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

\+ FAO(OS) (COMM) 133/2023

U.P. INFRAESTATE P. LTD. THROUGH LIQUIDATOR DE VINDER ARORA .....Appellant

Through: Mr. Raman Gandhi, Adv.

versus

RIVAJ INFRATECH PRIVATE LIMITED & ANR. .....Respondents

Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Harish Kumar Garg, Ms. Nisha and Mr. S. Panda, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 24.04.2026

C. HARI SHANKAR, J.

1. By an order dated 1 November 2019, a learned Sole Arbitrator, who was arbitrating on the disputes between the parties, terminated the arbitration on the ground of non-cooperation by the appellant, who was the claimant before the learned Arbitrator, in filing his statement of claim in time.

2. An application was filed by the appellant for recalling of the said order, which was dismissed by the learned Sole Arbitrator by order dated 14 January 2023.

3. Against this order, the appellant preferred OMP (COMM) 154/2023 before a learned Single Judge of this Court under Section 34(1)[1] of the Arbitration and Conciliation Act, 1996[2]. The said OMP (COMM) stands dismissed by the learned Single Judge on 26 April 2023.

4. Against the said decision, the present appeal has been preferred under Section 37(1)[3] of the 1996 Act.

5. Mr. Ramesh Singh, learned Senior Counsel for the respondents has advanced a preliminary submission that OMP (COMM) 154/2023 was itself not maintainable, as the remedy, against an order passed by the Arbitrator refusing to recall the earlier order terminating the proceedings lay under Section 14[4] of the 1996 Act, in view of the judgment of the Supreme Court in ***Harshbir Singh Pannu v. Jaswinder Singh***, particularly para 415(X), which reads thus:

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[1] **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] "the 1996 Act", hereinafter

[3] **37. Appealable orders**.—
(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—
(*a*) refusing to refer the parties to arbitration under Section 8;
(*b*) granting or refusing to grant any measure under Section 9;
(*c*) setting aside or refusing to set aside an arbitral award under Section 34.]

[4] **14. Failure or impossibility to act**.—
(1) [The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—
(*a*) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and
(*b*) he withdraws from his office or the parties agree to the termination of his mandate.
(2) If a controversy remains concerning any of the grounds referred to in clause (*a*) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.
(3) If, under this section or sub-section (3) of Section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section 12.

> "415(X) If, however, the recall application is dismissed, the party aggrieved therefrom, would be empowered to approach the court under Section 14(2) of the Act, 1996. The court would then in turn examine whether the mandate of the arbitrator stood legally terminated or not. If it finds that the proceedings were not terminated in accordance with the law, it would be empowered to either set-aside the order of termination of proceedings and remand the matter to the arbitral tribunal, or, if the circumstances so require, proceed to appoint a substitute arbitrator in terms of Section 15 of the Act, 1996."

6. Against an order under Section 14, Mr. Singh submits that no appeal under Section 37 of the 1996 Act lies. As such, Mr. Singh's submission is that either the appellant's OMP (COMM) 154/2023 was itself liable to be dismissed as not maintainable or in the alternative, even if the impugned order were to be treated as one passed under Section 14 of the 1996 Act, the present appeal would not lie.

7. Relying on the judgment of the Supreme Court in ***Ram Kishan Fauji v. State of Haryana***[5], Mr. Ramesh Singh submits that though the impugned judgment of the learned Single Judge *facially* purports to have been passed under Section 34, it should be *treated* as one passed under Section 14.

8. We are unable to agree.

9. The petition of the petitioner having been filed under Section 34, and the order of the learned Single Judge having also been passed on the said petition, and in view of the fact that there is nothing in the impugned judgment which indicates that the learned Single Judge was

[5] **(2017) 5 SCC 533**

exercising jurisdiction under Section 14 of the 1996 Act, it is not possible for us to read the impugned order as one passed under Section 14.

10. The decision in ***Ram Kishan Fauji*** is clearly distinguishable.

11. The issue before the supreme Court in that case was with respect to the maintainability of a Letters Patent Appeal[6] against the decision of a learned Single Judge passed in proceedings under Article 226 of the Constitution. An LPA would lie only if the learned Single Judge was exercising civil jurisdiction, but would not lie if the learned Single Judge was exercising criminal jurisdiction. The Supreme Court was, therefore, concerned with the question of whether the jurisdiction exercised by the Single Judge under Article 226 partook of the character of civil or criminal jurisdiction. The Supreme Court held that, as the order under challenge before the Single Judge was passed by the Lokayukta, and the outcome of the order was initiation of criminal prosecution, the order was required to be treated as having been in exercise of criminal jurisdiction. Thus, it was held that an LPA would not lie.

