

GAHC010089222026



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./7/2026

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
REPRESENTED BY THE PROJECT DIRECTOR, PROJECT IMPLEMENTATION
UNIT (PIU)- GUWAHATI, NHAI, HOUSE NO. 1, 1ST FLOOR, DILIP HUZURI
PATH, NEAR BAGHESWARI MANDIR, GUWAHATI, ASSAM, PIN-781006.

VERSUS

RAJIB BORUAH
SON OF LATE JURAN BORUAH, R/O BASISHTHA CHARIALI, P.S.-
BASISHTHA, GUWAHATI-781029, DISTRICT- KAMRUP (METRO), ASSAM.

Advocate for the Petitioner : MR. C BORUAH,

Advocate for the Respondent : MR. P K ROYCHOUDHURY (FOR CAVEATOR), S AHMED (FOR
CAVEATOR),MR. N G KUNDU (FOR CAVEATOR)

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.06.2026

Heard Mr. C Boruah, learned counsel for the appellant and Mr. P.K. Roy
Choudhury, learned Senior Counsel, assisted by Mr. S. Ahmed, learned counsel for the

respondent.

2. This appeal, u/s 37 of the Arbitration and Conciliation Act, 1996 is directed against the impugned Order, dated 12/03/2026, passed by the Ld. Civil Judge (Sr. Div), Kamrup, Amingaon in Misc. Arbitration Execution Case No. 01/2025. It is to be noted here that vide impugned order passed in Misc. Arbitration Execution Case No. 01/2025 (Rajib Boruah –vs.- the National Highways Authority of India), the learned court below has directed to release an amount of Rs. 73,27,009/-to the Respondent.

Background Facts:-

3. The background facts, leading to filing of the present appeal, is briefly stated as under:-

“The Ministry of Road Transport and Highways, Govt. of India had acquired a plot of land along with building and zirat, belonging to the respondent Rajib Boruah, measuring 0.03 Hectares (3 Bighas 4 Kathas) covered by Dag No. 1172 of Patta No. 122, situated at Village- Niz Sinduri Ghopa, Mouza- Sila Sinduri Ghopa, more specifically located at Changsari in the District of Kamrup, for the purpose of widening of National Highway, under the National Highways Act, 1956 and accordingly, the compensation amount for acquisition was calculated by Competent Authority for Land Acquisition and same was paid by NHAI, which the respondent had received. But, being dissatisfied with the compensation amount, he had filed an Arbitration case, vide RR. 57/2013, before the Commissioner, Lower Assam Division, Guwahati -cum- Arbitrator for enhancement of compensation and the Ld. Arbitrator vide Order dated 02/09/2022, awarded enhanced additional compensation of Rs. 73,27,009/-.

The respondent, being dissatisfied with the said award passed by Ld. Arbitrator, had filed a Misc. Arbitration Case No. 03/2022, before the Ld. District Judge, Kamrup, praying to set aside and quash the awarded amount of

Rs.73,27,009/- passed by Ld. Arbitrator and further enhance the compensation amount to Rs.7,34,53,336/-. In the meantime, the said case was transferred to the Court of Ld. Civil Judge (Sr. Div.), Kamrup, being re-numbered as Misc. Arbitration Case No. 01/2025, and the same is pending in the said Ld. Court.

During pendency of aforesaid Misc. Arbitration Case No. 01/2025, the respondent had filed a petition vide No. 224/2025 in aforesaid Misc. Arbitration Case No. 01/2025, praying to release the awarded amount of Rs. 73,27,009/- passed by Ld. Arbitrator, which was objected by the appellant by filing written argument, but vide Order, dated 12/03/2026, passed in aforesaid Misc. Arbitration Execution Case No. 01/2025, the Ld. Civil Judge (Sr. Div.), Kamrup, Amingaon was pleased to direct the Appellant NHA I to release the amount of Rs. 73,27,009/- in favour of the decree holder/respondent within 15 (Fifteen) days of passing of the aforesaid Order, dated 12/03/2026, as Interim Order whereas the Misc. Arbitration Case No. 1/2025 is pending for disposal.

As such, this arbitration appeal is filed for setting aside and quashing of impugned Order, dated 12/03/2026, passed in Misc. (Arbitration) Execution Case No. 01/2025, by the Ld. Civil Judge (Sr. Div), Kamrup on the ground that the Ld. Civil Judge (Sr. Div), Kamrup had failed to understand that the award dated 02/09/2022, passed by the Ld. arbitrator in RR. 57/2013 is to be considered in total and not in part. Hence, the provision laid for severability does not apply and therefore, the award dated 02/09/2022, passed by the Ld. Arbitrator in RR. 57/2013 cannot be modified by the Ld. Civil Judge (Sr. Div.), Kamrup u/s 34 of the Arbitration and Conciliation Act, 1996 as it has to be either allowed in to to or rejected it in to to.

