HC-KAR

NC: 2026:KHC:46023
WP No. 33403 of 2025

CNR: KAHC010717462025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 33403 OF 2025 (GM-RES)

BETWEEN:

MR. A.R. KRISHNAMANI
SON OF MR. A. RAMAN
AGED ABOUT 69 YEARS
RIVES DU LAC, 34,
COLOMBIER 2013
SWITZERLAND,
REP. BY HIS POWER OF ATTORNEY HOLDER
MRS. HARSHINI DEV
WIFE OF LATE MR. RUDRA DEV
AGED ABOUT 60 YEARS
RESIDING AT NO 445, 7TH CROSS
2ND BLOCK, BEHIND BDO COMPLEX
RT NAGAR, BANGALORE – 560 032.

...PETITIONER

(BY SRI PRADEEP NAYAK., ADVOCATE)

AND:

1. LAKEPOINT BUILDERS PVT. LTD.
A PRIVATE LIMITED COMPANY LIMITED
BY SHARES, INCORPORATED
UNDER THE PROVISIONS OF
THE COMPANIES ACT, 1956

AT NO. 154, DALAMAL TOWERS
NARIMAN POINT, MUMBAI-400 021

AND ALSO AT:
NO. 757/B, 100 FEET ROAD
HAL II STAGE, INDIRANAGAR
BANGALORE - 560 038.

2. SHRI S. RAMAMURTY
DISTRICT JUDGE (RETIRED)
SOLE ARBITRATOR.

...RESPONDENTS

(BY SRI NISHANTH A.V., ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD.16.09.2025 OF THE LD. XV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (CCH-3) CITY CIVIL AND SESSIONS COURT, BENGALURU PASSED IN A.P.NO.182/2022 PRODUCED AT ANNX-A ANE ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 21.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

<u>CAV ORDER</u>

1. The Petitioner is before this Court seeking for the following reliefs:

   a. *Setting aside the Impugned Order dated 16 September 2025 of the Ld. XV Additional City Civil and Sessions Judge (CCH 3), City Civil and Sessions Court, Bengaluru passed in A.P.No.182/2022 produced at Annexure A.*

   b. *Consequently, allow IA No. 2 of 2024 filed by the Petitioner under Section 34(2) of the Arbitration and Conciliation Act, 1996, in A.P.No.182/2022 and permit the documents produced along with I.A. No.2 of 2024 to be taken on record; Produced at Annexure-B.*

   c. *Direct the Ld. XV Additional City Civil and Sessons Judge, Bengaluru to expeditiously dispose of A.P.No.182/2022 within such timelines as may be imposed by this Hon'ble Court as it deems fit;*

d. Grant such other reliefs to the Petitioner as may be appropriate in the circumstances of the case, in the interests of justice and equity.

2. The petitioner had filed a proceeding under Section 34 of the Arbitration & Conciliation Act 1996 (hereinafter referred to as **"A&C Act, 1996"**) which came to be numbered as AP No.182 of 2022 on the file of Ld. XV Additional City Civil and Session Judge seeking to partially set aside the award dated 12.10.2021 in AC No.190 of 2019 passed by respondent No.2, on the ground that the award is against public policy of India being vitiated by fraud. In the said proceedings, I.A. No.2 of 2024 had been filed under Sub-section (2) of Section 34 of the A&C Act, 1996 by the petitioner seeking to place on record the following additional documents;

INTERLOCUTORY APPLICATION UNDER SECTION 34(2) OF THE ARBITRATION AND CONCILLATION ACT, READ WITH ORDER VII RULE 14 AND SECTION 151 OF THE CIVIL PROCEDURE CODE, 1908

For the reasons stated in the accompanying Memorandum of Facts, the Petitioner humbly seeks to place on record the following additional documents before this Hon'ble Court

Document No. 1*: True Copy of the RTI Application dated 09 December 2021 and subsequent reply dated 14 February 2022 which states that the Anneshwara Gram Panchayat does not have the Occupancy Certificate issued by the Respondent No. 1 in its records.*

