THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE G.RADHA RANI

C.M.A.No.1264 OF 2012, C.M.A.No.42 OF 2013
and
C.R.P.No.2835 OF 2016

COMMON JUDGMENT: (*Per Hon'ble Sri Justice P.Naveen Rao*)

Heard Sri Anand Kumar Kapoor learned counsel for petitioner in CRP No.2835 of 2016, Sri I.V.Radhakrishna Murthy learned counsel for appellant in CMA No.1264 of 2012, Sri A.M.Rao learned counsel for appellant in CMA No.42 of 2013, respondent no.5 in CRP No.2835 of 2016 and respondent no.2 in CMA No.1264 of 2012 and Sri E.Madan Mohan Rao learned senior counsel for Sri Venugopal Julamanti learned counsel for first respondent in all cases.

2. Petitioners in C.R.P.No.2835 of 2016 and the appellants in C.M.A.No.1264 of 2012 are same, whereas, the appellant in C.M.A.No.42 of 2013 is second respondent.

C.M.A.No.1264 of 2012:

3. For convenience, the parties are referred to as arrayed in C.M.A.No.1264 of 2012.

4. Appellants are sixteen in number. They claim that they are the owners of property bearing Nos.1-4-887/1 and 1-4-887/2, admeasuring 1996 square yards situated in Bakaram village of Hyderabad (for brevity hereinafter referred to as 'subject property'). A Development Agreement-cum-General Power of Attorney (DAGPA) on the above property was drawn on 23.10.1999 in favour of second respondent containing signatures of 12 appellants.

Thereafter, second respondent in his individual capacity and also as GPA holder of appellants entered into separate development agreement on the very same property on 05.02.2007 with first respondent. The said development agreement vests right in the developer-first respondent to an extent of 60% of the property developed in accordance there with and on remaining extent on second respondent. It appears that some differences arose between respondent Nos.1 and 2 leading to second respondent cancelling the development agreement vide cancellation deed dated 29.01.2007. According to appellants, having come to know that second respondent entered into development agreement with first respondent on 05.02.2007 and on 29.10.2007 the second respondent cancelled the said agreement, they have cancelled the Development Agreement cum General Power of Attorney dated 23.10.1999 vide document dated 30.10.2007. This time all the appellants have signed the document. On the same day, they have entered into fresh Development Agreement cum General Power of Attorney with M/s.Kura Homes Pvt. Ltd.

5. Alleging that the terms of Development Agreement are violated, causing loss to him, the first respondent invoked Clause 9 of the Development Agreement dated 05.02.2007, which envisages resort to Arbitration to resolve *inter se* disputes. Hon'ble Justice V.Neeladri Rao (Retd.,) was appointed as sole arbitrator.

6. Before the Arbitrator, the first respondent sought for declaration of execution of the cancellation deed dated 29.6.2007 as illegal, null and void and to set aside the same; to direct the respondents to handover the subject property or in the alternative,

to direct the respondents to pay sum of Rs.1,36,38,400/- (Rupees one crore thirty six lakhs thirty eight thousand four hundred only) together with the interest at the rate of 18% per annum, from the date of filing of arbitration petition; and to direct respondents to pay sum of Rs.50,00,000/- (Rupees fifty lakhs only) towards liquidated damages. Appellants herein were arrayed as respondents 1 to 16 and second respondent as 17th respondent.

7. The Arbitrator framed 17 issues. In the Award dated 25.9.2009, the Arbitrator rejected the claim against appellants and granted relief only against second respondent. The Award of the Arbitrator to the extent relevant reads as under:

