MAJESTY LEGAL
Advocates & Solicitors

STREAMLINE PLEADINGS TO SAFEGUARD ARBITRATION GOALS- SC

"BOMBAY SLUM REDEVELOPMENT CORPORATION PRIVATE LIMITED V. SAMIR NARAIN BHOJWANI"

Hon'ble Supreme Court in case of ***Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani***[1], observed that an order of remand in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, can be made only in exceptional cases where remand is unavoidable. The factual aspects of the case are that a dispute arose in 2012, leading to arbitration and the arbitral proceedings concluded in the form of an award by the Arbitral Tribunal in 2018 in favour of the respondent. Being aggrieved, appellant filed a petition under Section 34 of Arbitration and Conciliation Act,1996 and the same was allowed by the Single Judge. The respondent challenged the same before the Division Bench and it set aside the impugned judgment. Both the parties to appeal under Section 37 preferred the cross appeals before Hon'ble Supreme Court.

Hon'ble Supreme Court observed that remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the Appellate Court under Section 37(1)(c) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the Appellate Court can exercise the power of remand only when exceptional circumstances make an order of remand unavoidable. It further emphasized that if Courts keep routinely passing order of remand, the arbitral procedure will cease to be efficient.

Therefore, an order of remand by Section 37 Court can be made only in exceptional cases where remand is unavoidable.

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[1] CIVIL APPEAL NO.7247 OF 2024
[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7247 OF 2024
(Arising out of Special Leave Petition (C) No.16451 of 2023)

Bombay Slum Redevelopment Corporation Private Limited **... Appellant**

versus

Samir Narain Bhojwani **... Respondent**

with

CIVIL APPEAL NO.7248 OF 2024
(Arising out of Special Leave Petition (C) No.20359 of 2023)

and

CIVIL APPEAL NO.7249 OF 2024
(Arising out of Special Leave Petition (C) No. 14238 of 2024)
(Diary No.40494 of 2023)

J U D G M E N T

ABHAY S. OKA, J.

1. The application for permission to file special leave petition is allowed. Leave granted.

FACTUAL ASPECTS

2. These appeals take exception to the same judgment and order dated 7th July 2023 passed by the High Court of

Judicature at Bombay. Therefore, the same are being decided together. We are setting out a few factual aspects necessary for deciding the appeals.

3. On 31st March 1993, the Maharashtra Housing and Area Development Authority (MHADA) executed a lease agreement in respect of the subject property in favour of Andheri Kamgar Nagar Co-operative Housing Society Limited (for short, 'the Society'). It is stated to be a society of slum dwellers. The Society, by the agreement dated 6th October 1996, appointed M/s. Aurora Properties and Investments (for short, 'M/s. Aurora') as the property developer to implement a slum rehabilitation scheme. M/s. Aurora was to construct 237 rehabilitation tenements for slum dwellers and 40 tenements for project-affected persons (PAPs) free of cost and develop the property using the available Floor Space Index (FSI) and dispose of the same. It appears that M/s. Aurora could not discharge its obligations. Therefore, by the agreement dated 22nd September 1999 (described as an agreement for the grant of sub-development rights), the society appointed Bombay Slum Redevelopment Corporation Private Limited (the appellant) as the developer. Apart from taking over the obligations of M/s. Aurora under the development agreement dated 6th October 1996, the appellant corporation agreed to hand over 15,000 square feet of built-up area in the redeveloped property to M/s.Aurora against M/s. Aurora paying the cost of construction at Rs.600 per square foot. After that, the appellant started the development of the

property. On 10th March 2003, an agreement was executed by and between the appellant and one Samir Narain Bhojwani (the respondent), under which the appellant retained 45% of the total available FSI and permitted the respondent to construct the free sale area by allotting him FSI to the extent of the remaining 55%. According to the appellant's case, the respondent was appointed as a contractor to carry out the construction activities of the said building on the site. On 3rd July 2004, a deed of confirmation was executed to register the agreement dated 10th March 2003. Thereafter, on 11th September 2009, there was a letter/tripartite agreement executed, to which M/s. Aurora, the appellant and the respondent were parties under which it was agreed that the appellant would provide 22,500 square feet of constructed area to M/s. Aurora instead of 15,000 square feet, which was agreed to be allotted under the agreement dated 22nd September 1999.

