim 2 of the Appellants and the Respondent Nos.2 to 5 have been rejected.



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claims?			
Issue No.6: Relief	-	-	Claimant is entitled to receive a sum of Rs.7,88,965 along with interest @10% p.a. from the date of invocation of arbitration, and 1,50,000/- as costs of arbitration. Respondents are entitled to receive Rs.50,673 (for Counter Claim No. 1 and Counter Claim No.2).

13. Aggrieved by the same, the Appellant and Respondent Nos. 2 to 5 instituted the Section 34 Petition, assailing the Award as being, *inter alia*, patently illegal and manifestly perverse on the face of the record. However, the Appellant failed to raise the ground of arithmetical error before the court exercising jurisdiction under Section 34.



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14. Upon hearing the parties, the learned Court proceeded to dismiss the Section 34 Petition and upheld the Award rendered by the learned Arbitrator.

15. Aggrieved by the dismissal of the Section 34 Petition *vide* Impugned Order, the present Appeal has been filed by the Appellant.

CONTENTION OF THE PARTIES:

16. Heard learned Counsel for the parties at length and, with their able assistance, perused the paperbook.

17. The arguments raised by the learned Counsel for the Plaintiffs/Appellants are:

- i. A bare perusal of the Award would show that it is completely perverse, and the learned Arbitrator has committed glaring defects while passing the Award, which vitiates the entire Award.
- ii. Both the learned Arbitrator and learned District Judge failed to take into account that the charges towards Mumty and the Machine room were not covered under 'Extra Work' as claimed by the Respondent No. 1 and could not have been awarded to him, as it was within his scope of work and he was duly paid for it. The award of claim of Rs. 70,200/- towards Mumty and Rs. 65,000/- towards Machine Room are patently illegal, on the face of it and are therefore liable to be set aside.
- iii. In the Award, the learned Arbitrator gave a finding on Issue No. 3 that the Respondent No. 1 received a sum of Rs. 68,00,000 for the work done at the subject premises. Furthermore, while



addressing Issue No. 4, he made a finding that the value of the work done at the subject premises is determined to be Rs. 65,44,049/-. The Appellant and Respondent Nos. 2 to 5, even as per the learned Arbitrator, made an extra payment of Rs.2,55,951/- (i.e., Rs. 68,00,000 - Rs. 65,44,049) to the Respondent No. 1, however, the same was not adjusted in the final awarded amount granted to the Respondent No. 1.

18. *Per contra*, learned Counsel for the Respondent, while relying upon the judgment rendered by the two-judge Bench of the Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.*⁴, has made the following submissions:

- i. An Arbitrator is the sole judge of the facts involved in a matter and factual findings are not amenable to interference by the Court, beyond the scope and ambit of Section 34.
- ii. Proceedings under Section 37 are not akin to an appeal, whereby all the issues can be contended and deliberated again.
- iii. Appellant has come up with a new frivolous ground, with *mala fide* intent, that the learned Arbitrator has failed to adjust Rs.2,55,951/- as overpayment made by the Appellant against the work carried out in the terms of the Agreement, which was not pleaded anymore. Therefore, if something is not pleaded in the Section 34 Petition, it cannot be sought in a subsequent appeal under Section 37.

⁴ (2006) 11 SCC 181.



iv. Respondent has only received Rs.68,00,000/-, which is pertinent from the Award. Rs.68,00,000/-, including mobilisation advance, has already been adjusted in the final bill. Thus, the above question of readjustment does not arise.

19. Learned Counsel for the parties have not made any other submissions.

ANALYSIS AND FINDINGS:

20. This Court has analysed the submissions advanced by the learned Counsel for the parties.

21. It would be apposite to set out herein the scrutiny permissible by this Court in exercise of its powers under Section 37. It is now well-settled that the appellate jurisdiction of the Court under Section 37 is to be exercised with due restraint, ensuring that it does not traverse beyond the statutory confines delineated under Section 34. The Supreme Court in the judgment of *MMTC Ltd. v. Vedanta Ltd.*⁵ contemplated upon the limited and supervisory nature of an appeal under Section 37 and has observed that:

*“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.**”*

(Emphasis supplied)

⁵ (2019) 4 SCC 163.



