

JUDICIAL INTERVENTION FOR SETTING ASIDE AN ARBITRAL AWARD

A. INTRODUCTION

1. Section 34 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") empowers the court to set aside an Arbitral Award only in certain situations, if an aggrieved party submits an application for the same.

2. The grounds to set aside an Arbitral Award are limited in order to mitigate the interference of the Courts in a 'privately agreed jurisdictional process' as well as to prevent the misuse of this provision and uphold the authority of Arbitral Tribunal.

3. The primary purpose of the alternate dispute resolution mechanisms enlisted under the Arbitration Act is to provide speedy solutions and lessen the burden of pending cases in the already over-burdened litigation system.

4. However, the Arbitration Act does not imply complete departure from the judicial process, but to effectively resolve the issues of both the parties with mutual consent and understanding.

5. Thus, it is preferred by the legislature that judicial intervention should be minimal or negligible in cases of arbitration where the issue has been resolved adequately and reasonably in accordance to the Arbitration agreement between the parties.

B. Appeal under Section 34 before Arbitration Court & Appellate Courts

1. However, from the very advent of the Arbitration Act, the powers of the Courts sitting in Appeal under Section 34 of the Arbitration Act has been sought to be profoundly confused with the powers of the Appellate Courts enlisted under Section 107 of the Civil Procedure Code, 1908 (for short "CPC").

2. The Appellate Courts have wider discretions and powers as compared to those of Arbitration Court, since the intention of the legislature in drafting of the Arbitration Act was to prevent re-agitation of the disputes, decided by the Arbitral Tribunal, as per agreed procedures of the parties. To point, some significant difference are as follows: -

- The Appellate Court can adjudicate to determine a case finally under Section 107(l)(a) read with Order XLI Rule 24 of the CPC.
- Infact, the Appellate Court can take additional evidence at the Appellate stage, if it has been proven that the circumstances did not allow the

admission of additional evidence during the trial by the Court of original jurisdiction, even after all possible efforts. On the contrary, the Arbitration Court have no such powers. The Hon'ble Supreme Court in the case of 'Emkay Global Financial Services Limited vs Girdhar Sondhi' [(2018) 9 SCC 49] that propounding on the same, has held that "an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the court by way of affidavits filed by both the parties. Cross-Examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both the parties". The said principles have been reiterated time and again, including in the recent case of 'Canara Nidhi Limited vs M. Shashikala and others' [(2019) SCC Online SC 1244].

- The Appellate Court can modify the decree and make a decision it deems fit for parties. However, the Award rendered by the Arbitral Tribunal should be deemed to be final and binding on the parties to arbitration and can only be challenged under the limited scope of Section 34 of Arbitration Act. The Hon'ble Supreme Court in the case of 'Ssangyong Engg. & Construction Co. Ltd. v. NHAI' [(2019) 15 SCC 131] explaining the scope of Section 34 reiterated that under no circumstance, can the court interfere with the rendered Award on the sole reason that the justice has not been served in its opinion.

3. In the past, several attempts had been made to limit the power of Arbitration Court while setting aside an Arbitral Award so that it does not defeat the purpose of Arbitration itself. In 'Narayan Prasad Lohia vs. N. Kunj Kumar Lohia' reported in (2002) 3 SCC 572, it has been held that one of the objects of the Arbitration Act is to minimize the role of Courts in the Arbitration process.

4. In 'State of Orissa v. Kalinga Construction Co. (P) Ltd.' [(1970) 2 SCC 861], the Hon'ble Supreme Court has held that the court should not be empowered to re-examine, re-assess or re-appraise



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any evidence which has been previously considered by the appointed Arbitrator. Section 34 does not enlist wrong conclusion or improper appreciation of facts or evidence as valid grounds for challenging an Arbitral Award.

5. As per ratio of decisions reported in 'State of Rajasthan vs. Abdul Sattar' [AIR 2003 NOC 156 (Raj)] and 'Surinder Kumar, Sole Proprietor vs. Union of India' [1993 SCC OnLine Del 525] being in consonance with the provisions of Arbitration Act, jurisdiction of the court in cases of Arbitration has been fettered and the disputes that have been settled by arbitration should not be meddled with.

C. 'Hindustan Petroleum Corporation Ltd. v Banu Constructions' [AIR 2021 Mad 35]

1. In a recent judgement of the Hon'ble High Court at Madras in 'Hindustan Petroleum Corporation Ltd. vs Banu Constructions' [AIR 2021 Mad 35], the ground for challenging the Arbitral Award before the Arbitration Court was the arbitrariness of Award given by the Arbitrator in his decision.

2. The Hon'ble High Court amazed by the upholding of the Arbitral Award by Arbitration Court in appeal under Section 34 of the Arbitration Act, proceeded to pass on directions on the ground that the Arbitration Court had exceeded its jurisdiction by re-writing the Award after giving its own reasons, which is not allowed under the limited scope of Section 34 of the Arbitration Act.

3. The Hon'ble High Court held that in appeal, the Appellate Court is empowered to commence on the fact-finding exercise again, re-assess the presented evidence, re-interpret documents and function in approximately the same manner in which the Court of original jurisdiction functioned. However, the same liberty is not available to the Arbitration Court.

4. The Arbitration Court has to rely on the arbitrator's judgement and assessment of documents, facts and evidences. The Hon'ble High Court further held that the de-novo fact-finding exercise, reassessing the arbitrator's interpretation of law, etc. by the Arbitration Court would be unreasonable and beyond jurisdiction, unless and until there is blatant miscarriage of justice and the Award, prima facie is unreasonable for any prudent man. The Hon'ble High Court, therefore set aside the Award and referred the disputes back to Arbitration.

D. Conclusion

1. The Arbitration and Conciliation (Amendment) Act 2015 narrowed the scope of "public policy" by laying down the circumstances in which the judiciary could interfere. Before the amended act was made applicable, the Arbitration Court had widely interpreted the term 'public policy', in their previous judgements, such as, Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd [(2003) 5 SCC 705] and ONGC Ltd v Garware Shipping Corporation Ltd, [2007 (13) SCC 434].

2. Moreover, Section 34(2A) was introduced in the 2015 Act in cases of domestic arbitration stating that the Award may be set aside if it is vitiated by apparent patent illegality. In the Ssangyong judgement (supra), it emphasized that the Award can be set aside on the ground of patent illegality only if it is highly irrational or the construction of contract has been done in an unreasonable manner by the Arbitrator.

3. The judicial pronouncements have limited the Arbitration Court from performing the function of fact-finding, amongst other functions. If the Arbitration Courts widen their scope and exercise their jurisdiction and powers equivalent to that of the Appellate court, it would endanger the sanctity of adjudication of disputes by alternate mechanisms and act in favour of unsuccessful party re-opening the same before the Arbitration Court.