

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 460 of 2024

Appellant :- M/s Mukesh and Associates

Respondent :- Motilal Nehru National Institute of Technology (MNNIT), Allahabad

Counsel for Appellant :- Naman Agarwal, Nipun Singh, Parijat Srivastava

Counsel for Respondent :- Bidhan Chandra Rai, S A Husain

And

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 5 of 2025

Appellant :- Motilal Nehru National Institute of Technology (MNNIT), Allahabad

Respondent :- M/s Mukesh and Associates

Counsel for Appellant :- S A Husain, Bidhan Chandra Rai

Counsel for Respondent :- Naman Agarwal, Nipun Singh, Parijat Srivastava

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. These appeals under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') are directed against judgement dated 04.10.2024 passed by Commercial Court, Prayagraj in Arbitration Case No. 18 of 2019 whereby the application filed by Motilal Nehru National Institute of Technology (MNNIT), Allahabad (in short, 'MNNIT') under Section 34 of the Act has been disposed of.
2. The application under Section 34 of the Act was filed by MNNIT for setting aside the award dated 31.07.2019 passed by Arbitral Tribunal in the matter of dispute between the parties.
3. The Commercial Court by the judgement impugned, after noticing the facts and contentions of the parties, came to the

conclusion that the Arbitral Tribunal has given detailed reasoning and finding to arrive at the award, however, as the Arbitral Tribunal in the Award impugned had not mentioned the place of passing the award, referring to the judgement of Bombay High Court in **Mafatlal Securities Ltd. Mumbai Vs. Birla Sun Life Securities Ltd. and Ors. : 2002 SCC OnLine Bom 304** came to the conclusion that as all requirements under Section 31 of the Act are mandatory, for non mention of place of arbitration by the Arbitrator, the award is non speaking, the same cannot be set aside under Section 34 of the Act since it is not an award and consequently disposed of the application under Section 34 of the Act.

4. Both the parties i.e. MNNIT as well as M/s Mukesh & Associates (Claimant) are aggrieved of the judgement passed by the Commercial Court.

5. The appeal filed by MNNIT is barred by 26 days and an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay has been filed.

6. The prayer for condonation of delay is not opposed on behalf of counsel appearing for the claimant. Consequently, the application is allowed. Delay in filing the appeal is condoned.

7. Learned counsel for the appellant-claimant made submissions that the Commercial Court was not justified in coming to the conclusion that the award, for lack of mention of place of arbitration, was a non speaking award and consequently was not an award at all.

8. Submissions have been made that the finding recorded in this regard cannot be sustained. It was submitted that the arbitration clause between the parties was very clear and specific providing that the proceedings will be conducted at Allahabad and jurisdiction will lie within the courts of Allahabad. Once the said stipulation was available in the arbitration clause, and it was not the case of any of the

parties that the arbitration was held somewhere else and/or that on account of said non mention, the jurisdiction of the Commercial Court was affected, the award could not be declared as not an award.

9. Further submissions have been made that the provisions of Section 31 of the Act provide for form and contents of arbitral award and mere fact that under sub-Section 4 of Section 31 of the Act the form requires that the award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place, cannot and does not unless non mentioning has some implication, vitiate the award and, therefore, the finding recorded in this regard deserves to be quashed and set aside. Reliance was placed on **Chandok Machineries Vs. M/s S.N. Sunderson & Co. : 2018 SCC OnLine Del 11000**.

10. Learned counsel appearing for MNNIT made submissions that the Commercial Court though noticed the challenge laid to the award along with the written arguments filed in this regard, however, not a word on the merit of the contentions raised has been dealt with and indicated and only one line has been indicated that the Tribunal has given detailed reasoning and findings to arrive at the award and, therefore, the finding on the merit of the award passed by the Arbitral Tribunal cannot be sustained.

11. Submissions were made that the Commercial Court has failed to deal with any of the issues raised and, therefore, on that count, the judgement impugned deserves to be quashed and set aside.

12. Learned counsel appearing for the claimant, though attempted to submit that the award passed by the Arbitral Tribunal did not require any interference, however, conceded that the order passed by the Commercial Court does not deal with any of the grounds raised in challenge by MNNIT.

13. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

14. Present is a strange case wherein, both the parties are seeking quashing of the award passed by the Commercial Court though for different reasons.

15. The Commercial Court while dealing with the application under Section 34 of the Act after noticing the contentions raised by the parties, recorded a finding regarding the merit of the award passed, however, came to the conclusion that the same was not an award at all as the Arbitral Tribunal failed to indicate the place of arbitration as required by Section 31(4) of the Act and consequently came to the conclusion that the same was not an award at all.