12. This decision cannot support Mr. Ramesh Singh's argument that the impugned order of the learned Single Judge, under challenge in the present appeal, should be treated as an order passed under Section 14 of the 1996 Act even though it is, on the face of it, passed under Section 34 of the 1996 Act.

13. In ***Ram Kishan Fauji,*** the exercise of jurisdiction by the learned Single Judge, whether civil or criminal, was under Article 226 of the Constitution of India. The power of the learned Single Judge to exercise writ jurisdiction under Article 226 of the Constitution was not in question. It was only the *nature* of jurisdiction exercised by the learned Single Judge which had come up for consideration, as the decision on that issue would impact the maintainability of the LPA.

14. There was no plea before the Supreme Court, therefore, in ***Ram Kishan Fauji***, that an order passed under one provision should be treated as an order passed under another provision.

15. We, therefore, are unable to accept Mr. Ramesh Singh's submission that the impugned order should be treated as one passed under Section 14 of the 1996 Act.

16. Per consequence, therefore, we are also not able to sustain Mr. Singh's argument that the present appeal would not be maintainable, as an appeal under Section 37 does lie against an order passed under Section 34 of the 1996 Act. We, therefore, hold that the present appeal is maintainable.

17. That would, then, take us to the question of whether the impugned judgment of the learned Single Judge is sustainable in law. This would throw open, for consideration, the issue of whether the learned Single Judge could have exercised jurisdiction under Section 34 and whether the Section 34 proceeding was at all maintainable

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"LPA" hereinafter

before the learned Single Judge against an order passed by the learned Arbitral Tribunal refusing to recall an order terminating the proceedings under Section 25 of the 1996 Act.

18. This issue, to our mind, is no longer *res integra*, in view of para 415(x) of ***Harshbir Singh Pannu***, which is clear and categorical. It holds, in unequivocal terms, that a dismissal of a recall application, by the Arbitrator, has to be challenged under Section 14(2) of the 1996 Act. Clearly, therefore, the petition of the petitioner before the learned Single Judge, having been preferred under Section 34 of the 1996 Act, was not maintainable and the order of the learned Single Judge, having been passed under Section 34 of the 1996 Act, is equally unsustainable in law on that ground alone.

19. Mr. Gandhi, learned Counsel for the appellant, has addressed us at length, seeking to escape the rigour of para 415 (X) of the decision in ***Harshbir Singh Pannu***. He submits that the decision in ***Harshbir Singh Pannu*** itself notes that there was earlier a cleavage of opinion with respect to the remedies which would be available against an order terminating arbitral proceedings. That, to our mind, is irrelevant, as the order which was under challenge before the learned Single Judge was not an order *terminating the proceedings* but an *order refusing to recall the order terminating the proceedings*.

20. In fact, the order terminating the proceedings had been passed on 1 November 2019 under Section 25 of the 1996 Act, as none appeared on behalf of the claimant. The order dated 1 November 2019 was never challenged by the petitioner by any means known to law.

Rather, the petitioner moved an application for recall of the order dated 1 November 2019. It is that application which was rejected by the order dated 14 January 2023, which forms subject matter of challenge before the learned Single Judge.

21. Though Mr. Gandhi sought emphatically to contend that, as the effect of the order dated 14 January 2023 was to terminate the arbitral proceedings, that order should also be treated as an order passed under Section 25 terminating the proceedings, it is obviously impossible to agree with this contention. Arbitral proceedings can be terminated only once and once terminated they cannot again be terminated a second time. The dismissal of the recall application could not, therefore, be treated as a second order terminating the arbitral proceedings again relatable to Section 25 of the 1996 Act. It was clearly an order which was refusing to recall the order terminating the arbitral proceedings.

22. We, therefore, are of the clear opinion that the only order terminating the arbitral proceedings was the order dated 1 November 2019, which was never challenged. The order dated 14 January 2023 cannot be treated as an order terminating the proceedings, but was, as it clearly expresses itself to be, an order refusing to recall the order dated 1 November 2019.