4. The dispute began on 22nd March 2012 when the respondent, by his letter, alleged default against the appellant as set out in the said letter. After the letter was sent, there was a prolonged correspondence, exchange of drafts of the sale agreements, etc. Ultimately, the respondent filed a petition before the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Arbitration Act'). An Arbitrator was appointed. The arbitral proceedings concluded in the form of an award made by the Arbitral Tribunal on 7th September 2018 in favour of the

respondent (the claimant before the Arbitral Tribunal). Most of the claims made by the respondent were granted. The counter-claim made by the appellant was rejected. The appellant filed a petition under Section 34 of the Arbitration Act before the High Court to challenge the award. By the judgment dated 13th September 2019, the learned Single Judge of the High Court allowed the petition under Section 34 of the Arbitration Act and proceeded to set aside the award on various grounds, such as perversity, patent illegality, etc. The respondent filed an appeal under Section 37(1)(c) of the Arbitration Act to challenge the judgment of the learned Single Judge. By the impugned judgment, which set aside the judgment of the learned Single Judge, the Division Bench of the High Court passed an order of remand to the learned Single Judge on the ground that the learned Single Judge did not consider several issues. The Division Bench referred to an application made by the third parties. It directed that the interim arrangements made earlier by making an appointment of the Court Receiver shall continue for four weeks with a liberty to the parties to seek appropriate interim orders in the restored petition under Section 34 of the Arbitration Act. Both the parties to the appeal under Section 37 have preferred these cross-appeals.

SUBMISSIONS

5. We have heard the learned senior counsel appearing for the parties in these appeals. The learned senior counsel

representing the appellant submitted that an appeal under Section 37 of the Arbitration Act is essentially a continuation of the proceedings under Section 34. The scope of interference in an appeal under Section 37(1)(c) is narrower than what is available under Section 34 of the Arbitration Act. Reliance was placed on various decisions of this Court in support of the said submissions. Another contention is that while deciding the appeal under Section 37(1)(c), the Court can either set aside the award or affirm the award but cannot remand the petition under Section 34 for a fresh hearing. The submission is that the provisions of Order XLI of the Code of Civil Procedure, 1908 (for short, 'the CPC') concerning remand do not apply to an appeal under Section 37 of the Arbitration Act as the provisions of the CPC do not apply to such an appeal. Inviting our attention to the findings recorded by the learned Single Judge, the learned senior counsel submitted that while allowing the petition under Section 34 of the Arbitration Act, the learned Single Judge, by a detailed judgment, has dealt with all the issues canvassed by the parties. Pointing out the findings recorded by the Division Bench in the impugned judgment, he submitted that it cannot be said that the reasons recorded by the learned Single Judge are not elaborate. The reasons are very detailed and more than elaborate. In short, the submission is that the remand order is wholly unwarranted, and the Division Bench ought to have decided the appeal under Section 37 of the Arbitration Act on merits.

6. The appellant was the respondent before the Arbitral Tribunal. Even the claimant Samir Narain Bhojwani (described in this judgment as the respondent) has filed the Civil Appeal arising out of Special Leave Petition (C) No.20359 of 2023. The intervenor before the Division Bench in the appeal under Section 37 of the Arbitration Act has preferred a Civil Appeal arising out of Special Leave Petition (C)Diary No.40494 of 2023. The plea by the respondent is naturally for restoration of the award of the Arbitral Tribunal. We have heard the detailed submissions of the learned senior counsel representing the respondent (the claimant) and the intervenors. We are not referring to the submissions made by them relating to the merits of the Award, considering the limited scope of these appeals.

CONSIDERATION OF SUBMISSIONS

7. After considering the submissions made across the Bar, we find that the issue revolves around the power of the Appellate Court dealing with the appeal under Section 37(1)(c) of the Arbitration Act to pass an order of remand to Section 34 Court. Before we address the issue regarding the power of the Appellate Court, we will need to refer to the award made by the Arbitral Tribunal. There are six different parts of the award by the Arbitral Tribunal. The operative part of the award of the Arbitral Tribunal reads thus:

".. .. ..