22. Similar observations have been made by the Supreme Court in *Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills*⁶, which reads as follows:

“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters 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 law 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 disturbed 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.”

(Emphasis supplied)

23. Further, a three-judge Bench of the Supreme Court in *UHL Power Co. Limited v. State of Himachal Pradesh*⁷ held the following:

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappraising the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

⁶ 2024 SCC OnLine SC 2632.

⁷ (2022) 4 SCC 116.



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.

(Emphasis supplied)

24. Learned Counsel for the Respondents has placed his reliance upon the judgment rendered by the two-judge Bench of the Supreme Court in *McDermott International* (*supra*), where the Court has taken a similar view. The relevant extracts of the same are extracted hereunder:

“52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See *Pure Helium India (P) Ltd. v. ONGC* [(2003) 8 SCC 593] and *D.D. Sharma v. Union of India* [(2004) 5 SCC 325] .)

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise



its jurisdiction unless it is found that there exists any bar on the face of the award.

114. The above principles have been reiterated in Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors [(2004) 2 SCC 663], Union of India v. Banwari Lal & Sons (P) Ltd. [(2004) 5 SCC 304], Continental Construction Ltd. v. State of U.P. [(2003) 8 SCC 4] and State of U.P. v. Allied Constructions [(2003) 7 SCC 396].”

(Emphasis supplied)

25. The Courts have adopted the same consistent view in a catena of decisions, a few of which may be adverted to, namely, ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***⁸; ***ONGC Ltd. Western Geco International Ltd.***⁹; ***Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.***¹⁰; ***Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India***¹¹; ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***¹²; and, ***NHAI v. M. Hakeem***¹³.

26. Thus, it is a well-embedded principle in arbitration jurisprudence that the scope of interference under Section 37 is even narrower than that contemplated under Section 34. The appellate court, while examining an order passed under Section 34, does not sit in substantive review of the arbitral award, nor does it reassess or re-appreciate the evidence underlying the Arbitrator’s findings. Thus, the enquiry under Section 37 is confined to testing whether the court below has acted within the statutory boundaries prescribed under Section 34, and whether its decision suffers from patent illegality, perversity, or a jurisdictional infirmity warranting correction.

⁸ (2019) 11 SCC 465.

⁹ (2014) 9 SCC 263.

¹⁰ (2007) 8 SCC 466.

¹¹ (2003) 4 SCC 172.

¹² (2019) 15 SCC 131.

¹³ (2021) 9 SCC 1.



27. Consistent with this framework, the Supreme Court has repeatedly underscored that an appeal under Section 37 is supervisory and not corrective in the ordinary appellate sense. The appellate court is not empowered to expand the permissible grounds of challenge, revisit factual determinations, or substitute its own view for that of either the Arbitral Tribunal or the Section 34 Court. Its remit is limited to ascertaining whether the Section 34 Court has applied the correct legal standards and whether its interference with, or refusal to interfere with, the award aligns with the restrictive contours of Section 34.

28. However, this strict view has been significantly eased and modified by the five-Judge Constitution Bench in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*¹⁴. The majority judgment held that courts do possess a limited power to modify an arbitral award under Sections 34 and 37 of the A&C Act. This limited power is permissible in specific, narrowly defined circumstances. Primarily, this includes cases where the invalid portion of the arbitral award is clearly severable from the valid part, applying the *omne majus continet in se minus* principle, i.e., the greater power to set aside includes the lesser power to partially set aside/modify. Additionally, it was also held that the court may correct computational, clerical, typographical, or other manifest errors apparent on the face of the record. The relevant extract of the same is delineated below:

“II. Severability of awards

32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters

¹⁴ (2025) 7 SCC 1.



submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. [The “validity” and “invalidity”, as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the “valid” and “invalid” portions are legally and practically inseparable. In simpler words, the “valid” and “invalid” portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

III. Difference between setting aside and modification

38. This distinction lies at the heart of many arguments canvassed before us. The parties opposing the recognition of a power of modification of the courts have strenuously contended that modification and setting aside are distinct and sui generis powers. While modification involves altering specific parts of an award, setting aside does not alter the award but results in its annulment. Their primary concern is that recognising a power of modification may invite judicial interference with the merits of the dispute—



something arguably inconsistent with the framework of the 1996 Act.