23. Para 415 (X) of the decision in ***Harshbir Singh Pannu*** holds in clear terms that such an order, rejecting a recall application, would be amenable to challenge under Section 14(2) of the 1996 Act. *Ipso facto*, therefore, the order would not be amenable to challenge under Section 34.

24. Mr. Gandhi also sought to advance detailed arguments on the aspect of prospective overruling. He drew our attention to the judgment of the Supreme Court in ***DRI v. Raj Kumar Arora***[7], from which he cited paras 141, 142 143 and 147, which also stand extracted in ***Harshbir Singh Pannu***, and may be reproduced, to advantage, as under:

> "141. The applicability or discussion relating to the doctrine of prospective overruling can be noticed in a few other matters under the criminal arena, though prominently on matters pertaining to procedural law. In ***Ramesh Kumar Soni* v. *State of M.P.***[8], the Court was concerned with an amendment changing the triability of certain offences i.e. from the Judicial Magistrate, First Class to the Court of Session and its effect on the cases pending trial or pending investigation. This Court had held that any amendment shifting the forum of the trial had to be, on principle, retrospective in nature in the absence of any indication to the contrary in the Amendment Act. This retrospective operation of amendments relating to procedure would be subject to the exception that the earlier procedure which was correctly adopted and which led to the proceedings being concluded under the old law cannot be reopened for the purpose of applying the new procedure. Furthermore, it was also reiterated that an accused does not possess a "vested right of forum" for his trial. However, the decision of a Full Bench of the Madhya Pradesh High Court in ***Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007 In re***[9], had opined that all the cases which were pending before the Judicial Magistrate as on 22-2-2008 i.e. the date of the amendment, would remain unaffected by the Amendment. Therefore, the Full Bench of the High Court directed that all the cases which were pending before the Judicial Magistrate and had already been committed to the Court of Session due to the coming into force of the amendment, to be sent back to the Judicial Magistrate.
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> 142. This Court in ***Ramesh Kumar Soni* v. *State of M.P.***[10], disagreed and overruled the decision of the Full Bench but only prospectively. This was done because the trial of the cases that were sent back from the Sessions Court to the Judicial Magistrate

[7] **(2026) 2 SCC 401**
[8] **(2013) 14 SCC 696**
[9] **2008 SCC OnLine MP 185**
[10] **(2013) 14 SCC 696**

under the orders of the Full Bench may have also been concluded or may be at an advanced stage. Therefore, any change of forum at that stage would have caused unnecessary and avoidable hardship to the accused if they were transferred again to the Court of Session in light of the conclusion that an amendment to procedural law would operate retrospectively. The relevant observations are reproduced hereinbelow: (***Ramesh Kumar Soni*** *case*)

> "*21. The upshot of the above discussion is that the view taken by the Full Bench* in *holding the amended provision to be inapplicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from the Sessions Court to the Court of the Magistrate, First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us.*
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> *27.* The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the Madhya Pradesh High Court will not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision."
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> (emphasis supplied)

143. On a conspectus of the aforesaid discussion on the doctrine of prospective overruling, the following can be summarised:

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143.2. Since resorting to the doctrine of "prospective overruling" is an exception to the normal rule that a judgment or decision applies retrospectively and to the general rule of doctrine of precedent, an express declaration by the court that its decision is prospectively applicable is absolutely necessary. Prospectivity as a concept cannot be considered to be inhered in situations since the intention to attribute prospectivity to a decision must be limpid and clear.

143.3. In ***Jarnail Singh* v. *Lachhmi Narain Gupta***[11], this Court took the view that even if the overruling decision does not indicate

[11] **(2022) 10 SCC 595**

that its decision is to apply with prospective effect, a different or even a smaller Bench of this Court, subsequently, can declare that the doctrine of prospective overruling must be applied to the prior judgment of this Court, in exercise of the power under Article 142 to do complete justice to the matter at hand.

143.4. In ***Baburam* v. *C.C. Jacob***[12], this Court was of the view that, on the application of the doctrine of prospective overruling, it is deemed that all actions taken contrary to the declaration of law but prior to the date of the declaration, are validated. However, ***Somaiya Organics (India) Ltd.* v. *State of U.P.***[13] clarified that the application of the doctrine of prospective overruling would not have the effect of validating an invalid law. All that is done is that the declaration of invalidity of the legislation is directed to take effect from a future date. To prevent the chaotic unscrambling of actions done in the past, a middle-ground is reached by postponing the decision declaring invalidity to a particular date, in the interest of doing complete justice. Thus, ensuring that "complete justice" is done in the most equitable way is the true essence of the doctrine and this is also evident from the fact that this Court has, on several occasions, prescribed the limits to the retroactivity of the law declared by it.

