



2025:CGHC:2571

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 8 of 2025

- M/s Hira Carbonics Private Limited Through Its Authorised Representative Shri Rahul Agrawal Registered Office At Om Kutir Opposite Sagar Nursing House Civil Lines Raipur Chhattisgarh

... Petitioner(s)

versus

1. Kunwar Virendra Singh Patel S/o Late Har Prasad Ji Patel Aged About 73 Years R/o Nehru Nagar Ward Jhirna Road Tehsil And District - Narsinghpur Madhya Pradesh
2. Shri Tulsiram Mishra S/o Late Lanki Prasad Mishra R/o 48/5, Nehru Nagar (East) Bhilai District - Durg Chhattisgarh

... Respondent(s)

(Cause Title is taken from Case Information System)

For Petitioner	:	Mr. Abhinav Kardekar, Advocate
For Respondent No. 1	:	Mr. Rakesh Kumar Thakur, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

15.01.2025

1. With the consent of the parties, the matter is heard finally.
2. The petitioner has challenged the order passed by the learned Commercial Court, Raipur in Arbitration MJC No. 12 of 2024 dated 07.11.2024, wherein, an application moved by respondent No. 1/applicant under Section 65 of the Evidence Act, 1872(for short "Act, 1872") has been allowed.
3. Mr. Abhinav Kardekar, learned counsel appearing for the petitioner would submit that respondent No. 1/applicant challenged the award dated

16.04.2020 by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act, 1996”) on various grounds. He would further submit that during the pendency of the proceedings, the applicant moved an application under Section 65 of the Act, 1872 to prove the contents of a letter dated 15.04.2015 issued by the Director of Hira Carbonics to respondent No. 1/applicant. He would also submit that according to the provisions of Section 34 of the Act, 1996, the party who moves an application for setting-aside the arbitral award has to establish on the basis of the record of the Arbitral Tribunal only. It is contended that no additional document can be placed on record. It is further contended that such document can be placed on record if exceptional circumstances are made out. He would refer to the law laid down by the Hon’ble Supreme Court in the matter of ***Alpine Housing Development Corporation Pvt. Ltd. vs. Ashok S. Dhariwal and Others*** reported in ***2023 SCC OnLine SC 55***.

4. On the other hand, Mr. Rakesh Kumar Thakur, learned counsel appearing for respondent No. 1/applicant would oppose. He would submit that the document was placed on record along with an application moved under Section 65 of the Act, 1872. He would further submit that respondent No. 1/applicant has to prove the contents of that document according to the procedure prescribed under Section 65 of the Act, 1872. He would also submit that the learned Commercial Court applying the ratio laid down in the matter of ***Alpine Housing Development Corporation Pvt. Ltd. (supra)*** allowed the application. It is contended that the instant writ petition deserves to be dismissed.
5. Heard learned counsel for the parties and perused the documents placed on the record.

6. Admittedly, an award was passed against respondent No. 1/applicant on 16.04.2020 by the Arbitral Tribunal. Respondent No. 1/applicant challenged that award by filing an application under Section 34 of the Act, 1996. During the pendency of the proceeding, an application under Section 65 of the Act, 1872 was moved along with the certified copy of the letter dated 15.04.2015 issued by Hira Carbonics in favour of respondent No. 1/applicant.

7. The Hon'ble Supreme Court in the matter of ***Alpine Housing Development Corporation Pvt. Ltd. (supra)*** held that in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues, then the party who has assailed the award can be permitted to file an affidavit in the form of evidence. Para 24, which is relevant, is reproduced herein-below:-

*“24. The ratio of the aforesaid three decisions on the scope and ambit of section 34(2)(a) pre-amendment would be that applications under sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in section 34(2)(a) and section 34(2) (b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; an application for setting aside the arbitral award will not **ordinarily** require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the 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’ the cross-examination of the persons swearing in to the affidavits should not be allowed **unless absolutely necessary** as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the*

*arbitrator that certain things are relevant to the determination of the issues arising under section 34(2)(a), then the party who has assailed the award on the grounds set out in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed **unless absolutely necessary.**"*

8. The Hon'ble Supreme Court has categorically held that any additional document can be placed on record in an exceptional case. Respondent No. 1/applicant has not moved any application or filed any affidavit to demonstrate the fact that an exceptional case was made out and the documents are necessary for the just adjudication of the case; therefore, in the considered opinion of this Court, the application moved by respondent No. 1/applicant under Section 65 of the Act, 1872 was not maintainable at all. Respondent No. 1/applicant ought to have moved an application along with an affidavit assigning exceptional circumstances to place that document on record, but this course was not adopted by respondent No. 1.
9. The learned Commercial Court allowed the application and observed that acceptance of additional evidence in the form of the said letter dated 15/04/2015 shall, by no means, be deemed to be an expression of validity on its veracity or authenticity and the same shall remain open to be proved in accordance with law. When the application moved by respondent No. 1/applicant was not maintainable; there was no occasion for respondent No. 1 to prove the contents, authenticity and genuineness of that document before the learned Court below.
10. Taking into consideration the above-stated facts and law laid down by the Hon'ble Supreme Court, the order passed by the learned Commercial Court dated 07.11.2024 is hereby **set-aside**.
11. Respondent No. 1/applicant would be at liberty to move a fresh application

in light of the law laid down by the Hon'ble Supreme Court in the matter of
Alpine Housing Development Corporation Pvt. Ltd. (supra).

12. With the aforesaid observation(s), the instant petition stands disposed of.

Sd/-
(Rakesh Mohan Pandey)
Judge

\$iddhant