39. *We agree with this argument, but only to a limited extent. It is true that modification and setting aside have different consequences: the former alters the award, while the latter annuls it. [The words used in the statute must be interpreted contextually, taking into account the purpose, scope, and background of the provision. Many words and expressions have both narrow and broad meanings and thereby open to multiple interpretations. Legal interpretation should align with the object and purpose of the legislation. Therefore, we may not strictly apply a semantic differentiation while interpreting the words “modification” or “setting aside”. Instead, a holistic and purposive interpretation of these words will be consistent with the intent behind the provision and the 1996 Act. Linguistically and even jurisprudentially, a distinction can be drawn between the expressions — “modification”, “partial setting aside”, and “setting aside” of an arbitral award in its entirety. However, we must note that the practical effect of partially setting aside an award is the modification of the award.] However, we do not concur with the view that recognising any modification power will inevitably lead to an examination of the merits of the dispute. It will completely depend on the extent of the modification powers recognised by us. In the following part of our **Analysis**, we outline the contours of this limited power and explain why, in our view, recognising it will ultimately yield more just outcomes.*

IV. A limited power of modification can be located in Section 34

40. *A core principium of arbitration, an alternative dispute resolution (hereinafter referred to as “ADR”) mechanism, is to provide a quicker and cost-effective alternative to courtroom litigation. While this suggests minimal judicial interference, the role of domestic courts remains crucial, as they function in a supportive capacity to facilitate and expedite the resolution of disputes. Therefore, it follows that judicial intervention is legitimate and necessary when it furthers the ends of justice, including the resolution of disputes.*

41. *To deny courts the authority to modify an award—particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays—would defeat the *raison d'être* of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve.*

42. *Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the*



previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the Court. This would render the arbitration process more cumbersome than even traditional litigation.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. **However, Section 34 does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").**

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the Court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

45. We are thus of the opinion that the Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in **Part II** of our Analysis.

46. Mustill and Boyd have observed that an order varying an award is not equivalent to an appellate process. [Sir Michael J. Mustill & Stewart C. Boyd QC, *Commercial Arbitration* (2nd Edn., 2001) p. 617.] The authors suggest that a modification order would only be appropriate where the modification, including any adjustment of costs, follows inevitably from the tribunal's determination of a question of law. [*Ibid.*] This approach would be beneficial, as it would reduce costs and delays. The courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review under Section 34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34.

V. Court can modify the award despite Sections 33 and 34(4)



47. Section 33 of the 1996 Act (**Annexure A**) empowers an arbitrator, upon request, to correct and/or re-interpret the arbitral award, on limited grounds. This includes the correction of computational, clerical or typographical errors, as well as giving interpretation on a specific point or a part of the award, when mutually agreed upon by the parties. Section 33(3) enables the Tribunal to suo motu correct any errors within thirty days of delivering the award. Section 33(4) grants wider powers. It permits the Arbitral Tribunal, upon compliance with specified manner of request, to make an additional award on claims presented before the arbitral proceedings but omitted from the arbitral award.

49. Notwithstanding Section 33, we affirm that a Court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the Court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the Court.

54. Under Section 152 of the Code, [“152. Amendment of judgments, decrees or orders.—Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”] a court executing a decree has the power to correct clerical or arithmetic mistakes in judgments, orders, or decrees arising from any accidental slips or omissions. This Court in *Century Textiles Industries Ltd. v. Deepak Jain* [*Century Textiles Industries Ltd. v. Deepak Jain*, (2009) 5 SCC 634 : (2009) 2 SCC (Civ) 608] held that clerical or arithmetical errors may be corrected by the executing court, however, the court must take the decree according to its tenor and cannot go behind the decree.

