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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Pronounced on : 20.11.2024***

\+ **FAO (COMM) 67/2024**

AKTIVORTHO PRIVATE LIMITED EARLIER KNOWN AS M/S INTERNATIONAL ORTHOPEDIC REHABILITATION AND PREVENTION INDIA PRIVATE LIMITED

..... Appellant

versus

DILBAGH SINGH SACHDEVA AND OTHER .....Respondents

Advocates who appeared in this case:

For the Appellant :	Mr. Pradeep Dahiya, Adv. with Ms. Mahima Benipuri, Adv.
For the Respondents:	Mr. Ashok Kumar Sharma, Adv. With Mr. Kewal Krishan and Mr. Abhinav Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

1. This Appeal has been filed by Aktivortho Private Limited earlier known as M/s International Orthopedic Rehabilitation and Prevention (India) Private Limited [hereinafter referred to as the "Appellant/Lessee"] under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the "Arbitration Act"] impugning a judgment

passed by the learned District Judge Commercial Court-03, West, Tis Hazari, Delhi dated 29.01.2024 in O.M.P. (COMM.) 19/2023 [hereinafter referred to as "Impugned Order"]. The Appellant is aggrieved by the Impugned Order which upheld the award dated 08.08.2022 as amended by the Arbitral Award dated 17.03.2023 [hereinafter referred to as "Arbitral Award"]. By the Arbitral Award the sole arbitrator appointed by the learned Trial Court on 20.12.2018 [hereinafter referred to as "Sole Arbitrator"] adjudicated upon a landlord-tenant dispute in relation to the Upper Ground Floor, comprising of a total super area of 3400 sq. ft. of property bearing No. 63, West Avenue Road, West Punjabi Bagh, New Delhi, 110026 [hereinafter referred to as "Premises"]. The Appellant/Lessee was the Petitioner before the learned Commercial Court and the Respondent in the arbitration proceedings. Conversely, the Respondents/Lessors in this Appeal were the original claimant before the Sole Arbitrator.

BRIEF FACTS

2. Under and by virtue of a registered Lease Deed dated 18.03.2015 [hereinafter referred to as the "Lease Deed"], the Appellant/Lessee took on lease the Premises from the Respondents/Lessors. The salient feature of the Lease Deed included the following:

(i) The monthly rental of Rs. 3,55,000/- payable on or before the 7th day of each calendar month;

(ii) Interest free security deposit equivalent to six months rent in the sum of Rs. 21,30,000/- was to be paid by the Appellant/Lessee;

(iii)The Lease Deed would commence on 23.05.2015 for a duration of three years with a rent free fit out period of 45 days;

(iv) The lease would automatically extend for another two terms of three years each with an escalation of the rental by 15% for such successive terms unless a written notice is received six months in advance by the lessor terminating the tenancy priorly; and

(v) The lock-in period of 36 months from the date of commencement of lease also form part of the Lease Deed.

3. The tenancy commenced and the Appellant/Lessee carried out its fit out in the Premises and commenced its business from the Premises. The Appellant/Lessee made rental payments until February, 2017 after which the rental payments were stopped. Disputes arose between the parties and on 07.04.2017, the Appellant/Lessee issued a legal notice terminating the lease owing to defaults of Lease Deed by the Respondents/Lessors. The Appellant/Lessee contended that the Respondents/Lessors failed to honour the terms of the Lease Deed and on the ground of non-performance, terminated the Lease Deed between the parties. As per the legal notice, the breaches included:

(i) Non payment of entire conversion charges;

(ii) No structural insurance cover was taken;

(iii) Non payment of annual maintenance charges for the lift;

(iv) Denying the access to the respondent and its staff etc. to use the common area; and

(v) Refusal to upkeep the common area on the ground floor.

4. Simultaneously, the Respondents/Lessors sent a legal notice dated 10.04.2017 to the Appellant/Lessee raising a demand for the unpaid rent for the months of March, 2017 and April, 2017. A reply to the legal notice dated 07.04.2017 was also sent by the Respondents/Lessors

denying any breach of the Lease Deed. The Premises were vacated by the Appellant/Lessee on 31.05.2017.

5. A suit for recovery was filed by the Respondents/Lessors against the Appellant/Lessee in the Court of learned District Judge at Tis Hazari Courts, Delhi. By an order dated 20.12.2018, pursuant to an Application filed under Section 8 of the Arbitration Act by the Appellant/Lessee and with the consent of both the parties, the Court appointed the Sole Arbitrator to adjudicate disputes between the parties.