Being aggrieved the appellant preferred this appeal on the following grounds:-

(GROUNDS)

- i) For that, the Ld. Civil Judge (Sr. Div.), Kamrup has totally failed to consider the grounds submitted by NHA I for not considering the aforesaid

Petition No. 224/25 is not tenable in the eye of law.

ii) For that, the Ld. Civil Judge (Sr. Div.), Kamrup has totally failed to consider that the impugned Order dated 12/03/2026 passed in Petition No.224/2025 showing as arising out of Misc. Arbitration Execution Case whereby the Appellant was directed to release the compensation amount of Rs. 73,27,009/- in favour of the Decree Holder/ Petitioner i.e. present Respondent of this Appeal but it is to be stated that, no Arbitration Execution Case was/is filed by the Respondent.

iii) For that, it is to be stated that, the aforesaid interim order issuing direction to release the awarded amount of Rs. 73,27,009/- in favour of Decree Holder amounts to Final Order which is not tenable under the provision of law.

iv) For that, the Ld. Court below failed to consider that the Respondent in one hand is praying for setting aside the Awarded Amount of Rs. 73,27,009/- passed by the Ld. Arbitrator in Order dated 02/09/2022, but on other hand, he had filed a petition, praying for releasing said awarded amount of Rs. 73,27,009/- as an Interim Award, which is self contradictory.

v) For that, the Ld. Court below failed to appreciate the Judgment and Order passed by the Hon'ble Supreme Court of India in the case of Gayatri Balasamy -VS- ISG Novasoft Technologies Limited cited in (2025) 7 SCC 1 with following observation:

"Conclusions:-

87. Accordingly, the questions of law referred to by Gayatri Balasamy are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

87.1. When the award is severable, by severing the "invalid" portion from

the "valid" portion of the award, as held in Part II of our Analysis;

87.2. By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Parts IV and V of our Analysis;

87.3. Post-award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or 87.4. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis."

vi) For that, the Ld. Civil Judge (Sr. Div), Kamrup had failed to understand that the Award dated 02/09/2022 passed by the Ld. Commissioner, Lower Assam Division-cum-Arbitrator in RR. 57/2013 arising out of Case No. KRA. 6/2008 is to be considered in total and not in part. Hence, the provision laid for severability does not apply. And therefore, the Award dated 02/09/2022 passed by the Ld. Commissioner, Lower Assam Division -cum-Arbitrator in RR. 57/2013 cannot be modified by the Ld. Civil Judge (Sr. Div.), Kamrup u/s 34 of the Arbitration and Conciliation Act, 1996.

vii) For that, the Ld. Civil Judge (Sr. Div), Kamrup had failed to appreciate that Section 34 of the Arbitration and Conciliation Act, 1996 does not give the Ld. Court power to grant Interim Relief but it can only deal with setting aside the Award or granting relief in total.

viii) For that, under above facts and circumstances, the Ld. Court below has totally failed to consider the submissions as well as Written Argument filed by present Appellant. Hence, the Appellant has filed this Appeal with above mentioned grounds and the Appellant NHAJ craves Leave of this Hon'ble Court to furnish further grounds at the time of hearing.

ix) For that, the impugned Order dated 12/03/2026 passed in Petition bearing No. 224/2025 arising out of Misc. Arbitration Execution Case No. 1/2025 passed by Ld. Civil Judge (Sr. Div.), Kamrup, Amingaon is liable to be set aside and quashed.”

Submissions of learned Counsel for the appellant:-

4. Mr. Baruah, learned counsel for the appellant submits that the impugned order, so passed by the learned court below is arbitrary and illegal. Mr. Baruah has pointed it out that the respondent herein has filed the application under Section 34 of the Arbitration and Conciliation Act for setting aside the award. Said application is pending before the learned court below. And unless the award is set aside or the petition is finally disposed of, the learned Court below has no authority to release the awarded amount by the arbitrator. Under such circumstances Mr. Baruah has contended to allow this appeal by directing the learned court below to hear the entire matter and finally dispose of the same.

5. Per contra, Mr. Roy Choudhury, learned counsel for the respondent submits that this appeal is not maintainable. Taking this court through the provision of Section 34 of the Arbitration and Conciliation Act, Mr. Choudhury submits that except the grounds mentioned therein, no appeal will lie. Further, Mr. Choudhury submits that the appellant herein had not challenged the award of the arbitrator. And having not challenged the same, now the appellant cannot raise objection in releasing the amount. Referring to a decision of Hon'ble Supreme Court in **Gayatri Balasami vs. M/S ISG Novasoft Technologies Limited (2025 INSC 605)**, Mr. Roy Choudhury submits that in the said case, Hon'ble Supreme Court has held that the Courts have a limited power to modify arbitral awards under Sections 34 and 37, and one of the circumstance for modification is severability under which the court can strike down invalid/illegal portions while upholding valid parts (based on the proviso to Section 34(2)(a)(iv)). And since the amount being awarded in the present case is not

challenged, there is no bar in releasing the amount, on the basis of the principle of severability, in view of the aforesaid decision.