203. In view of the foregoing discussion, the following Award is made:

I

(a) It is declared that the Development Agreement dated 10th March 2003 is valid, subsisting and binding upon the Claimant and the Respondent;

(b) It is declared that the Claimant is entitled to retain possession of 15 Flats in Wing A *(earmarked for the Respondent)* and 0.63 Flat in Wing B *(earmarked for the Respondent),* till the Respondent complies with all the directions being given in this Award;

(c) The Respondent is directed to construct at its own cost 107 PAP tenements (or any higher number as may be specified by SRA) at Shiv Shakti Nagar, Kandivali, relatable to the Andheri Kamgar Nagar CHS Scheme and handover the same to SRA within 2 months from the date of this Award;

(d) The Respondent is further directed to obtain from SRA a certificate of discharge of the Respondent from its obligation of constructing 107 (or any higher number of) PAP tenements relatable to Andheri Kamgar Nagar CHS Scheme, and handing over the same to SRA, within 3 months from the date of this Award;

(e) The Respondent is directed to obtain further Commencement Certificate for construction of 6th to 22nd floors of Wing C (further CC for Wing C) on the basis of sanctioned building plans dated 21st October 2010, within 4 months from the date of this Award;

(f) In case SRA requires the Respondent to comply with any condition under any Letter of Intent or under any Regulation or Circular, including payment of any premium, before issuance of further CC for Wing C, the Respondent shall comply with such condition or direction with utmost expedition and within one month from the date of receipt of such communication;

(g) Once the Respondent obtains further CC for Wing C as aforesaid, the Claimant shall at its own cost construct 6th to 22nd floors of Wing C as per the sanctioned building plans dated 2ist October 2010, within 18 months from the date of receiving further CC for Wing C and after completion of construction of Wing C, give intimation thereof to the Respondent for applying to SRA for Occupation Certificate **(OC)** for Wing C;

(h) The Respondent shall obtain from SRA OC for Wing C, within 2 months from the date of receipt of intimation from the Claimant as per the above direction;

(i) In case SRA requires the Respondent to comply with any condition under any Letter of Intent or under any Regulation

or Circular, including payment of any premium, before issuance of OC for Wing C, the Respondent shall comply with such condition or direction with utmost expedition and within one month from the date of receipt of such communication;

II

(j) The Respondent shall pay the Claimant Rs.67,00,000/- (Rupees Sixty Seven lakhs) along with Rs.26,00,000/- (Rupees Twenty Six Lakhs) being interest @ 18% p.a. from 19th July, 2016 till the date of this Award and further interest @ 18% p.a. from the date of this Award till the date of payment / realization, within 3 months from the date of this Award;

(k) The Respondent shall also pay the Claimant Rs.53,00,00,000/(Rupees Fifty Three Crores) as compensation for the period from 19th July 2016 till the date of this Award, being compensation for the delay on the part of the Respondent in not obtaining further CC for Wing C, within 4 months from the date of this Award;

(l) The Respondent shall further pay the Claimant Rs.50,00,00,000/(Rupees Fifty Crores) as compensation for delay in obtaining further CC for Wing C for the period of 24 months from the date of this Award till issuance of OC for Wing C, within 4 months from the date of issuance of OC for Wing C;

III

(m) The Respondent is directed to remove all encroachments from 9.15 mtr wide road to the South Side of the property under the said project; (n) The Respondent is also directed to obtain at its own cost, all necessary permissions for separate Lease and/or Assignment from MHADA in respect of the free sale component area in favour of the Andheri Kamgar Nagar Society, and, thereafter, in favour of the purchasers of the Apartments or their Association under the Indenture of Lease dated 31st March 1993 from MHADA;

(o) The Respondent is further directed to pay Stamp Duty on the Indenture of Lease dated 31st March 1993 executed by MHADA and on the Development Agreement for Development dated 6th October 1996 between Andheri Kamgar Nagar CHS and Aurora Properties & Investments and also on the Agreement for Sub Development dated

22nd September 1999 between Aurora Properties & Investments and the Respondent;

IV

(p) Till the OC is received for Wing C, neither the Claimant nor the Respondent shall sell, or in any other manner dispose of, encumber, or create any third party rights in any flat or any parking space in Wing C;

(q) Till the OC is received for Wing C and till the Respondent complies with the other directions given in Part II of the operative portion of this Award, the

Respondent and the persons claiming through the Respondent shall not sell/ re-sell or in any other manner dispose of or encumber or create any third party rights in any of the 15 flats in Wing A (earmarked for the Respondent) and the parking spaces related thereto;

V

(r) It is declared that the Letters of Allotment purportedly issued by the Respondent in respect of 31 flats in Wings A and B (earmarked for the Respondent) are sham, bogus, illegal and null and void ab-initio and not binding on the Claimant;

(s) It is further declared that the Agreements for Sale of 15 flats in Wing A (earmarked for the Respondent) purportedly executed by the Respondent in favor of the Managing Director and Directors of the Respondent Company and their family members are also sham and null and void ab-initio and not binding on the Claimant;