55. In the same vein as these judgments, we hold that inadvertent errors, including typographical and clerical errors can be modified by the Court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court. The key distinction between Section 33 and Section 34 lies in the fact that, under Section 34, the Court must have no uncertainty or doubt when modifying an award. If the modification is debatable or



a doubt arises regarding its appropriateness i.e. if the error is not apparent on the face of the record, the Court will be left unable to proceed, its hands bound by the uncertainty. In such instances, it would be more appropriate for the party to seek recourse under Section 33 before the Tribunal or under Section 34(4).

IX. Post-award interest

*73. The next question that arises is: Do courts possess the power to declare or modify interest, especially post-award interest? In respect of pendente lite interest, Section 31(7)(a) (**Annexure A**), states that unless otherwise agreed by the parties, the Arbitral Tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (**Annexure A**) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The Explanation defines the expression “current rate of interest”.*

77. Our reasoning is bolstered when considering the practical aspects. The Arbitral Tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post-award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 Court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change.

78. Inherent in the discussion above, is the Court's power to both increase or decrease the post-award interest rate. It would be incorrect to state that the Court's power to interfere with this interest rate is limited solely to decreasing the interest rate. Situations may arise where the rate should be increased due to delays or obstructions in the execution of the award. Interest rates may also fluctuate over time.

79. However, the Court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the Court is not acting in an appellate



capacity, but rather under limited authority. For instance, the 1996 Act stipulates a standard post-award interest rate. When the statute itself benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied.

80. Nevertheless, this limited power is significant, as it can help avoid further rounds of litigation. Without it, the Court may be forced to set aside the entire award or order a fresh round of arbitration because of an erroneous interest rate rather than simply adjusting this rate.

86. While exercising power under Article 142, this Court must be conscious of the aforesaid dictum. In our opinion, the power should not be exercised where the effect of the order passed by the Court would be to rewrite the award or modify the award on merits. However, the power can be exercised where it is required and necessary to bring the litigation or dispute to an end. Not only would this end protracted litigation, but it would also save parties' money and time.

Conclusions

87. Accordingly, the questions of law referred to by Gayatri Balasamy [Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2024 SCC OnLine SC 1681] are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

87.1. When the award is severable, by severing the “invalid” portion from the “valid” portion of the award, as held in **Part II** of our **Analysis**;

87.2. By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in **Parts IV** and **V** of our **Analysis**;

87.3. Post-award interest may be modified in some circumstances as held in **Part IX** of our **Analysis**; and/or

87.4. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in **Part XII** of our **Analysis**.”

(Emphasis supplied)

29. It is with the above caveat that we would need to examine the judgment impugned herein.



30. At this stage, it is pertinent to refer to the relevant part of the Award to understand the present dispute. The same are reproduced hereunder:

“55. Issue No. 3-To what extent payments have been made by the Respondents to the Claimant? OPP

The Claimant in this claim petition has stated that the total amount paid by the Respondent to him was Rs.65,50,000 /-. It may be noted that as per the agreement between the parties the estimated amount for the work was Rs. 62,14,000/-. The Claimant in support of his contention has filed hand written page which is Annexure C-4 and according to him gives the payment details received by him from the Respondent. As per this, the Claimant received sum of Rs. 60,00,000/-. In addition to the mobilization advance of Rs. 6,00,000/- making the total amount of Rs. 66,00,000/-.

The Respondent in the statement of defence has stated that he has paid the sum of Rs. 75,00,000/-. Counter claim No. 3 has also been instituted on the basis of this amount. However, it will be pertinent to note that the Respondent has not filed any document to show that they had paid a sum of Rs. 75,00,000/- to the Claimant. Since there is no document or evidence to support the payment of Rs. 75,00,000 /- as such this contention cannot be accepted.