> "19. It is a case where R-1 to R-16 had given irrevocable Power of Attorney in regard to share of RW-2 and in Ex.C-2. Hence, RW-2 can be treated as an agent of R1 to R-16 only in regard to share of RW-2 as per EX.C-1 but not in regard to their (R-1 to R-16) share. Hence, there is no force in the contention for the claimant that award has to be passed against R-1 to R-16 by way of charge for the amount that may be ordered as per the award. There is no stipulation to that effect in Ex.C-2. There is no statutory provision for ordering charge in case the claim of refund in regard to construction in joint ventures. Hence, there is no need to consider the scope of Sec. 188 Contract Act or deal with AIR 2005 Karnataka (172) (Gadigi Mariswarappa Vs Siva Murthy) and (2005) 6 SCC p.188 (Chirman LIC V.Rajiv Kumar Bhaskar) relied on for claimant for determination of issues in this proceeding.
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> .....
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> 22. IN RESULT THE AWARD IS PASSED AS UNDER:
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> A) R-17 has to pay Rs.63,88,475/- to the claimant registered firm with interest at 24 % per annum till date of payment from dates referred as under.
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> i) From 14-06-2006 in regard to Rs.10,00,000/-
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> ii) From 22-11-1966 in regard to Rs.29,00,000/- (Rupees twenty nine lakhs)
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> iii) From 29-11-2006 in regard to Rs.23,88,475/-
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> iv) From 20-6-2008 (date of claim statement) in regard to Rs.1,00,000/-.
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> B) R-17 has to further pay Rs.49,000/- and the fee of Advocate, as referred to in para 21 of this Award. (Receipt of advocate has to be filed along with Execution Petition, if claimant is constrained to file it.)"

8. Not satisfied with the Award to the extent of refusing the claim against appellant Nos.1 to 16, first respondent filed O.P.No.243 of 2010 on the file of the Court of II Additional Chief

Judge, City Civil Court, Hyderabad under Section 34[1] of the Arbitration and Conciliation Act, 1996 (for short, 'the Act, 1996').

9. Learned II Additional Chief Judge, City Civil Courts, Hyderabad, framed following point for determination:

> " Whether the impugned award is suffering from any patent illegality or irregularity and whether any interference in terms of Section 34 of Arbitration and Conciliation Act is necessary? If so, on what grounds and on which extent ?

10. The lower Court held that Court is competent to modify the award while exercising power under Section 34 of the Act, 1996. After discussing the issues decided by the Arbitrator, the lower Court partly allowed O.P.No.243 of 2010. Paragraphs 21 and 22 of the order read as under:

> "21. In view of the discussion made above and for all the reasons stated, this Court finds that to the extent of exempting respondents 1 to 16 from the liability and fixing liability on respondent no.17 alone, the award passed by learned arbitrator is not in accordance with law and to that extent, the award is liable to be set aside and ***modified***.
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> 22. In view of the findings of this Court on the point framed and in the result, petition is partly allowed. ***The award of the learned Arbitrator with regard to quantum and the refusal of relief of specific performance are confirmed. However, fixing of liability on respondent No. 17 alone is modified. There shall be liability on respondents 1 to***

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[1] **Section 34:Application for setting aside arbitral award:**
(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section *(2)* and sub-section *(3)*.
(2) An arbitral award may be set aside by the Court only if, --
(a) the party making the application furnishes proof that, --
(i) a party was under some incapacity, or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that--
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.
Explanation 1.— without prejudice to the generality of sub-clause (ii), of Clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.
(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:
Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.
(4) On receipt of an application under sub-section *(1)*, the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

> ***16 also***, however, without prejudice to their rights against respondent no.17." (emphasis supplied)

11. The said decision of the lower Court is challenged by the appellants in C.M.A.No.1264 of 2012. The second respondent who is respondent no.17 in the claim before the Arbitrator and in O.P.No.243 of 2010 has filed C.M.A.No.42 of 2013 challenging the very same decision. In addition he also challenges the award.

12. The first respondent/claimant filed E.P.No.97 of 2012 seeking execution of the order in O.P.No.243 of 2010. This was transferred to the Court of XXV Additional Chief Judge, City Civil Court at Hyderabad and renumbered as E.P.No.6 of 2014. He also sought injunction against appellants not to alienate the subject property. The appellants filed E.A.No.12 of 2015 praying to dismiss E.P.No.6 of 2014 against appellants and to raise attachment made against the appellants. This E.A. was dismissed by order dated 22.2.2016. Challenging the said order of dismissal of E.A.No.12 of 2015, appellants filed C.R.P.No.2835 of 2016.

13. Learned counsel Sri Anand Kumar Kapoor and Sri I.V.Radhakrishna Murthy made following submissions for appellants:

13.1. The impugned decision of the II Additional Chief Judge amounts to modification of the award. As per Section 34 of the Act, 1996 as it stood when the O.P.No.243 of 2010 was filed, the Civil Court can uphold or set aside the award, but has no power to modify or change the Award. Therefore, the order of the learned II Additional Chief Judge dated 21.09.2012 is without jurisdiction, competence and is *ex-facie* illegal.