16. The arbitration clause between the parties *inter alia* reads as under:

“12. DISPUTE SETTLEMENT AND ARBITRATION

Any dispute between the parties as to matter arising pursuant to this contract which cannot be settled amicably within thirty (30) days after receipt by one party of the other party's request for such amicable settlement, the dispute may be referred to a sole arbitrator/conciliator appointed by the Director of the INSTITUTE.

The reconciliation/arbitration will be conducted by the reconciliation/arbitrator to be appointed by Director of the INSTITUTE for the dispute so referred to him under the provisions of the Arbitration and Conciliation Act, 1996 with any amendments and enactment thereof. The proceedings will be conducted at ALLAHABAD and jurisdiction will lie within the COURTS OF ALLAHABAD.”

17. A perusal of the above clause would reveal that the parties have already agreed to Allahabad as the place of arbitration and provided that all arbitral proceedings would take place at Allahabad and jurisdiction will lie within the court of Allahabad.

18. Once the agreement between the parties in this regard is clear and specific and it is nobody's case that the said clause was, in any

way, violated and/or on account of any intervening circumstance, the Commercial Court at Prayagraj had no jurisdiction to deal with the matter, the mere absence of mentioning of place of arbitration in the award impugned, by itself would not vitiate the award.

19. Section 31 of the Act deals with form and contents of the award which enumerates that the same shall be made in writing, signed by the members of the Arbitral Tribunal, shall state the reasons upon which it is based, indicate the date and the place of arbitration and also provides exception to signing by all the members of the Arbitral Tribunal and stating reasons.

20. The mere fact that the form under Section 31 of the Act *inter alia* indicates mentioning of place of arbitration, by itself does not make it mandatory to the extent that the lack of such mention in the award, without there being any challenge based on such absence, the award would stand vitiated. The mentioning or absence of such mention in the arbitral award may assume significance, in a case where there is dispute between the parties on the said aspect, which is not the case in the present matter. All the clauses of Section 31 cannot be viewed in a manner that absence of any of the requirements enumerated therein would lead to award being vitiated.

21. The reliance placed by the Commercial Court on judgement in the case of **Mafatlal Securities Ltd. (supra)** is also apparently misplaced as the said case pertains to a non speaking award, which condition unless the exceptions provided therein are available, is mandatory.

22. In view thereof, the conclusion arrived at by the Commercial Court regarding the award in absence of mention of place of arbitration being not an award in the eye of law, cannot be sustained.

23. Coming to the challenge laid by the MNNIT to the finding recorded by the Commercial Court is concerned, it would be

appropriate to quote the finding on merit of the award recorded by the Commercial Court after noticing all the grounds raised against the validity of the award, which reads as under:

“ 23. From a perusal of the arbitral award, it is clearly evident that the Arbitral Tribunal has issued notice to both the parties after entering into the reference. Both the parties appeared before the Arbitral Tribunal. The opposite party filed its statement of claim on 21.07.2017 and the opposite party filed its counter affidavit on 17.11.2028 and thereafter the counter affidavit was also filed by the opposite party. On the basis of the pleadings of the parties and their submissions, the Arbitral Tribunal has framed 13 issues on facts. Both the parties filed its oral evidence in form of Affidavit as well as documentary evidence. The Arbitral Tribunal after hearing both the parties has recorded its findings on each issue based on the statement of claim, counter affidavits and affidavits as well as documentary evidence and passed the impugned arbitral award allowing the claims of the opposite party and directing the applicant to pay the award amount along with interest. The Arbitral Tribunal has delivered a copy to the parties after signing and announcing the arbitral award on 31.07.2017. Thus, it is clear that the Arbitral Tribunal has given detailed reasoning and findings to arrive at the award and thereafter signed and dated the same, but the Arbitral Tribunal has not mentioned the place of announcement of its arbitral award. It is acknowledged by both the parties that the award passed by the arbitral tribunal does not mention the place of passing the award.”
(emphasis supplied)

24. A perusal of the above finding would reveal that the finding is absolutely cursory and it appears that the Commercial Court, by way of formality, has recorded such finding as it has made up its mind to vitiate the award on account of non mention of place of arbitration in the award, which manner of disposal by the Commercial Court cannot be appreciated under any circumstances and, therefore, the award impugned on that count also cannot be sustained.

25. In view of above discussion, both the appeals are **allowed**.

26. The judgement dated 04.10.2024 passed by Commercial Court, Prayagraj in Arbitration Case No. 18 of 2019 is quashed and set aside.

27. The matter is remanded back to the Commercial Court, Prayagraj to hear and decide the case afresh.

28. Looking to the fact that the case pertains to the year 2019, it is expected of the Commercial Court, Prayagraj to decide the same with utmost expedition.

Order Date :- 20.02.2025

Sandeep

(Kshitij Shailendra, J)

(Arun Bhansali, CJ)