*The Claimant however in his final bill, which is claimed to have been sent on 24.09.2011 (Annexure C-7) gives the total amount received by him as Rs. 62,00,000/- and sum of Rs. 6,00,000/- towards mobilization advance making the total payment received as Rs. 68,00,000 /-. In addition to this the Claimant in his legal notice dated 13.12.2011 filed as Annexure C-8 has reiterated in Para 2 of the notice that he had received the sum of Rs. 68,00,000/- . **Thus, in view of the admission of the Claimant, the amount received by the Claimant from Respondents is determined at Rs. 68,00,000 /. Issue No. 3 is decided accordingly.***

56. Issue No. 4:-Whether the claimant is entitled for claims No. 1 to 6 as mentioned in the claim petition? OPC

This issue has been dealt on the basis of findings in respect of each claim.

Claim No.1- *This claim is towards the payment outstanding towards the work done by the Claimant. The Claimant in his statement of Claim has relied upon various running bills which are filed as Annexure C-3 (Colly). He also relied upon pre-final bill dated 02.06.2011 and final bill dated 24.09.2011, both filed as Annexure C-7 (Colly).*



59. The counsel for the Claimant has argued that Claimant was made to execute work in excess of the estimated areas provided under the contract agreement. The Claimant relied upon page 119 to show that actual area which he had constructed. As per this value of the work constructed excluding the extra work was Rs.66,36,049 /-. However, on page 121 of the said Final Bill stated to have been sent to the respondents through mail on 24.9.2011 shows that the amount of Rs.92,000/- towards the works not done which were within the scope of the contract has been deducted from the amount of Rs.66,36,049/-. **Thus, making the actual value of works constructed excluding the alleged extra work to the extent of Rs.65,44,049 /-.**

63. In fact the Claimant during the course of final argument had filed an application seeking to place documents, which according to the Claimant showed that he had sent these bills to Respondent. The said application had been rejected as it was filed belatedly on 01.02.2019 during the course of final argument. However, perusal of the document sought to be filed showed that as per the Claimant's own case the bills had been sent only on 10.12.2013, 21.11.2013 and 24.12.2013, Admittedly, the final bills which the Claimant relied upon are of 02.06.2011 and 24.09.2011. Even the notice invoking arbitration is of 19.12.2011. There is no explanation as to why these bills would have been sent in December, 2013 when parties were already in dispute in December, 2011. Hence, the final bill on pages 133-137 (Annexure C-11) has not been referred to and discussed during the arguments by both the parties.

64. The letter dated 17.12.2010, Annexure C-10 to the Claim petition, signed by both the parties and admitted, which the Claimant claims was an agreement for additional work also does not mention any such extra coverage although this is a document executed more than 8 months after the work had commenced. There was no reason why this would not have found mentioned in the said documents if the excess was to an extent which is claimed by the Claimant now. There is as such nothing to show that this work was actually done. The onus to prove this claim was upon the Claimant. The claimant has however relied upon the running bills raised from time to time and the respondents had been making payments though not as claimed in the running bills but in lump sum. It cannot be believed that they were not aware of the constructed. The respondents were fully aware of the work from the running bills he has constructed the areas as shown in the running bills and finally in the bill dated 24.9.2011. **As stated above, accordingly the value of the work is determined at Rs. 65,44,049/- excluding the**



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deductions of Rs. 92,000/- as claimed in the final bill dated 24.9.2011.

(Emphasis supplied)

31. At the outset, with respect to the claim concerning 'Extra Work', an examination of the Award shows that both the learned Arbitrator and the learned District Judge have returned their conclusions after considering the submissions advanced by the respective parties. This Court is mindful that its jurisdiction does not extend to reappreciating the merits as if in appellate review. Upon scrutinising the calculations undertaken by the learned Arbitrator while dealing with Issue Nos.4 and 5, it emerges that a clear and reasoned basis has been recorded to hold that the amounts relating to the Mumty and the Machine Room fall within the category of 'Extra Work'. Such findings, being well-supported and logically arrived at, warrant no interference.