> ***Document No. 2**: True copy of the RTI Application filed by the Petitioner with the Panchayat Raj Commissioner dated 3 December 2023, and the subsequent reply dated 7 December 2023, along with a translated typed copy of the same. The reply includes the Inspection Report of the Executive Officer, Taluk Panchayat, Devanahalli dated May 15, 2023. According to the report, the document submitted by Respondent 1, alleged to be an Official Occupancy Certificate for Villa No. 127 in the House of Hiranandani, Devanahalli Project undertaken by Respondent 1, was not found to be officially issued in the records of Anneshwara Gram Panchayat as per the reference number and date mentioned in the said document. Additionally, the report stated that the issuance of the document purported to be the Official Occupancy Certificate did not adhere to the necessary regulations and lacked the required documentation for the issuance of an Official Occupancy Certificate. Consequently, as of 15 May 2023, no Official Occupancy Certificate has been issued by Anneshwara Gram Panchayat for the Villa 127 purchased by the Petitioner.*
>
> *WHEREFORE, it is humbly prayed that the aforementioned documents may be taken on record in the interest of justice and equity.*

3. The reason for filing the said application is stated to be that arbitral proceedings have been initiated arising out of the Sale Agreement and Construction Agreement executed between the parties for the construction of a residential villa. It is contended that respondent No.1 was required to complete the construction of the villa by December 2015. The seventh and final instalment of the sale consideration was payable on 10.10.2014 and 30.10.2014. It is further contended that there was a delay in the

completion of the construction by respondent No.1, despite the petitioner having paid 80% of the total purchase consideration by March 2014. It is also alleged that the constructed built-up area was 490 square feet less than the area agreed upon under the agreements.

4. The learned Arbitrator rejected the petitioner's claim for compensation for delay in construction by placing reliance on a false and fraudulent document filed by respondent No.1 before the learned Arbitrator. Wherein, it was contended that occupancy certificate dated 27.04.2017 had been issued by the Anneshwara Gram Panchayat and on that basis the learned Arbitrator found that there was no delay in construction.

5. Consequent to the said refusal of delay compensation, the petitioner challenged the arbitral award contending that the occupancy certificate was never marked in evidence and could not be referred to by the Tribunal. It is in that background, the petitioner had also made an application under the Right to Information Act, 2005 (hereinafter referred to as "**RTI Act**") on 09.12.2021 to Anneshwara Gram Panchayat seeking for relevant information regarding

the issuance of the occupancy certificate. The Panchayat had issued a response on 14.02.2022 stating that the requested information was not within its records.

6. The petitioner had also applied to the Panchayat Raj Commission for certain information which was replied to on 07.12.2023. Wherein, it was indicated that as per the inspection report dated 15.05.2023 of the Taluk Panchayat Office, Devanahalli, there is no informational document necessary for issuance of an occupancy certificate submitted and that the document filed by respondent No.1 before the learned Arbitrator, purporting it to be an alleged occupancy certificate, was never issued as per the records of the Anneshwara Gram Panchayat.

7. A letter dated 22.05.2023 from the Bengaluru Rural Zilla Panchayat addressed to the Panchayat Raj Commissionerate had also been issued noting that the Executive Officer of the Taluk Panchayat Devanahalli had visited the site and noted that no necessary documents for issuance of occupancy certificate had been submitted by respondent No.1. As also a letter dated 10.11.2023 from the Panchayat raj Commissionerate to Bengaluru Rural Zilla

Panchayat, noting the irregularity of issuance of occupancy certificate. It is these documents which the petitioner wanted to produce before Section 34 Court to contend that the reliance placed by the Tribunal on the alleged occupancy certificate was false and fraudulent, the occupancy certificate had not been issued by the Anneshwara Gram Panchayat and therefore, this going to the root of the matter as regard to denial of the delay compensation, it was necessary for these documents to be considered by the Tribunal.

8. These documents being obtained subsequent to the arbitral proceedings, did not form part of the records of the Tribunal. However, respondent No.1 had played fraud on the arbitral Tribunal, if those documents were not permitted to be taken on record, respondent No.1 would continue to perpetuate such fraud, since without considering those documents, the Section 34 Court would not be in a position to consider the actual status of the matter and on that ground, it was claimed that the petitioner having come to know of the fraud, post the award having been rendered, those documents were required to be permitted to be produced.

9. The said application was objected to by the respondent No.1 by contending that Sub-section (2) of Section 34 of the A&C Act 1996, does not contemplate or permit filing/production of additional documents in a petition filed under Section 34 of the A&C Act, 1996. While considering a petition under Section 34, it is only the records which are available before the arbitral Tribunal which could be considered, no new or additional document could be considered by Section 34 Court. It was contended that the application is not accompanied by an affidavit of the petitioner, but is filed accompanied by Memorandum of facts and therefore cannot be said to be in the personal knowledge of the petitioner.