13.2. It is further contended that what is sought to be enforced in E.P., is an order passed by the II Additional Chief Judge in O.P.No.243 of 2010 which is an order modifying the award. Under Section 36[2] of the Act, 1996, only an Award passed by the Arbitrator can be enforced and not the order of the civil Court in O.P. filed against the award. A cumulative reading of Sections 34, 36 and 37[3] of the Act, 1996 makes it very clear that no such power is vested in the Civil Court to seek enforcement of an illegal order and therefore, E.P.No.06 of 2014 is not maintainable against appellants.

13.3. In support of this contention, learned counsel placed reliance on the decision in **Project Director, National Highways No.45 E and 220 National Highways Authority of India Vs. M.Hakeem and another[4].** According to learned counsel, since the order of the Civil Court itself is erroneous, the question of enforcement of the said order does not arise.

13.4. Further, the Development Agreement cum General Power of Attorney dated 23.10.1999 was unregistered and thus, it has no legal sanctity. Moreover, the said Development Agreement does not contain signatures of all the property owners and therefore is not a valid DAGPA and cannot be enforced against appellants.

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[2] **Section 36. Enforcement**:
Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

[3] **Section 37.Appellable orders:**
(1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely,----
(a) granting or refusing to grant any measure under Section 9;
(b) setting aside or refusing to set aside an arbitral award under Section 34.
(2) An appeal shall also lie to a Court from an order of the arbitral tribunal,--
(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or
(b) granting or refusing to grant an interim measure under Section 17.
(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

[4] (2021) 9 SCC 1

13.5. Further, even assuming that the said agreement is valid and binding on the appellants, it has not authorised the second respondent to enter into further agreements with any other person, more particularly to enter into an agreement to confer development rights on the subject property and to apportion the share of property that may be developed. Further, as the said development agreement was cancelled, it cannot be enforced.

14. Learned counsel appearing for the second respondent submits that the civil Court erred in entertaining the O.P., and modifying the award. It has no competence to modify the award. He therefore seeks to set aside the award since the award lost its sanctity after it was modified. Learned counsel does not deny the fact that the second respondent has not challenged the Award passed by the Arbitrator under Section 34. Alternatively, he would submit that if the order of civil Court is set aside the second respondent is entitled to workout his remedies on the *inter se* disputes between the appellants.

15. According to learned senior counsel Sri E Madan Mohan Rao appearing for first respondent, the Development Agreement was executed in favour of the first respondent by the Appellants and second respondent jointly. The first respondent paid Rupees 40 lakhs as caution deposit and incurred huge expenditure to develop the property. Due to illegal cancellation of the Development Agreement, the first respondent was subjected to huge loss. He therefore contended that the first respondent is entitled to recover entire amount claimed in the arbitration proceedings from the appellants and the second respondent. He would submit that the

learned Arbitrator erred in not granting prayer against appellants 1 to 16. He therefore submitted that the Civil Court rightly modified the award. There is no illegality or irregularity in the order of the lower Court. He further submitted that as award as modified is not complied by the Appellants in both CMAs, execution proceedings are maintainable.

16. We have carefully consider the submissions of learned counsel.

17. Two issues arise for consideration:

1. Whether civil Court in exercise of power under Section 34 of the Act, 1996, as it stood then, was competent to alter/modify the award of Arbitrator;

2. Whether Execution Petition under Section 36 of Act, 1996 is maintainable only against award of the Arbitrator?

18. Considering these two issues rests on scope of Sections 34, 35, 36 and 37 of the Act, 1996, as they stood when the O.P. and E.A. were filed.

19. If parties to a contract have dispute(s) flowing out of terms of contract, they can avail legal remedy to enforce the terms of contract, to claim damages, to recover money, etc. However, in order to avoid long drawn litigation, they can also set out to resolve the dispute(s) by alternative modes, such as, arbitration. Once the contract envisages resolution of *inter se* dispute(s) through the medium of arbitration, law requires parties to resort to such mode only. A comprehensive statutory framework is put in place by Act, 1996 to regulate resolution of disputes through arbitration. Act, 1996 is a complete code dealing with all aspects of resolution of a dispute through the medium of arbitration. It is based on the

bedrock of the principle i.e, least judicial intervention in arbitral proceedings. Once the agreement between parties envisage resolution of a dispute by resorting to arbitration, the Act do not encourage civil litigation and assigns finality to a dispute after the Arbitrator passes award, and binding on parties to the arbitration, by creating only a small window to assail the award. However, the reality is, on everything and anything of arbitration, recourse is made to the courts of law defeating the very objective of the Act to encourage parties to a contract to avail alternative dispute resolution which can save costs and time and lessen the burden on Courts of law.