143.5. The evolution of the doctrine of prospective overruling, although not indigenous to India, yet has been well entrenched in Indian jurisprudence. As a default rule, any judgment deciding a question of law would be retrospective and would also apply to the factual situation in the background of which such a decision is rendered. However, it is only when the hardship is too great that such a retrospective operation is withheld. Broadly, the doctrine is being applied with a view to not unsettle everything that was undertaken in the past either on account of an existing law/rule or due to the decision of a court. The object is to ensure a smooth transition of the law and not disturb matters that have attained finality. Time and again, it has been reiterated that prospective overruling is an accepted doctrine as an extended facet of stare decisis. The doctrine involves giving effect to the new law laid down from a prospective date, ordinarily from the date of the judgment of the overruling decision. Sometimes, while declaring that a decision would be prospectively applicable, courts have granted limited relief to the parties or petitioners in question retrospectively.

143.6. There are several factors or considerations which may weigh with the court before the doctrine of prospective overruling is applied. Some broad considerations include — to meet the ends

[12] **(1999) 3 SCC 362**
[13] **(2001) 5 SCC 519**

of justice, prevent the unsettlement of settled positions, mitigate any administrative chaos keeping in mind the pragmatic realities, curb any uncertainty in law, thwart avoidable litigation, safeguard public interest and preserve the avowed object and purpose that is embodied in the overruling decision. The possibility of impact on a large number of parties or individuals, the impossibility of restoring the original and correct position of law, the existence of an overwhelming reason favouring prospectivity or where the law on the subject been in a state of flux for a significant period of time are also relevant. Therefore, the legitimate or justifiable reliance by a party or administration in good faith on the overruled decision, the ability to effectuate the new rule adopted in the overruling case without doing injustice, the likelihood of implementing its retrospective operation without substantially burdening the administration of justice, the prior history of the rule in question, its purpose and effect and whether the retroactive operation will accelerate or retard its operation, etc. are all significant considerations which are to be kept in mind before the doctrine of prospective overruling may be resorted to. Obviously, if one or more of the factors illustrated above are competing with each other i.e. one favours retrospectivity and the other favours prospectivity, the competing considerations must be sought to be balanced to arrive at a reasonable conclusion.

143.7. Therefore, the invocation of the doctrine of prospective overruling or the attribution of prospectivity to a decision must not be resorted to in a routine manner without the court satisfying itself that the circumstances demand such a solution, both to do complete justice to the matter at hand and also to reorient the law in the right direction without creating widespread chaos and disruption. In certain situations, it might be preferable on a holistic consideration of several competing interests and factors to invoke the doctrine of prospective overruling and therefore, it could be said that the ambit of the doctrine is co-extensive with the equity of a situation. If the doctrine of prospective overruling is applied, pending cases would not be affected by the new declaration of law. In the absence of the court applying this doctrine, however, all pending matters and future cases would automatically and inescapably be governed by the law declared in the overruling decision.

143.8**.** In the realm of criminal law, the question of prospective or retrospective declaration of a law/decision has been comparatively rare. In ***State of Kerala* v. *Alasserry Mohd***[14]., this Court held that since ***Rajaldas Gurunamal Pamanani* v. *State of Maharashtra***[15] had held the field for a significant time and several prosecutions had resulted in acquittals in the meantime, the appeals would be

[14] **(1978) 2 SCC 386**
[15] **(1975) 3 SCC 375**

disposed of by only laying down the correct proposition of law. Neither were any acquittals disturbed nor were any of the matters remanded to the courts below. The decision did not expressly apply the doctrine of prospective overruling. Therefore, it could reasonably be stated that the decision was retrospectively applicable to pending matters (if any) which had not yet resulted in an acquittal and which was instituted when ***Pamanani*** held the field or in other words, was instituted before Rule 22-B clarified the position of law.