10. The proceeding under Section 34 having been filed on 23.08.2022, the petitioner was very much knowledgeable about the documents sought to be produced, since they were issued prior to filing of the Petition. As regard Document No.1, even according to the petitioner, on 14.02.2022, he received a reply to the application filed on 09.12.2021, which is much before the filing of the petition.

11. As regard the other document, it was contended that the reply in respect of document No.2 was received

on 07.12.2023, the application, I.A. No.2 of 2024 having been filed on 16.04.2024, is after a long lapse of time. There being no explanation given for the said delay, the application ought not to be considered. It was further contended that insofar as Document No.1 being the RTI application was concerned, the petitioner is not the author of the said document nor the applicant. It was filed by one Mr.Nandakumar and as such the petitioner cannot claim benefit on a said document.

12. The petitioner ought to have at least disclosed that the petitioner had filed certain applications under the RTI Act, which disclosure was also not made. It was contended that the occupancy certificate produced had been relied upon by the petitioner during the course of argument, having accepted the said document, the petitioner could not deny that document and produce certain other documents to counteract the same. Respondent No.1 has only produced documents issued by the authorities, there is no fabrication carried out by respondent No.1, respondent No.1 is only a recipient of the said document, which respondent No.1 has made use of in the arbitral proceedings. It was denied that

respondent No.1 has filed any false or fabricated documents.

13. Section 34 Court vide impugned order dated 16.09.2025 dismissed the said application while doing so, the Section 34 Court referred to the decision of this Court in ***M/S. Karnataka State Electronics Development Corporation Ltd vs. M/S Lakshmi Nirman Pvt Ltd*** [WP No.11530 of 2020 dated 21.11.2024] and came to a conclusion that post the amendment to Section 34 on 30.08.2019, the Section 34 Court can consider only the documents on record and not any other documents which could be produced for the first time in the Section 34 proceedings, it is this order which is under challenge in the present proceedings.

14. Sri.Pradeep Nayak., learned counsel for the petitioner submits that;

14.1. The impugned order is a misconstruction of the applicable law. Though the application was filed under Sub-section (2) of Section 34, the petitioner had raised a specific contention as regard fraud, which is not one that comes under Clause (a) of Sub-section (2) of Section 34, but is one which comes under Clause (b) of

Sub-section (2) of Section 34 and on that basis, he submits that a law applicable to an application under each of these provisions is different. His submission is that an application filed under Section 34, post the amendment in the year 2019 on 30.08.2019, it is only the documents which are on record which could be considered by Section 34 Court. But insofar as a ground raised under Clause (b) of Sub-section (2) of Section 34, his submission is that the restriction as regards documents on record would not be applicable.

14.2. Section 34 is reproduced hereunder for easy reference;

> ***34. Application for setting aside arbitral award**.— (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if—*
>
> *(a) the party making the application 1[**establishes on the basis of** the record of the arbitral tribunal that]—*
>
> *(i) a party was under some incapacity, or*
>
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing*

any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) ***<u>the Court finds that</u>***—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) ***<u>the making of the award was induced or affected by fraud or corruption</u>*** *or was in violation of section 75 or section 81; or*

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other

party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

STATE AMENDMENT

Jammu and Kashmir and Ladakh (UTs).

Amendment of section 34.—

(i) after sub-section (2), insert the following sub-section, namely:—

"(2A) An arbitral award may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.";

(ii) in sub-section (3),—

(i) for "three months" substitute, "six months";

(ii) in proviso thereto, for, "three months" and "thirty days" substitute respectively "six months" and "sixty days".

[Vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

14.3. His submission is that respondent No.1-Developer had deliberately produced an illegal and false occupancy certificate before the arbitral Tribunal, which is what was considered by the Tribunal while dismissing the claim for delayed compensation by the petitioner. Though the said document had been produced by respondent No.1, respondent No.1 firstly, did not lead any evidence at all and secondly, did not mark the said occupancy certificate in evidence.

14.4. During the course of admission and denial of documents, the petitioner had specifically denied the existence of the said document. Hence, the burden of proving the said document was on respondent No.1. Respondent No.1 not having led evidence and marked the document, the said document remained without proof as regards its existence, which could not have been considered by the Tribunal.

14.5. The reference made by the petitioner to the said document during the course of argument was only to contend that even as per the said document there was a shortfall of 490 square feet in the size of the villa, the petitioner had never admitted the said document. The document having been produced by respondent

No.1, respondent No.1 is bound by the said document irrespective of it being marked or not. Insofar as the petitioner is concerned, the petitioner having denied the said document, mere reliance of it during the course of argument would not make the said document binding on the petitioner.