6. The Sole Arbitrator entered reference on 15.01.2019 and thereafter, the Respondents/Lessors filed a claim in the sum of Rs. 36,78,203/- seeking the following:

(i) Recovery of rent for entire unexpired lock-in period in the sum of Rs. 32,60,203/- after adjusting the balance security deposit of Rs.9,05,130/-.

(ii) Recovery of cost of restoration of the Premises amounting to Rs.4,18,000/-.

(iii) Recovery of Service Tax/GST dues as applicable upon the rent dues for the lock-in-period.

(iv) Interest and costs.

7. A counter-claim was also filed by the Appellant/Lessee seeking recovery of the security amount of Rs. 21,30,000/- along with interest at the rate of 24% per annum. In addition, damages were sought by the Appellant/Lessee for loss of business as well as goodwill and reputation in the market at the rate of Rs. 1 crore.

8. The Sole Arbitrator rendered his findings and held that the

Appellant/Lessee was not justified in terminating the tenancy vide notice dated 07.04.2017, however, at the same time held that the Respondents/Lessors also did not entirely fulfil their responsibilities as mentioned in the Lease Deed. It was further held that the ends of justice would only be met if the Appellant/Lessee were directed to pay rent only for the month of March 2017 to May 2017 and six months in lieu of lock-in period, and not the rent for the entire remaining lock-in period.

9. After examining the evidence given by the parties, the Sole Arbitrator found that the contentions of breach of the Lease Deed as were raised by the Appellant/Lessee could not be proved. The conversion charges for the year 2015-16 were already paid as was the annual lift maintenance. The insurance policy was obtained from the insurance company by the Respondents/Lessors and the annual maintenance charges for running of the lift in the Premises were also paid up to 27.10.2017. So far as concerns, the denial of access to the washroom and other common areas, the Sole Arbitrator relying on the testimony of the witness of the Appellant/Lessee, held that the Appellant/Lessee failed to prove that there was any negligence or inaction of the Respondents/Lessors with regard to upkeep of common areas on the ground floor.

9.1 The Sole Arbitrator also found that there was no communication placed on record by the Appellant/Lessee alleging any breach by the Respondents/Lessors of any of the terms of the Lease Deed during the period that it was in use and occupation of the Premises.

10. The Sole Arbitrator passed an Arbitral Award on 08.08.2022,

whereby it directed the Appellant/Lessee to make payment of rent for the months of March, 2017 to May, 2017 and additionally directed the payment of six months rent in lieu of the lock-in period with interest at the rate of 9% per annum from 01.06.2017 onwards, along with costs of litigation at the rate of Rs. 75,000/-.

10.1 An application seeking modification/clarification of the Arbitral Award was filed by the Appellant/Lessee in view of the fact that the refund of security deposit did not find mention in the Arbitral Award. Accordingly, an amended award was passed by the Sole Arbitrator on 17.03.2023 whereby the security deposit amount of Rs. 21,30,000/- was directed to be adjusted in the amounts due to the Respondents/Lessors. No other changes were made.

11. Being aggrieved by the Arbitral Award, the Appellant/Lessee filed a petition under Section 34 of the Arbitration Act seeking setting aside of the Arbitral Award passed by the Sole Arbitrator on the grounds that the Sole Arbitrator failed to appreciate the evidence as produced before him and the award passed by the Sole Arbitrator was in conflict with the public policy of India.

12. By the Impugned Order, the learned Commercial Court dismissed the Petition under Section 34 of the Arbitration Act filed by the Appellant/Lessee and held that vide the said Petition, the Appellant/Lessee had sought nothing but re-appreciation of the evidence. It was held that the Sole Arbitrator had effectively dealt with and duly considered the evidence lead. The learned Commercial Court further held that the findings of the Sole Arbitrator were duly supported by the

reasons upon appreciation of evidence and the same did not warrant interference by the Court and that re-appreciation of evidence is beyond the scope of Section 34 of the Arbitration Act. The Court also gave a finding that the powers as provided under Section 34 of the Arbitration Act are not that of an appellate jurisdiction.

13. This led to the filing of the present Appeal. This Court had sought a clarification on 08.05.2024 as to whether there was any communication setting out breach of obligations on the part of the Respondents/Lessors was issued at any point in time by the Appellant/Lessee prior to the notice of termination. Although, time was sought by the Appellant/Lessee to ascertain the same, no such communication was placed on record by the Appellant/Lessee during these proceedings.