(t) In case, within 4 months from the date of this Award, the Respondent does not pay the Claimant the aforesaid amount of Rs.54.03 crores or does not surrender 3.63 flats in Wing B (out of those earmarked for the Respondent), the Claimant shall be entitled to sell 0.63 flat in Wing

B (Flat No.4 on the pt floor) and 3 flats in Wing B, out of the following 9 flats:-

► 2 Flats purportedly transferred by the Respondent to Mr. Kiran H.Hemani - M.D. of the Respondent,

► 7 flats purportedly transferred by the Respondent to Mr. Priyank K. Hemani - Director of the Respondent;

(u) The Respondent and the persons claiming through the Respondent are hereby restrained from selling/reselling, or in any other manner disposing of or encumbering or parting with possession of or creating any third party rights, in the flats in Wing B purportedly transferred to Mr. Kiran H. Hemani and Mr. Priyank K. Hemai till identification and intimation of 3 flats out of those 9 flats in Wing B is conveyed by the Respondent to the Claimant for the purpose of being available for sale by the Claimant for recovery Rs.54.03 crores as directed in (h), (i) & (r) hereinabove and explained in detail para 199 hereinabove;

(v) In case the Respondent does not obtain further CC for Wing C within 4 months from the date of this Award, the Claimant shall be entitled to sell the 15 flats in Wing A (earmarked for the Respondent) and adjust the sale proceeds thereof against the loss of profit from Wing C;

(w) In case the Respondent obtains further CC for Wing C and also obtains OC for Wing C within the time limits stipulated in this Award, but the Respondent does not pay the Claimant Rs.SO crores, as directed in (j) above

within 4 months from the date of obtaining OC for Wing C, or does not surrender 3.37 flats to the Claimant and the parking spaces related thereto, within the said period, the Claimant shall be entitled to sell off 3.37 flats earmarked for the Respondent in Wing C and the parking spaces related thereto;

VI

(x) The Respondent shall pay the Claimant costs of this proceeding quantified at Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs), within **4** months from the date of this Award. The Respondent shall bear its own costs for this proceeding.

205. The claims made by the Claimant for the other reliefs not granted in this Award are hereby rejected. All the Counter Claims made by the Respondent are also rejected.

206. It is clarified that this Award does not deal with any of the 5 flats in Wing A, 3 flats in Wing B and 4 flats in Wing C, earmarked for Aurora Properties & Investments, for which orders of injunction were passed by the Bombay High Court on 3rd and 17th December 2013 in Notice of Motion 147 of 2013, and which injunction orders have been restored by the Supreme Court by judgment and order dated 2ist August 2018 in Civil Appeal No. 7079 of 2018.

.. .."

8. While deciding the petition under Section 34 of the Arbitration Act, the learned Single Judge has made an in-depth discussion on the factual aspects and the submissions of the learned counsel representing the parties. Paragraphs 1 to 35 of his judgment deal with the factual aspects and details about the directions issued by the Arbitral Tribunal under the award. Paragraphs 36 to 125, spanning over 45 pages, record the submissions made by the parties, and paragraphs 126 to 194, covering 37 pages, are the reasons recorded by the learned Single Judge. There is a discussion about the oral and documentary evidence adduced by the parties. From paragraphs 140 onwards, the learned Single Judge discussed the issue of jurisdiction of the Arbitral Tribunal to pass the award against the third parties who were not parties to the arbitral proceedings. The learned Single Judge referred to the finding of the Arbitral Tribunal that 31 agreements/allotment letters for the sale of flats were sham and bogus and were not binding on the respondent. The learned Single Judge found that no persons shown as purchasers under the agreement were parties to the proceedings before the Arbitral Tribunal. The learned Single Judge also noted that these 31 flats were mortgaged in favour of various Banks and Financial Institutions. Therefore, the learned Single Judge held that even the Banks and Financial Institutions would be affected by the finding of the Arbitral Tribunal that 31 flats under the sale agreements were sham, bogus, null, and void. Therefore, the learned

Single Judge held that the Arbitral Tribunal had exceeded its jurisdiction. The learned Single Judge also held that the respondent before the Arbitral Tribunal (the appellant herein) was entitled to sell the said 31 flats, and the purchasers thereof were neither parties to the agreement containing the arbitration clause nor claiming under the said agreement.