32. Further, from the reading of the above extracts, it becomes evident that the learned Arbitrator, while examining Issue No. 3, noted that the Claimant had taken inconsistent positions regarding the payments received. Though the Claimant initially asserted receipt of Rs.65,50,000/-, the documentary material relied upon by him, particularly, the final bill dated 24.09.2011 and the legal notice dated 13.12.2011, disclosed an admitted receipt of Rs.68,00,000/- including the mobilisation advance. The Respondents, who alleged having paid Rs.75,00,000/-, failed to produce any documentary proof in support of such assertion. Consequently, based on the Claimant's own admissions, the learned Arbitrator determined the total amount received as Rs.68,00,000/-.



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33. Further, with respect to Issue No. 4, relating to the Claimant's entitlement to monetary claims, the learned Arbitrator evaluated the running bills, the pre-final bill, and the final bill relied upon by the Claimant. The plea of additional or excess work was rejected as the Claimant neither produced timely proof nor satisfactorily explained the belated attempt to introduce documents from 2013, despite the disputes having arisen in 2011. The learned Arbitrator further held that even the document dated 17.12.2010, claimed by the Claimant to evidence additional work, did not support the allegation. Ultimately, the learned Arbitrator accepted the value of work on the basis of the Claimant's own billing, determining it at Rs.65,44,049/- (after deducting Rs.92,000 for works not executed).

34. In view of the foregoing findings, it becomes apparent that there exists an error on the face of the record in the manner in which the learned Arbitrator reconciled the payments received and the value of work executed. The figures adopted by the learned Arbitrator, namely, the admitted receipt of Rs.68,00,000/- and the assessed value of work at Rs.65,44,049/-, were derived from the Claimant's own documents, however, the computation of the resulting liability and the consequential Award does not correctly reflect the mathematical relationship between these figures.

35. This inconsistency arises not from any interpretative exercise or re-appreciation of evidence but from a manifest error, with regard to the computation of the resulting liability, that is self-evident upon comparing the numerical findings recorded in the Award. Such a



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computational discrepancy, being objectively demonstrable from the Award itself, constitutes an error apparent on the face of the record.

36. As already noted in the ratio in *Gayatri Balasamy (supra)* courts exercising jurisdiction under Sections 34 and 37 of the A&C Act, are empowered to rectify or modify an arbitral award where the mistake is purely arithmetical or clerical in nature, and where such correction does not entail substituting the Arbitrator's reasoning or undertaking a substantive review of the merits.

37. The Supreme Court has further clarified that the statutory power of setting aside an Award necessarily encompasses the lesser power of correction in cases of manifest computational errors.

38. Applying this ratio, it becomes evident that there is no occasion to set aside the Award, as it neither suffers from perversity nor discloses any error warranting such interference and the mathematical inconsistency in the Award squarely falls within the category of correctable arithmetical errors, enabling this Court to modify the Award to bring it in conformity with the figures expressly recorded by the learned Arbitrator itself.

CONCLUSION:

39. Keeping in view the aforesaid discussion, this Court is of the opinion that the extra payment arising out of the difference between the value of the work done at the subject premises and the Award sum received by the Respondent No.1 should be adjusted.



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40. Therefore, the Appellant is entitled to receive an extra payment of Rs.2,55,951/- along with the already awarded sum Rs.50,673/- from the Claimant/Respondent No.1.

41. Accordingly, the Appeal is partly allowed to the extent where the learned Arbitrator has made a manifest error of failing to adjust the aforesaid excess amount in favour of the Appellant.

42. Accordingly, the Award shall stand modified and the Claimant/ Respondent No. 1 would now be entitled to Rs.5,33,014/- [Rs.7,88,965/ (Awarded amount in favour of the Respondent No. 1 herein) - Rs.2,55,951/ (Amount to be adjusted in favour of the Appellant)] along with interest @10% p.a. from the date of invocation of arbitration, i.e., 19.12.2011 till realization.

43. Needless to mention, the Claimant/ Respondent No. 1 is entitled to Rs. 1,50,000/- as costs of arbitration, and also, the Appellant is entitled to receive Rs. 50,673/- from the Claimant/ Respondent No. 1, as awarded by the learned Arbitrator.

44. The present Appeal, along with pending application, is disposed of in the above terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 26, 2025/sp/sh