CONTENTIONS OF APPELLANT

14. Learned counsel for the Appellant/Lessee submits that the Impugned Order has been passed by the learned Commercial Court in total disregard of the concept of public policy as has been envisaged in the matter of ***Board of Control for Cricket in India v. Cricket Association of Bihar and Ors.***[1] The Appellant/Lessee contends that the Sole Arbitrator did not properly evaluated the evidence presented and misinterpreted the terms outlined in the Lease Deed. The Appellant/Lessee contends that the Sole Arbitrator's failure to fully understand and accurately apply the provisions of the Lease Deed has led to a flawed and unjust outcome in the arbitration process.

[1] (2015) 3 SCC 251

14.1 It was further contended that Clause 1.5 of the Lease Deed which provided for a six month notice of termination, at the end of the lock-in period was misconstrued by the Sole Arbitrator and was only applicable on the completion of the lock-in period. Since, the Lease Deed was terminated during its tenure, the applicability of Clause 1.5 of the Lease Deed did not arise.

14.2 In addition, the Appellant/Lessee averred that a reading of Clause 1.6 of the Lease Deed would establish that the Appellant/Lessee is entitled to terminate the Lease Deed during the lock-in period if there is a default on the part of the Respondents/Lessors and that this payment is to be made only in a case where there is no default on the part of the Respondents/Lessors and not otherwise.

14.3 Learned Counsel further contends that the Sole Arbitrator has failed to distinguish between "default" and "breach" and has completely overlooked that the Respondents/Lessors had committed defaults by failing to insure the Premises, pay annual maintenance charges for the lift despite promising the same, and specifically failed to abide by Clauses 3.1 and 3.11 of the Lease Deed thereof. The defaults committed by the Respondents/Lessors were non-rectifiable in nature. It was further submitted that the time period to pay the annual maintenance charges for the lift and to take insurance cover for the Premises had long expired and such defaults were rendered irreversible owing to the failure/omission by the Respondents/Lessors to take measures for rectification within the prescribed time.

14.4 Lastly, it was argued that the Sole Arbitrator, in the first instance,

failed to provide for refund of the security deposit and thereafter, by the Amended Award, directed the security deposit to be adjusted without any interest thereon. It was contended that the security deposit was interest free only till the time the Appellant/Lessee was in possession of the Premises and thereafter, holding on to the same would accrue interest which was not awarded by the Sole Arbitrator. It was thus contended that the Arbitral Award was patently illegal, irrational and unfair and was liable to be set aside.

CONTENTIONS OF RESPONDENTS/LESSORS

15. Learned Counsel for the Respondents/Lessors has contended that the Impugned Order and the Arbitral Award do not suffer from any infirmity. The Sole Arbitrator had after examining the evidence and appreciating the materials placed before it, found that the Appellant/Lessee sought re-evaluation of the evidence which is beyond the scope of Section 34 of the Arbitration Act. Reliance was placed on the judgment of a Division Bench of this Court in ***Scholastic India Pvt. Ltd. And Anr. Vs Smt. Kanta Batra***[2] wherein it was held that appreciating the sufficiency of materials before the Sole Arbitrator was outside the ambit of Section 34 of the Arbitration Act.

15.1 Learned Counsel for the Respondents/Lessors further relied on the judgment in the case of ***P. R. Shah, Shares and Stock Brokers (P) Ltd. Vs M/s B. H. H. Securities (P) Ltd. And Ors***[3]**,** to contend that under Section 34 of the Arbitration Act the Court does not sit in appeal over an

[2] 2022 SCC OnLine Del 2351
[3] AIR 2012 SC 1866

Arbitral Award and the Court cannot re-assess or re-appreciate the evidence.

15.2 It was contended that the Appellant/Lessee stopped paying rental in March, 2017 and thereafter vacated the Premises on 31.05.2017 in complete contravention of the terms of the Lease Deed. No communication of any kind whatsoever was issued by the Appellant/Lessee prior to its legal notice dated 07.04.2017 setting out that the Respondents/Lessors were in breach of the terms of the Lease Deed nor was any issue with regard to the maintenance and upkeep of common areas or otherwise, raised by the Appellant/Lessee previously.

15.3 Lastly, it was contended that the issues raised by the Appellant/Lessee were only raised to avoid their obligation to make rental payments and payment of other dues during the tenure of the Lease Deed including payment with respect to the lock-in period.