9. The learned Single Judge also referred to that part of the arbitral award, which provided that there would be a charge over the flats held by the appellant herein. The learned Single Judge held that the charge on the properties could be either created by operation of law or by agreement of the parties, and in this case, there was no such agreement. Therefore, the learned Single Judge held that the direction to create the charge was *ex-facie* without the jurisdiction. Thereafter, the learned Single Judge referred to the reliefs granted by the Arbitral Tribunal in clauses (c) to (l), (m) to (q), (t), (u) and (v) of paragraph 203 of the award. According to the learned Single Judge, some of the reliefs could have been granted only in the execution of the award. Further, the learned Single Judge held that under clauses (c) to (l) and (m) to (q) of paragraph 203 of the award, the appellant herein was directed to carry out various acts to obtain multiple permissions from the authorities within the prescribed time and based on such compliance, further directions were issued for the execution of multiple documents, etc. The authorities from whom the appellant was directed to obtain various permissions were admittedly

not parties before the arbitral proceedings. The learned Single Judge also noted that the directions issued in the abovementioned clauses required continuous supervision by the Court. Therefore, in view of the provisions of the Specific Relief Act, 1963, such reliefs ought not to have been granted by the Arbitral Tribunal.

10. The learned Single Judge also held that though specific performance was sought in the claim made before the Arbitral Tribunal based on the Letter of Intent dated 7th March 2012, the Arbitral Tribunal granted specific performance based on the Letter of Intent of 2010. The learned Single Judge also held that the learned Arbitrator or the Court could not supervise whether the appellant can shift 107 PAPs in its other properties as directed under the award. Further, it was observed that the direction to construct the 6th to 22nd floors could be implemented only upon completing the entire chain of events, such as obtaining permissions, shifting of PAPs, etc. The learned Single Judge held that the grant of specific performance in the present case would be hit by Section 14 of the Specific Relief Act, 1963, as the enforcement of such a contract involves continuous supervision by the Court. On perusing the material on record, the learned Single Judge also held that the respondent herein had not proved his readiness and willingness to perform his obligations. The learned Single Judge held that since the relief of specific performance is

discretionary, the conduct of the respondent ought to have been taken into consideration by the Arbitral Tribunal.

11. The learned Single Judge dealt with the award of damages in the sum of Rs.53 crores for the period from 19th July 2016 till the date of the award on account of the alleged delay by the respondent. The learned Single Judge held that the evidence on record had been completely overlooked while granting the relief of damages in the sum of Rs.53 crores. The learned Single Judge recorded that the Arbitral Tribunal referred to only a part of the depositions of the witnesses and ignored the rest. Further, the learned Single Judge held that the delay on the part of the appellant in completing other projects was neither pleaded nor proved. Moreover, the learned Single Judge held that even assuming that there was a delay in completion of other projects on the part of the appellant, that would be no ground for grant of relief for specific performance. The learned Single Judge recorded something about the approach of the Arbitral Tribunal in paragraph 168. The learned Single Judge objected to the learned Arbitrator relying on the news report of some other developer's project in the Times of India. The learned Single Judge noted that the news article was published after the arguments were concluded. Moreover, the learned Single Judge found that relying upon the material, not forming part of the record, amounts to a breach of the principles of natural justice. A clear finding recorded by the learned Single Judge is that the learned Arbitrator has applied

different yardsticks to the evidence adduced by both parties. Therefore, the Arbitral Tribunal did not treat the parties as equals.

12. The learned Judge held that while dealing with the per square feet rate of the flats for awarding a claim for damages, the Arbitral Tribunal completely ignored the evidence on record, which showed that the respondent had sold the flats at much lower rates. The learned Single Judge also discussed the finding recorded while rejecting the counterclaim. The learned Single Judge held that though the Arbitral Tribunal concluded that the building did not have a load-bearing capacity of 22 floors, the respondent neither pleaded nor proved the load-bearing capacity of the building. The learned Single Judge also held that awarding payment of interest on interest-free deposit was contrary to the terms of the contract, which shows patent illegality. However, the learned Single Judge rejected the allegation of bias made by the appellant against the learned Arbitrator.

13. We have referred to only material findings of the learned Single Judge by way of illustration to emphasise that there is a very elaborate consideration of the merits of the challenge to the award in the judgment of the learned Single Judge.