6. Having heard the submission of learned counsel for both the parties this court has carefully gone through the memo of appeal and the grounds mentioned therein. Also gone through the relevant provision of law and the decision referred by Mr. Roychoudhury, learned counsel for the respondent.

7. The basic facts, herein this appeal, are not in dispute. But, before directing a discussion into the merit of the appeal, this court has to address first the issue of maintainability. It is to be noted here that Section 37 of the Arbitration and Conciliation Act is the relevant provision herein, which read as under:-

37. Appealable orders:-

(1) 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.

(2) An appeal shall also lie to a court from an order of the arbitral tribunal—

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

7.1. Thus it appears from a bare perusal of Section 37 that it provides an exhaustive list of appealable orders. As per this section an appeal shall lie from the following

orders:-:

- (i) Refusing to refer parties to arbitration under Section 8.
- (ii) Granting or refusing interim measures under Section 9.
- (iii) Setting aside or refusing to set aside an arbitral award under Section 34.
- (iv) Certain orders by the arbitral tribunal (under Sections 16 and 17).

7.2. It is to be noted here that in the case of **MMTC Ltd. v. Vedanta Ltd. reported in (2019) 4 SCC 163**, Hon'ble Supreme Court has held that interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. The appellate court cannot undertake an independent assessment of the merits of the arbitral award. Its role is limited to examining whether the court under Section 34 exceeded or properly exercised its narrow jurisdiction. The court does not sit in appeal over the award or re-appreciate evidence/reinterpret contracts, merely because another view is possible.

7.3. Thereafter, in the case of the **State of Chhattisgarh and another v. M/s Sa1 Udyog Pvt. Ltd.**, reported in **2021 SCC OnLine SC 1027**, Hon'ble Supreme Court has held that a party is not barred from raising an additional ground (such as patent illegality under Section 34(2A)) in a Section 37 appeal, even if it was not specifically pleaded in the Section 34 petition, — provided the ground falls within the statutory parameters of Section 34. It has allowed amendment/raising of such a ground in appeal, emphasizing that courts can consider it *suo motu* in appropriate cases if it goes to the root of the matter, but with a caveat that it does not permit entirely new or unrelated grounds outside Section 34 parameters, nor does it allow a full merits review. It applies to legally tenable grounds within the limited scope.

7.4. From the aforesaid decision of Hon'ble Supreme Court, the proposition, that can be crystallized is that Section 37 appeals are not regular first appeals. It provides for a limited remedy to check compliance with Section 34 grounds only. New/additional

grounds are permissible only if they strictly fit within Section 34 (e.g., patent illegality, public policy, etc.) and do not amount to a backdoor merits review.

8. In the instant case, vide impugned order, dated 12.03.2026, the learned court below had allowing release/withdrawal of a deposited sum, and this does not fall within this list of Section 37. Indisputably, the impugned order is an interlocutory or procedural order in the pending Section 34 proceedings, not a final adjudication on setting aside the award or granting/refusing interim measures under Section 9.

8.1. It is not in dispute that at the Section 34 stage (challenge pending), release of deposited amounts requires security from the recipient, as the award is not yet final/enforceable as a decree. However, it could have been permitted at the Section 37 stage only, after dismissal of the application, under Section 34, as at that stage the award gains stronger enforceability. But, even if the release order is viewed as erroneous as submitted by Mr. Baruah, the learned counsel for the appellant, it does not become appealable under Section 37 solely for that reason.

8.2. In that view of the matter, the possible remedy, that can be availed by the appellant herein, may be:-

1. It can seek stay, recall, or modification of the release order before the same court in the main Section 34 proceedings:
2. It can file revision petition under Section 115 CPC or writ petition under Article 227 of the Constitution of India to invoke the supervisory jurisdiction of High Court.

Conclusion: -

9. The upshot of aforesaid discussion is that the appellant herein cannot typically challenge the order releasing the deposited amount directly under Section 37 of the Arbitration and Conciliation Act, 1996, as the same is not one of the enumerated appealable orders.

9.1. In view of aforesaid factual and legal position, directing a discussion in respect of the submission of Mr. Roy Choudhury regarding the severability of the award and the decision referred by him, is found to be not necessary.

10. In the result, this court is of the considered opinion that the present appeal is not at all maintainable. And accordingly, the same stands dismissed, granting liberty to avail the possible remedy, as discussed in para No. 8.2. above. The parties have to bear their own cost.

JUDGE

Comparing Assistant