16. It is necessary to set out the undisputed facts which are as follows:

(i) The Lease Deed was registered and contained a clause for a *"lock-in"* period for 36 months from 23.05.2015;

(ii) Prior to the expiry of the lock-in period, the Appellant/Lessee vacated the Premises on 31.05.2017;

(iii) No rental was paid for three months from March, 2017 to May, 2017 to the Respondents/Lessors; and

(iv) The interest free security deposit amount of Rs. 21,30,000/- remained available with the Respondents/Lessors.

17. The contentions raised by the Appellant/Lessee before this Court

were raised in its Petition under Section 34 of the Arbitration Act which were dealt with by the learned Commercial Court. The Court after examining the Arbitral Award has found that the Arbitral Award is neither in conflict with public policy of India as is set out under Section 34(2)(b)(ii) of the Arbitration Act nor was the Arbitral Award vitiated by patent illegality appearing on the face of the Arbitral Award and thus, the Arbitral Award was upheld.

18. As set out above, the claim of the Respondents/Lessors comprised of the following:

S. No.	***Particulars***	***Amount***
1.	*Period of arrears of Rent of Rs. 3,55,000/- per month for 3 months March, 2017 – May, 2017*	*Rs. 10,65,000/-*
2.	*Service tax dues for 3 months i.e., March 2017 to May 2017 of Rs. 53,290/-*	*Rs. 1,59,870/-*
3.	*Rent of the lock-in period from June 2017 to 22nd May 2018 i.e., 11 months and 22 days of Rs. 3,55,000/- per month.*	*Rs. 41,65,333/-*
4.	*Cost of restoration of Premises to original condition*	*Rs. 4,18,000/-*
5.	*Minus Security deposit adjusted*	*(Rs. 21,30,000/-)*
	Total amount claimed	*Rs. 36,78,203/-*

18.1 The Sole Arbitrator examined the evidence as well as documents filed by the parties and interpreted the Clauses of the Lease Deed and found that no valid ground existed for the Appellant/Lessee to terminate the Lease Deed pre-maturely and without any notice. The Sole Arbitrator found that the claims as made by the Appellant/Lessee with regard to maintenance and upkeep of common areas; non-payment of necessary

conversion charges; failure to maintain the lift installed/pay the lift maintenance charges; failure to take structural insurance of the building as a commercial building; and breach of Clause 1.7 and 1.8 of the Lease Deed by denying the access of the staff of Appellant/Lessee to common areas of the ground floor including the washroom of all which could not be proved by the Appellant/Lessee.

18.2 The Sole Arbitrator also held that the witness produced by the Appellant/Lessee admitted in its cross-examination that there was no damage suffered by the Appellant/Lessee owing to the *'so called'* non-maintenance or failure of cleanliness of the lift or common areas; that there was no Challan/notice or other action taken by the civil or municipal authorities for using of the Premises for commercial purposes so as to cause any injury to the Appellant/Lessee. The witness of the Appellant/Lessee was also unable to give any evidence of any negligence or inaction of the Respondents/Lessors during the period that the Premises were in occupation of the Appellant/Lessee.

19. The Sole Arbitrator after interpreting the provisions of Clause 1.5 and 1.6 of the Lease Deed found that even though the rent for almost 11 months was due until the end of the lock-in period, paying the rent for whole of the lock-in period would be a harsh penalty considering that the Premises was vacated and handed over back to the Respondents/Lessors on 31.05.2017. Thus, the Sole Arbitrator, in addition to the arrears of 3 months rental also awarded arrears of rent for the period of 6 months from 31.05.2017. Given the fact that under Clause 1.5 of the Lease Deed, the notice period as provided in the Lease Deed for the right of the Appellant/Lessee to terminate at any time was 6 months albeit at the end

of the lock-in period, this Court finds that the interpretation of the clause of the Lease Deed by the Sole Arbitrator was reasonable and does not call for any interference.

20. The Sole Arbitrator examined the receipts and documents evidencing the conversion charges as well as the receipts with regard to payment of lift maintenance and found that all these payments were duly proved by the Respondents/Lessors. On the issue of non-payment of insurance for commercial purposes and the other contentions raised by the Appellant/Lessee, it was found that no notice or communication of any kind whatsoever was sent by the Appellant/Lessee setting out its grievances to the Respondents/Lessors during the term of the Lease Deed. An insurance policy was obtained from Universal Sampo General Insurance Company Limited for an amount of Rs. 1.91 crores on 17.08.2016, insuring the Premises as a residential one which was valid up to 13.08.2017. The conversion charges for 3175 sq. ft. of the Premises had already been paid by the Respondents/Lessors prior to the commencement of the Lease Deed. The annual maintenance for the lift services was also paid for the period from 28.10.2016 to 27.10.2017.