14. Now, we turn to the judgment of the Division Bench in the appeal under Section 37 of the Arbitration Act. The

approach of the Division Bench is reflected in paragraph 4 of the impugned judgment, which reads thus:

> **"4. Having heard the learned counsel for the parties, we were of the opinion that the impugned order is required to be set aside and the matter needs to be remanded to the learned Single Judge for *de novo* consideration. We had put it to the counsel for the parties that the appeal can be remanded, without detailed reasons, by consent, keeping all contentions open. The Appellant was ready but the Respondent was not ready. Therefore, we are required to give elaborate reason why remand is necessary.** In this context, we have briefly referred to the core facts of the case, the rival contentions, the award and the impugned order. The factual backdrop leading to the dispute is narrated in detail in the Award and by the learned Single Judge. The summary of the factual position is as follows.
> .. .."
> (emphasis added)

In paragraphs 42 and 43, the Division Bench held thus:

> **"42. Even otherwise, question would arise as to whether such a detailed factual enquiry can be made to set aside the award. To reach such a conclusion that it suffers from perversity, the Award had to be carefully analyzed to rule out other possibilities. It is not enough to merely state a conclusion.** Further,

> when such a conclusion can be reached under Section 34 of the Act is a debatable issue that also needs to be addressed.
>
> **43.** In the impugned order in paragraphs 161 and 162 reference is made to the principle of law governing the discretion to be used for grant of specific performance. In paragraph 163, it is stated that 'perusal of the record' will indicate that the Appellant has not proved that he was ready and willing. When the Appellant sought to argue that the Appellant was ready and willing, the same was dealt with in paragraph 164. The submission of the Appellant that unless the Respondent would have fully satisfied the Appellant that he had made appropriate provision for shifting 107 PAPs to some other plot the Appellant was not required to proceed with the construction of building, was not accepted. However, there is no discussion as to why this stand of the Appellant was rejected.
> .. .."
> (emphasis added)

In the impugned judgment, certain findings recorded by the learned Single Judge have been criticised. Ultimately, in paragraphs 61 and 62 of the impugned judgment, the Division Bench held thus:

> **"61.** Considering that the impugned order has not addressed several issues raised by both parties before setting aside the Award, for the above reasons we are inclined to set aside the

> impugned order to remand the proceedings to the learned Single Judge. Further under the Award itself. question now will remain for damages.
>
> **62.** Since we are of the opinion that the petition filed by the Respondent needs to be reconsidered, we refrain from going deeper into the controversy and in our discussion, which have only highlighted as to why the impugned order is unreasoned and therefore needs to be set aside for reconsideration.
>
> .. .."

Thus, eventually, an order of remand was passed directing the learned Single Judge to hear the petition under Section 34 afresh.

15. We need not dwell on the limited scope of the interference in the petition under Section 34 of the Arbitration Act. That position is very well settled. However, as far as the appeal under Section 37(1)(c) of the Arbitration Act is concerned, in the case of ***MMTC Limited v. Vedanta Limited***[1]**,** in paragraph 14, this Court held thus:

> **"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**

1 (2019) 4 SCC 163

> **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 added)

In another decision of this Court in the case of ***UHL Power Company Limited v. State of Himachal Pradesh***[2]**,** in paragraph 16, it was held thus:

> **"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.** In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

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"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

(emphasis added)

In the decision of this Court in the case of ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking***[3]**,** in paragraph 18, it was held thus:

> **"18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], is akin to the jurisdiction of the court under Section 34 of the Act.** [Id, SCC p. 167, para 14:"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."] **Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act."**
>
> (emphasis added)

16. The jurisdiction of the Appellate Court dealing with an appeal under Section 37 against the judgment in a petition

3 (2023) 9 SCC 85

under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the Appellate Court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the Appellate Court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the Appellate Court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints.

17. In the facts of the case in hand, while deciding the petition under Section 34 of the Arbitration Act, the learned Single Judge has made a very elaborate consideration of the submissions made across the Bar, the findings recorded by the Arbitral Tribunal and the issue of illegality or perversity of the award. Detailed reasons while dealing with the alleged patent illegalities associated with the directions issued under the arbitral award have been recorded. Considering the nature of the findings recorded by the learned Single Judge, the job of the Appellate Court was to scrutinise the said findings and to decide, one way or the other, on merits. In this case, the finding of the Appellate Bench that the impugned judgment of the learned Single Judge does not address several issues raised by the parties cannot be sustained at all.