14.6. The proceeding under Section 34 has been filed only for partial setting aside of the award insofar as the denial of the delay compensation. As regards which, the fraudulent occupancy certificate produced was the reason for denial. His submission therefore is that after the award had been passed, the petitioner was put to notice and in that background the petitioner made an application under the RTI Act, so as to verify the veracity of the document and it is in that background that Document No.1 and Document No.2 had been furnished, which is what has been sought to be produced by filing I.A. No.2 of 2024.

14.7. In this regard, he relies upon the decision of this Court in ***Ashok S Dhariwal & Anr., vs. M/s Alpine Housing Development***

Corporation Private Limited & ors[1]., more particularly para 1, 6, 9, 10, 11, 13, 14, 15 and 16 thereof, which are reproduced hereunder for easy reference;

> ***1.*** *The petitioners, who are the plaintiffs in Arbitration Case No.38/1998 on the file of the LII Additional City Civil and Sessions Judge, Bengaluru (for short 'the civil Court'), have filed this petition impugning the civil Court's order dated 25.10.2019. The civil Court has rejected the petitioners' application to adduce evidence opining that the scope of review of the award dated 12.3.1998 by the Arbitral Tribunal under Section 34 of the Arbitration and Conciliation Act,1996 (for short the 'Act') is confined to the grounds urged and the petitioners cannot be permitted to file frivolous applications. The civil Court has observed that the arbitration case is pending consideration for more than 21 years and it is the oldest matter on its board and the protraction of the proceedings would defeat the very object of the Act.*
>
> ***6.*** *Sri Sanjay Subramanya Kaushik, the learned counsel for the first respondent, submits that the exposition in Fiza Developers supra will have to be seen in the light of the subsequent decision in EMKAY Global Financial Services Limited vs. Girdhar Sondhi, (2018)9 SCC 49 and 2019 amendment vide Act No. 33/2019. The provisions of section 34(2)(a) of the Act are amended in the year 2019 to substitute the expression 'furnished proof' in Section 34(2)(a) with the expression 'established on the basis of the record of the arbitral Tribunal'. This amendment is intended to limit the scope of judicial review under Section 34 of the Act to only exceptional circumstances*

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[1] WP No.50799 of 2019 dated 01.09.2021

enumerated under Section 34(2)(a) of the Act on the basis of the records available. Therefore, even if the ground urged relates to Section 34(2)(b) of the Act, the applicant cannot have a right to produce additional evidence

9. *There cannot be any dispute that with the decision of the Hon'ble Supreme Court in Fiza Developers and in EMKAY Global Financial Services Limited (supra) that the proceedings under section 34 of the Act are summary proceedings and review in such proceedings would only be confined to examining whether the award would withstand the grounds contemplated under section 34(2)(a) and 34(2)(b) of the Act. The Hon'ble Supreme Court in Fiza Developers has held that as follows:*

"14. Having regard to the object of the Act, that is providing an expeditious alternative binding dispute resolution process with minimal court intervention, it is difficult to envisage proceedings under section 34 of the Act as full-fledged regular civil suits under Code of Civil Procedure. Applications under section 34 of the Act are summary proceedings with provision for objections by the defendant/respondent, followed by an opportunity to the applicant to `prove' the existence of any ground under section 34(2). The applicant is permitted to file affidavits of his witnesses in proof. A corresponding opportunity is given to the defendant/respondent to place his evidence by affidavit. Where the case so warrants, the court permits cross-examination of the persons swearing to the affidavit. Thereafter, court hears arguments and/or receives written submissions and decides the matter. This is of course the routine procedure. The Court may vary the said procedure, depending upon the facts of any particular case or the local rules. What is however clear is that framing of issues as contemplated under Rule 1 of Order 14 of the Code is not an integral part of the process of a proceedings under section 34 of the Act."

The Hon'ble Supreme Court, when section 34(2)(a) of the Act enabled furnishing of proof, has declared that the routine procedure is to permit an applicant under Section 34 to file an affidavit of his witnesses to place proof with the corresponding opportunity to the respondents to place their counter evidence; where the case so warrants, the Courts would also permit cross-examination of the persons who have sworn to affidavits and to hear the arguments and decide the matter. This would be the routine procedure but the Courts may, depending on the facts and circumstances of a particular case or the local Rules, vary the procedure.