21. Clause 7 of the Lease Deed provided for termination. Clause 7.1 of the Lease Deed set out that the Appellant/Lessee shall be at liberty to terminate the Lease Deed, at any time, after the expiry of 36 months with a written notice of 6 months. It also provided that the Appellant/Lessee may terminate the Lease Deed with immediate effect if the Respondents/Lessors are in breach of Clause 6.5 of the Lease Deed and fails to remedy such breach within 15 days of receiving the written notice from the Appellant/Lessee. No other provision for termination by the

Appellant/Lessee is provided in the Lease Deed. Clause 7.1 is reproduced below:

> *"Termination*
> *7.1 It is hereby agreed that the LESSEE shall,* ***after the expiry of 36 (Thirty Six) months,*** *from the date of commencement of the Lease Rent, be at liberty to terminate the Lease Deed at any time by serving upon the LESSOR a* ***written lease termination notice of 6 (Six) months. The LESSEE shall, be entitled to terminate the Lease deed with immediate effect If the LESSOR Is In breach of any term of the Lease Deed and falls to remedy such breach within 15 (fifteen) days of receiving written notice from the LESSEE, in respect of failure by the LESSOR to comply with Sections [sic: Clause] 6.5 above****."*
>
> [Emphasis is ours]

21.1 Clause 6.5 of the Lease Deed reads

> *"6.5 The LESSOR has represented that they are the lawful owners and fully and totally entitled to, seized and possessed of the Leased Premises free from all encumbrances whatsoever, and that there is no charge, mortgage, trust, litigation etc., thereon and LESSOR shall keep LESSEE saved, harmless and indemnified against any such loss, damages, expenses, claims, actions, which LESSEE may suffer on account of such representation of the LESSOR."*

21.2 Undisputably, the Lease Deed provided no option for termination of the Lease Deed prior to the expiry of the lock-in period and the only option that was available with the Appellant/Lessee for prior termination is a failure by the Respondents/Lessors to comply with Clause 6.5 of the Lease Deed above.

22. Notwithstanding the aforegoing, the only communication sent by the Appellant/Lessee to the Respondents/Lessors was dated 07.04.2017, terminating the Lease Deed forthwith and raising a demand for refund of the security deposit amount and setting out that the Appellant/Lessee will vacate the Premises at the expiry of six weeks from the date of the said notice, in the following terms:

> *"**In view of the above and continued breach by the Lessors of the terms of the LD. Our Client terminates the Lease Deed forthwith and demands that the entire security deposit of Rs. 21,30,000 (Rupees Twenty One Lakhs Thirty Thousand Only) be returned to Our Client within six-(6) weeks of the date of this notice und no hindrance be caused to Our Client during the removal of the fixtures and fittings by our Client from the premises, Our Client shall vacate the Lease Premises before the end of those six (6) weeks and take with them all the improvements that are removable, which they had made to the Lease Premises.***
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> *In the event you all do not comply with the relief sought by Our Client In terms of this notice or create any hindrance In peaceful vacation of Lease Premises by Our Client, Our Client will be compelled to initiate appropriate legal action, both Civil and Criminal, as well as have you all pay 24% per annum interest on the security deposit against all three of you at your risk, costs and consequences…."*
>
> [Emphasis is ours]

22.1 The Appellant/Lessee did not raise any complaint with regard to breach of Clause 6.5 of the Lease Deed in this communication. Thus, the legal notice sent on behalf of the Appellant/Lessee was not in accordance with the terms of the Lease Deed.

23. As stated above, since the Lease Deed between the parties commenced on 23.05.2015 and the Appellant/Lessee continued in occupation of the Premises till 31.05.2017, the breaches/defaults complained by the Appellant/Lessee were to be communicated in writing by the Appellant/Lessee. However, instead, the Appellant/Lessee stopped the rental payment after February 2017 and sent the legal notice dated 07.04.2017 to the Respondents/Lessors.