18. The provisions of the CPC have not been made applicable to the proceedings before the learned Arbitrator and the Court under Sections 34 and 37 of the Arbitration Act. The legislature's intention is reflected in Section 19(1) of the Arbitration Act, which provides that an Arbitral Tribunal is not bound by the provision of the CPC. That is why the provisions of the CPC have not been made applicable to the proceedings under Sections 34 and 37(1)(c). We are not even suggesting that because the provisions of the CPC are not applicable, the Appellate Court dealing with an appeal under Section 37(1)(c) is powerless to pass an order of remand. The remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the Appellate Court under Section 37(1)(c) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the Appellate Court can exercise the power of remand only when exceptional circumstances make an order of remand unavoidable. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:

a. Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;

b. Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and

c. Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record.

19. Some of the objectives mentioned in the Statement of Objects and Reasons of the Arbitration Act are very relevant which are as follows:

> "4. The main objectives of the Bill are as under:-
>
> (i) to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;
>
> (ii) **to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration**;
>
> (iii) to provide that the arbitral tribunal gives reasons for its arbitral award;
>
> (iv) to ensure that the arbitral tribunal remains within the limits of its jurisdiction;
>
> (v) **to minimise the supervisory role of courts in the arbitral process**;
> ....."
>
> (emphasis added)

While coming out with the 2015 Amendment Bill, the legislature has noted in the objects and reasons that a lot of delay is involved in concluding the arbitral proceedings. In paragraphs 6 and 7 of the objects and reasons of the Bill, the Legislature has stated thus:

> "6. It is proposed to introduce the Arbitration and Conciliation (Amendment) Bill, 2015, to replace the Arbitration and Conciliation (Amendment) Ordinance, 2015, which inter alia, provides for the following, namely—
>
> (i) to amend the definition of "Court" to provide that in the case of international commercial arbitrations, the Court should be the High Court;
>
> (ii) to ensure that an Indian Court can exercise jurisdiction to grant interim measures, etc., even where the seat of the arbitration is outside India;
>
> (iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days;
>
> (iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues;

(v) **to provide that the arbitral tribunal shall make its award within a period of twelve months from the date it enters upon the reference and that the parties may, however, extend such period up to six months, beyond which period any extension can only be granted by the Court, on sufficient cause;**

(vi) to provide that a model fee Schedule on the basis of which High Courts may frame rules for the purpose of determination of fees of arbitral tribunal, where a High Court appoints arbitrator in terms of Section 11 of the Act;

(vii) to provide that the parties to dispute may at any stage agree in writing that their dispute be resolved through fast track procedure and the award in such cases shall be made within a period of six months;

(viii) to provide for neutrality of arbitrators, when a person is approached in connection with possible appointment as an arbitrator;

(ix) **to provide that application to challenge the award is to be disposed of by the Court within one year.**

7. **The amendments proposed in the Bill will ensure that arbitration process becomes more user friendly, cost effective and lead to expeditious disposal of cases."**

(emphasis added)

The object of the Arbitration Act is to provide an arbitral procedure that is fair, efficient, and capable of meeting the needs of specific arbitration. The object is to ensure that the arbitral proceedings and proceedings filed for challenging the award are concluded expeditiously. The proceedings have to be cost-effective. The supervisory role of the Courts is very restricted. Moreover, we cannot ignore that arbitration is one of the modes of Alternative Disputes Redressal Mechanism provided in Section 89 of the CPC. If the Courts dealing with appeals under Section 37 of the Arbitration Act start routinely passing the orders of remand, the arbitral procedure will cease to be efficient. It will cease to be cost-effective. Such orders will delay the conclusion of the proceedings, thereby defeating the very object of the Arbitration Act. Therefore, an order of remand by Section 37 Court can be made only in exceptional cases where remand is unavoidable. As observed earlier, the scope of interference in a petition under Section 34 is very narrow. The jurisdiction under Section 37 of the Arbitration Act is narrower. Looking to the objects of the Arbitration Act and the limited scope available to the Courts to interfere with the award of the Arbitral Tribunal, this Court, while dealing with the decisions under Sections 34 and 37 of the Arbitration Act, in its jurisdiction under Article 136 of the Constitution of India, has to be circumspect. By their own volition, the parties choose to go before the Arbitral Tribunal instead of availing remedy before the traditional civil courts. Therefore,

the Courts must be very conservative when dealing with arbitral awards and confine themselves to the grounds strictly available under Section 34 of the Arbitration Act.