10. *This enunciation is because section 34(2)(a) of the Act, as it stood prior to the amendment in 2019 by Act No.33/2019, enabled an applicant to furnish proof of any one of the grounds mentioned therein. As regards the grounds contemplated in section 34(2)(b), the Act read that the Courts may set aside the arbitral award if the Court finds any one of the circumstances enumerated therein. With the amendment by Act 33/2019, the enabling expression of furnish proof in Section 34(2)(a) of the Act is substituted with the expression "establishes on the basis of record of the arbitral tribunal" but without any change in Section 34(2)(b). The question in the present proceeding, which is prior to Act No.33/2019, would be: "Whether the petitioner, who has impugned the arbitral award under section 34(2)(b) of the Act, should have an opportunity to file evidence by way of affidavit with liberty to the other side to cross examine."*

11. *This question is examined in the light of the decision of the Hon'ble Supreme Court in both Fiza Developers and Inter-Trade Pvt. Ltd., and EMKAY Global Financial Services Limited, supra wherein the Supreme Court has exposited that in proceedings under Section 34 of the Act, the Courts would not ordinarily require anything beyond the record that was before the arbitrator* *and that the evidence and cross-examination of the persons sworn to the affidavit should not be allowed unless absolutely necessary and exceptional circumstances are made out to justify grant of opportunity of file evidence. The Hon'ble Supreme Court has held as follows:*

"However, this judgment must now be read in the light of the amendment made in Sections 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross- examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties."

13. *The decisions in Fiza Developers and Inter-Trade Pvt. Ltd., Emkay Global Financial Services Limited, supra and M/s Canara Nidhi Limited v. M Shashikala and others do not make a distinction between the applications filed under Section 34(2)(a) or 34(2)(b) of the Act, and of course, in all the decisions the Hon'ble Supreme Court is engaged with proceedings prior to Act of 33/2019. This Court in the present case [which relates to the period prior to the Act 33/2019], must also opine that the application of the exposition – that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, and if there are no matters contained in such record but are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties –* ***<u>cannot be excluded only because the</u>***

ground urged by the petitioner could perhaps relate to a ground permissible under Section 34(2)(b) of the Act *and the provisions thereof do not contemplate 'furnishing of proof' as in Section 34(2)(a) of the Act.*

14. *If the civil Court is to find out whether the impugned award is liable to be set aside on the ground that the contract is frustrated because of a legal requirement and therefore unsustainable under Section 34(2)(b) of the Act,* ***all the necessary material will have to be available to the civil Court****. The petitioners did not, for reasons that will have to be examined by the civil Court, contest the award, and certain endorsements are already permitted to be brought on record in the present proceedings to buttress their contention that there cannot be a composite development of the property because of the requirement of a buffer on either side of the nala.*

15. *The first respondent has not contested such permission being accorded and such permission has attained finality. If the endorsements in this regard are already part of the record, there must be elucidation of the ramification of such stipulation in law but with equal opportunity to both the contesting parties. These circumstances, in the considered view of this Court, also make out special circumstances justifying grant of opportunity to the petitioners to file affidavit to place on record circumstances that surround issuance of endorsements with liberty to the respondents to cross-examine the different deponents who files such affidavit.*

16. *In the light of the above, this Court is of the opinion that there must be interference by this court with the impugned order but this Court must also issue directions for expeditious disposal* *of the proceedings in view of the fact that the proceedings are pending for over 2½ decades. Therefore, the following*

ORDER

The petition is allowed, and the order dated 25.10.2019 on I.A.No.4 IN AC NO.38/1998 pending on the file of the LII Additional City Civil and Sessions Judge, Bangalore is quashed allowing the petitioners' application with liberty to the respondent as afore observed.

The civil Court shall dispose of the proceedings within an outer limit of five [5] months from the date of receipt of a certified copy of this order and every unnecessary request for adjournment shall be dealt with sternly and if necessary by imposing exemplary costs.