143.9. One another decision on the doctrine of prospective overruling which pertains to criminal law was rendered in ***Ramesh Kumar Soni*** . Herein, this Court overruled the decision in ***Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re,*** of the Full Bench of the High Court prospectively, by stating that any change of forum at this stage would cause unnecessary and avoidable hardship to the accused if they were transferred again in light of the conclusion arrived at in ***Ramesh Kumar Soni.***

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147. A reflection of this proposition laid down by Salmond was evident in the decision of the Indiana Supreme Court, way back in the year 1898, in ***Center School Township*** **v.** ***State***[16], which discussed the effect of the overruling of a decision. It was held that a decision of a court of last resort, is only an exposition of what the court "construes the law to be", therefore, while overruling a former decision, the court does not declare the overruled decision to be bad in law, but that it was "never the law". The overruling would be indicative of the fact that the court was simply mistaken in regard to the law in its former decision and it would have the effect of obliterating the former decision altogether. However, it was cautioned that courts will not apply a change made by the overruling decision to the construction of the law given in the overruled decision, so as to invade the vested rights of any person."

25. Para 143 of the decision in ***Raj Kumar Arora*** clearly holds that the near universal principle is that the judgment of the Supreme Court operates retrospectively. This is apparent from the fact that Article 141 of the Constitution ordains that the Supreme Court declares the law. A declaration of the law is a declaration of the law as it always

[16] **49 NE 961 (1898)**

deemed to exist. Unless, therefore, the Supreme Court itself expressly makes its judgment prospective, every judgement, which declares the law, declares it as it always stood.

26. Mr. Gandhi's reliance on the fact that, on the date when he had filed his Section 34 petition there were Division Benches of this Court on the basis of which such a petition would be maintainable cannot, therefore, be urged as grounds to support maintainability of the petition when the Supreme Court, albeit later, has clearly held that the only remedy against a recall application is under Section 14. That declaration of the law has not been made prospective by the Supreme Court. If, therefore, applies retrospectively and would also operate to hold that the petitioner's petition under Section 34 before the learned Single Judge was not maintainable.

27. Mr. Gandhi also sought to contend that, if the application of a judgment respectively destroys vested rights, it could not apply retrospectively. There is no such universal principle. The examples which were cited by Mr. Gandhi were essentially examples where there is an amendment to statute. The law with respect to statutory amendment is, no doubt, that a statutory amendment cannot operate retrospectively so as to extinguish rights which had vested prior in point of time. We are not dealing, here, with any amendment of a statutory provision.

28. Besides, actually no right had vested in the petitioner prior to the decision of ***Harshbir Singh Pannu***, which stands extinguished by operation of para 415(X) of the said decision. The question was

regarding the remedy which was available to the petitioner against an order which refused to recall an application. There is no declaration of the law prior to ***Harshbir Singh Pannu*** which holds that such a recall application can be challenged by way of a Section 34 proceedings. Nor does the 1996 Act contain any such provision.

29. In any event, there is no divesting of any right which vested in the petitioner, as it is always open to the petitioner to challenge the order refusing the recall application by moving a proceeding under Section 14 of the 1996 Act.

30. There is, therefore, no divestiture of any right which vested in the petitioner prior to the declaration of the law in ***Harshbir Singh Pannu***.

31. In view of the aforesaid discussions, we are left with no option but to hold that OMP (COMM) 154/2023 filed by the petitioner under Section 34 of the 1996 Act was not maintainable in view of the law as it stands declared in para 415(X) of the decision in ***Harshbir Singh Pannu***. No doubt the petitioner may have its remedies under Section 14 of the 1996 Act, which the petitioner is granted liberty to avail, if so advised.

32. As the impugned order has been passed on the petitioner's petition under Section 34 of the 1996 Act, and we are not accepting Mr. Singh's submission that it should be treated as an order passed under Section 14, the impugned order would also have to be quashed and set aside.

33. Resultantly, the impugned order is quashed and set aside.

34. OMP (COMM) 154/2023 which was preferred by the petitioner before the learned Single Judge under Section 14 of the 1996 Act is also dismissed as not maintainable in view of the declaration of the law in para 415(X) of ***Harshbir Singh Pannu***.

35. The appeal would stand disposed of in the aforesaid terms, without entering into the merits of the controversy between the parties.

36. Liberty, however, would stand reserved with the petitioner to take appropriate steps in the light of the law declared in para 415(X) of the decision in ***Harshbir Singh Pannu***, if so advised.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

APRIL 24, 2026/*dsn*