20. In the facts of the case, the remand was completely unwarranted. The reason is that the learned Single Judge has elaborately dealt with the merits of the challenge in the Section 34 petition. This Court should benefit from reasoned judgment rendered by the Court under Section 37. In this case, we do not have the benefit of a decision of the Appellate Court dealing with all the issues dealt with by the learned Single Judge while deciding the petition under Section 34 of the Arbitration Act. Therefore, it will not be appropriate for this Court to look at the arbitral award and the findings recorded by the Section 34 Court and exercise the jurisdiction of the Section 37 Court. If we do something which Section 37 Court was required to do, it will be unjust to the parties as the unsuccessful party before us will be deprived of one forum of challenge. Therefore, we have no option but to set aside the impugned judgment of the Division Bench and request the Division Bench to decide the appeals on merits after considering the arbitral award and the decision of Section 34 Court.

21. Before we part with the judgment, we must record some serious concerns based on our judicial experience. Case after case, we find that the arbitral proceedings have become synonymous with very bulky pleadings and evidence

and very long, time-consuming submissions, leading to very lengthy awards. Moreover, there is a tendency to rely upon a large number of precedents, relevant or irrelevant. The result of all this is that we have very long hearings before the Courts in Sections 34 and 37 proceedings.

22. By way of illustration, we are referring to the factual aspects of the present case. The award runs into 139 pages. The petition under Section 34 of the Arbitration Act runs into 93 pages and incorporates 151 grounds. The judgment of the learned Single Judge dealing with the petition under Section 34 consists of 101 pages. One of the contributing factors is that more than 35 decisions were relied upon by the parties before the learned Single Judge. On the same point, multiple judgments have been cited, taking similar views. As per the practice in the High Court of Judicature at Bombay, a memorandum of appeal under Section 37 of the Arbitration Act does not contain the facts but only the grounds of challenge. In the memorandum of appeal preferred by the respondent consisting of 46 pages, 164 grounds have been incorporated. Considering the narrow scope of interference under Sections 34 and 37 of the Arbitration Act, we cannot comprehend how there could be 151 grounds in a petition under Section 34 and 164 grounds in an appeal under Section 37. It is not surprising that this appeal has a synopsis running into 45 pages, and it contains as many as 54 grounds of challenge.

23. In many cases, the proceedings under Sections 34 and 37 are being treated as if the same are appeals under Section 96 of the CPC. When members of the bar take up so many grounds in petitions under Section 34, which are not covered by Section 34, there is a tendency to urge all those grounds which are not available in law and waste the Court's time. The time of our Courts is precious, considering the huge pendency. This is happening in a large number of cases. All this makes the arbitral procedure inefficient and unfair. It is high time that the members of the Bar show restraint by incorporating only legally permissible grounds in petitions under Section 34 and the appeals under Section 37. Everyone associated with the arbitral proceedings must remember that brevity will make the arbitral proceedings and the proceedings under Sections 34 and 37 more effective. All that we say is that all the stakeholders need to introspect. Otherwise, the very object of adopting the UNCITRAL model will be frustrated. We are not called upon to consider whether the arbitral proceedings are cost-effective. In an appropriate case, the issue will have to be considered. Arbitration must become a tool for expeditious, effective, and cost-effective dispute resolution.

24. As we are directing the rehearing of the appeal under Section 37 of the Arbitration Act, it is necessary to extend the interim relief that was operative during the pendency of these appeals.

25. Accordingly, we pass the following order:

a. The impugned judgment dated 7th July 2023 in Commercial Appeal no.31 of 2023 is, hereby, set aside, and Commercial Appeal no.30 of 2023 is restored to the file of the High Court of Judicature at Bombay;

b. The restored appeal shall be placed before the roster Bench on 29th July 2024 at 10:30 a.m. The parties to the appeal before this Court shall be under an obligation to appear before the concerned Bench on that day, and no fresh notice shall be served to the parties. The High Court will permit the appellants to file an amended memorandum of appeal containing only the relevant and permissible grounds. The concerned Division Bench shall fix a schedule for hearing of the appeal;

c. The Registry of this Court shall forward a copy of this judgment to the Prothonotary and Senior Master of the High Court of Bombay, who shall ensure that the appeal is listed before the roster Bench as directed above;

d. The interim relief, granted by this Court on 11th August 2023, shall continue to operate till the disposal of the remanded appeal;

e. We make it clear that we have made no adjudication on the merits of the arbitral award and the judgment of the learned Single Judge and all the issues arising in the remanded appeal are left open to be decided by the High Court; and

f. The appeals are, accordingly, partly allowed with no orders as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

New Delhi;
July 08, 2024