20. Within limited parameters, a party to arbitration proceedings can take recourse to legal remedy under Section 34 of the Act. It is a residuary provision enabling civil Court/Commercial Court to re-look at the award in the areas specified in Section 34(2) of the Act. It is not an appeal remedy. Primarily, the Courts of law only to act as guardians to see the arbitrators do not cross the *'Laksmana rekha'*. When the civil Court/Commercial Court is satisfied that right of the petitioner was affected, within the parameters set out in Section 34 (2), it can only set aside the award but in no circumstance it can amend/alter the award.

21. Section 34 of the Act, 1996 also specifies period within which one can avail the remedy. Section 34 (3) is explicit on this. If no challenge is made to the award within three months of receipt of award and within a further period of 30 days, subject to showing sufficient cause, the award becomes final. In the case on hand,

second respondent has not availed the remedy under Section 34 against the award and the award has become final as against him.

22. The scope of power of Civil Court under Section 34 is no more *res-integra*, in view of the decision of Hon'ble Supreme Court in **McDermott International Inc Vs Burn Standard Company Limited[5].** In the said decision and the decisions that followed, the Hon'ble Supreme Court held that in a petition under Section 34 of the Act, 1996, the Court cannot correct errors of Arbitrator. It can only quash the award. Paragraphs 51 and 52 of **McDermott International Inc** read as under:

> "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."
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> (emphasis supplied)

23. The decision of Hon'ble Supreme Court in **M.Hakeem** (supra) puts the issue beyond pale of doubt. It is affirmation of statement of law that stood the test of times. On review of precedent decisions, Hon'ble Supreme Court held that Section 34 of the Act, 1996 cannot be held to include within it a power to modify the award. The Hon'ble Supreme Court held further:

> "16. What is important to note is that, far from Section 34 being in the nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34. Secondly, as the marginal note of Section 34 indicates, "recourse" to a court against an arbitral award may be made *only* by an application for *setting aside* such award in accordance with sub-sections (2) and (3). "Recourse" is defined by P. Ramanatha Aiyar's *Advanced Law Lexicon (3rd Edn.)* as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. ***What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award***. This becomes even clearer when we see sub-section (4) under which, on receipt of an application under sub-section (1) of Section 34, the

[5] (2006) 11 SCC 181

court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award. Here again, it is important to note that it is the opinion of the Arbitral Tribunal which counts in order to eliminate the grounds for setting aside the award, which may be indicated by the court hearing the Section 34 application.

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19. The statutory scheme under Section 34 of the Arbitration Act, 1996 is in keeping with the UNCITRAL Model Law and the legislative policy of ***minimal judicial interference in arbitral awards***.

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41. As has been pointed out by us hereinabove, *McDermott* [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] has been followed by this Court in *Kinnari Mullick* [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] . Also, in *Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.* [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] , a recent judgment of this Court also followed *McDermott* [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] stating that there is no power to modify an arbitral award under Section 34 as follows : (*Dakshin Haryana Bijli Vitran Nigam case* [*Dakshin Haryana Bijli Vitran Nigam Ltd.* v. *Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] , SCC p. 676, para 44)

> "*44.* In law, where the court sets aside the award passed by the majority members of the Tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34 of the Arbitration Act, ***the court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2-A) are made out. There is no power to modify an arbitral award."***

42**. *It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court.*** Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, ***the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."***

(emphasis supplied)

24. Taking due note of the proposition of law on the subject in issues, the three cases are considered as under:

C.M.A.No.1264 of 2012:

25. The concept is now firmly rooted that right flowing out of a term in a contract leading to arbitral proceedings and award is a truncated right and enforcement thereof is also truncated. Thus,

on a challenge to award by taking recourse to Section 34 of the Act, 1996, as it stood at the relevant time the scope of consideration of civil Court is limited. It can either set aside or affirm the award, but cannot modify. In the decision impugned herein, the lower Court modified the award fixing the liability on appellants also which relief claimed by the second respondent was denied by the learned Arbitrator.