24. The Lease Deed was entered into by the Appellant/Lessee for a term of 3 years with a renewal clause for two additional term of three years each i.e., 9 years, with a lock-in period of 36 months. Prior to the

expiry of the lock-in period, a notice to determine the lease was sent by the Appellant/Lessee alleging a breach of the terms of the lease. The termination was not in accordance with the terms of the Lease Deed. The disputes between the parties were adjudicated and after detailed evidence, a finding was reached that there was no breach committed by the Respondents/Lessors so as to entail a termination.

25. So far as concerns the issue of interest not being awarded on the security deposit, the same was also examined by the Sole Arbitrator and it was held that the Respondents/Lessors did not illegally retain the security deposit and that Clause 3.7 of the Lease Deed required the Respondents/Lessors to return the security deposit but only after adjusting the arrears of rent and amounts due. The Sole Arbitrator also found that the arrears of rent and lock-in period charges were the subject matter of dispute between the parties and that the Respondents/Lessors was justified in holding the security amount. Thus, no interest on this amount was awarded to the Appellant/Lessee.

26. The Respondents/Lessors filed a claim for the sum of Rs. 36,78,203/-. The Appellant/Lessee filed its counter-claim for the refund of its security deposit along with interest and damages in the sum of Rs. 1 crore for loss of its business as well as goodwill in the market. The Arbitral Award held that the counter-claim was not proved by the Appellant/Lessee and hence was rejected. The claim of the Respondents/Lessors was allowed to the extent of arrears of 3 months' rent and the 6 months rental in lieu of 11 months and 22 days duration of lock-in period that remained in terms of the Lease Deed, along with interest and costs. The findings as discussed above, are in terms of the

Lease Deed between the parties and after examining the evidence placed before the Sole Arbitrator and do not merit any interference by this Court.

27. The scope of interference in an Arbitral Award under Sections 34 and 37 of the Arbitration Act is limited. Amongst the grounds provided in the Arbitration Act for interference with Arbitral Award is patent illegality, which is limited to situations where the findings of the Sole Arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. [See: ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Ors.***[4] ***and MMTC Limited v. Vedanta Limited***[5]].

27.1 The Sole Arbitrator examines the quality and quantity of evidence placed before him when he delivers his Arbitral Award and a view, which is possible on the facts as set forth by the Sole Arbitrator must be relied upon. In the case of ***State of Jharkhand & Ors. v. HSS Integrated SDN & Anr.***[6], the Supreme Court held that the Arbitral Tribunal is the master of evidence and a finding of fact arrived at by an Sole Arbitrator is on an appreciation of the evidence on record are not to be scrutinised as if the Court was sitting in appeal.

28. In a recent judgment, the Supreme Court in ***Hindustan Construction Co. Ltd. v. NHAI***[7] recapitulated the prevailing view that Courts should not customarily interfere with Arbitral Awards that are

[4] 2021 SCC OnLine SC 508
[5](2019) 4 SCC 163
[6] (2019) 9 SCC 798
[7] (2024) 2 SCC 613

well reasoned, and contain a plausible view. The Supreme Court observed, that judges, by nature, may incline towards using a corrective lens, however, under Section 34 of the Arbitration Act, this corrective lens is inappropriate especially under Section 37 of the Arbitration Act. It was held that the error in interpreting a Contract is considered an error within its jurisdiction. Therefore, judicial interference should be avoided unless absolutely necessary, ensuring the Sole Arbitrator's decision remains final and binding. The relevant extract of the ***Hindustan Construction*** case reads as follows:

> *"26. The prevailing view about the standard of scrutiny — not judicial review, of an award, by persons of the disputants' choice being that of their decisions to stand — and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily choose the path of least interference, except when absolutely necessary).* ***By training, inclination and experience, Judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34.*** *So viewed, the Division Bench's approach, of appellate review, twice removed, so to say (under Section 37), and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, and substitution of another view. As long as the view adopted by the majority was plausible — and this Court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, compacted matter, comprising both soil and fly ash), such a substitution was impermissible.*
>
> *27.* ***For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly…"***
>
> [Emphasis is ours]

29. This Court finds that the Sole Arbitrator after appreciating and examining the evidence placed before it, reached a conclusion which is

plausible and does not merit any interference.

30. In view of the aforegoing disucussions, we find no ground for interference with the Arbitral Award or the Impugned Order.

31. The Appeal is accordingly dismissed.

TARA VITASTA GANJU, J

VIBHU BAKHRU, J

NOVEMBER 20, 2024/r