26. Having regard to the settled proposition of law on scope and application of Section 34 of the Act, 1996, as it stood then, the lower Court grossly erred in holding that the appellants are also liable, in effect, modifying/amending the award. It is liable to set aside and is accordingly set aside.

C.M.A.No.42 OF 2013:

27. The second respondent who is appellant in C.M.A.No.42 of 2013 also challenges the order of the lower Court and the award of the Arbitrator. The order of the lower Court is set aside in C.M.A.No.1264 of 2012. Therefore, to that extent for the reasons assigned therein, this CMA is also allowed.

28. Further, the issue for consideration is whether second respondent is entitled to challenge the award of arbitrator in an appeal under Section 37 of the Act, 1996 ?

29. Scope of Section 37 of the Act has to be considered on the over all scheme of the Act as discernible from Sections 34, 35, 36 and 37 of the Act 1996 though they are placed in different chapters. It is a complete package and elucidates the over all scheme, objective and purpose of the Act.

30. Section 35 affirms that an award is final and binding on the parties. Section 34 vests limited right to an aggrieved party to challenge the award of the arbitrator. On such a challenge, the Court may either affirm the award or set aside. It cannot modify or amend the award.

31. Section 36 of the Act, 1996 fits into the over all scheme of the Act and in fact epitomizes the intendment of the legislature. It only provides remedy of enforcement of the award passed by the Arbitrator. This is because in a petition under Section 34, the civil Court/Commercial Court can either set aside or affirm the award but cannot modify/amend/alter. If a party to a contract having secured award from the arbitrator and award has become final, he can take recourse to its enforcement under Section 36. Thus, question of enforcement would arise only when award is accepted by the opposite party or is affirmed under Section 34 and appeal under Section 37 is dismissed.

32. Section 37(1)(b) of the Act, 1996 makes the scheme very clear. It only envisages remedy of appeal against setting aside or refusing to set aside award in a petition under Section 34 and does not even speak of modification/alteration/amendment in an application made under Section 34. Recourse to Section 37 of the Act remedy before this Court is available only against a decision of the civil Court in a petition under Section 34(1) of the Act and not against the award. Act does not envisage remedy of appeal to this Court directly against the award of arbitrator. No application was preferred under Section 34 of the Act by second respondent against the award and the award has become final in so far as he

is concerned. The cloud of uncertainty created by the civil Court by modifying the award is cleared by allowing CMA No. 1264 of 2012. Once the error committed by the civil Court is erased, the award as it stood when made by the arbitrator stands restored. Thus, on the second limb of prayer, the appeal fails.

C.R.P.NO.2835 OF 2016:

33. In the case on hand, Execution Petition was filed seeking enforcement of the award as modified by the Civil Court. In view of clear intendment of Section 36, execution proceedings are not maintainable against decision of civil Court in a petition under Section 34 of the Act, 1996. Against the petitioners herein no award was passed by the Arbitrator. Further, the decision of Civil Court in O.P.No.243 of 2010 extending the liability determined by the Arbitrator on appellants also is set aside in CMA No.1264 of 2012. Therefore, Execution Petition is not maintainable against these petitioners. The Civil Revision Petition is accordingly allowed.

34. **CONCLUSIONS:**

34.1. The Civil Court is not competent to alter or modify the award of arbitrator in petition filed under Section 34 of the Act as it stood then.

34.2. Under Section 36 of the Act, Execution Petition is maintainable only against award of the Arbitrator.

35. In the result, C.M.A.No.1264 of 2012 and C.R.P.No.2835 of 2016 are allowed and C.M.A.No.42 of 2013 is partly allowed to the extent of invalidity of order of civil Court in O.P.No.243 of 2010 on the file of II Additional Chief Judge, City Civil Courts, Hyderabad

and dismissed to the extent of challenge to award of Arbitrator. Pending miscellaneous applications, if any, shall stand closed.

36. It is made clear that the Court has not expressed opinion on *inter se* disputes. What is discussed herein above is only to consider the issues formulated. It is also made clear that it is open to parties to work out their remedies as available in law.

JUSTICE P.NAVEEN RAO

JUSTICE G.RADHA RANI

Date: 27.01.2022
PT/Tvk/KKM

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