14.8. By relying on ***Ashok S Dhariwal vs. M/s Alpine Housing Development Corporation Private Limited's case,*** his submission is that the Co-ordinate Bench of this Court considered the decision in ***Fiza Developers & Inter-Trade (P) Ltd. v. AMCI (India) (P) Ltd.*** [(2009) 7 SCC 796] ***and Emkay Global Financial Services Ltd. v. Girdhar Sondhi.*** [(2018) 9 SCC 49] ***and M/s. Canara Nidhi Ltd. v. M. Shashikala and ors*** [Civil Appeal No. 7544- 7545/2019 (arising out of SLP(C) Nos. 35673-74/2014)], and came to a conclusion that those decisions do not make a distinction between an application filed under Clause (a) of Sub-section (2) of Section 34 or Clause (b) of Sub-section (2) of Section 34 and further observed that in those decisions all the matters were relating to a situation prior to the amendment in the year 2019 and therefore, concluded that if the Civil Court is to find out whether the impugned award is liable to be set aside on the ground that the contract is frustrated because of legal requirement and therefore unsustainable under Clause (b) of Sub-section (2) of Section 34 of the Act, all the necessary materials will have to be available to the Civil Court and in that background, set aside the order dismissing the interlocutory application, allowed the application, enabling the parties therein to produce the said documents. His submission is that the said judgment is applicable on all fours to the present matter since the claim of the petitioner in the present matter is under Clause (b) of Sub-section (2) of Section 34 and not under Clause (a) of Sub-section (2) of Section 34.

14.9. His submission is that the said decision was taken on an Appeal to the Hon'ble Supreme

Court, which was considered by the Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal***[2], more particularly paras 15 to 20 thereof, which are reproduced hereunder for easy reference;

> ***15.*** *The ratio of the aforesaid three decisions on the scope and ambit of Section 34(2)(a) pre-amendment would be that applications under Sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in Section 34(2)(a) and Section 34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of the 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under Section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties' the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the Court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under Section*

[2] (2023) 19 SCC 629

34(2)(a), then the party who has assailed the award on the grounds set out in Section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed unless absolutely necessary.

16. *Now so far as the submission on behalf of the appellant that the requirement of "furnishing proof" as per pre-amendment of Section 34(2)(a) of the Arbitration Act shall not be applicable to the application for setting aside the award on the grounds set out in Section 34(2)(b) and the submission that in the execution proceedings the subsequent development of refusing to grant permission for amalgamation of the plots can be considered and it will be open for the applicants to point out in the execution proceedings that the award is not capable of being executed is concerned, at the outset, it is required to be noted that* ***<u>even for establishing that the arbitral award is in conflict with public policy of India, in a given case, the evidence may have to be led</u>*** *and by leading evidence, the person who is challenging the award on that ground can establish and prove that the arbitral award is in conflict with public policy of India and/or the subject-matter of dispute is not capable of settlement by arbitration under the law for the time being in force. However, at the same time, from the record before the arbitrator, if the same can be established and proved that the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India, in that case, the person may not be permitted to file the affidavit by way of evidence/additional evidence.*

17. *Now so far as the submission on behalf of the appellant that the subsequent development of refusing to grant permission by the appropriate authority to amalgamate the plots can be considered in the execution proceedings, a person against whom the award is passed and who* *alleges on the grounds set out in Section 34(2)(b) before the executing court, the executing court may hold that the award is not capable of being executed is concerned, it is required to be noted that so far as one of the grounds set out in Section 34(2)(b), namely, that the arbitral award is in conflict with the public policy of India, the said ground could be available only after passing of the award. Therefore, the same can be permitted to be agitated in an application under Section 34 of the Act and the person shall not have to wait till the execution is filed. The defence that the arbitral award is in conflict with the public policy of India itself can be a ground to set aside the award in view of Section 34(2)(b) of the Act. Therefore, the aforesaid submission has no substance.*

18. *Now the next question fell for consideration is, whether the present case is such an exceptional case that it is necessary to grant opportunity to the respondents to file affidavits and adduce evidence and whether any case is made out for the same.*

19. *From the affidavit, which is sought to be placed in the proceedings under Section 34 of the Act, it is seen that the respondents want to place on record the communication from the appropriate authority by which the application for amalgamation of the plots is rejected. At this stage, it is required to be noted that the Arbitral Tribunal has passed the decree for specific performance of the contract/agreement, subject to the amalgamation of the plots. Therefore, it is the case on behalf of the respondents that in view of the refusal of the permission by the appropriate authority to amalgamate the plots, the case falls under Section 34(2)(b), namely, that the dispute is not capable of settlement under the law for the time being in force and that the arbitral award is in conflict with the public policy of India, namely,* *against the relevant land laws. The event of refusal to amalgamate the plots is subsequent to the passing of the award and therefore naturally the same shall not be forming part of the record of the Arbitral Tribunal. Even otherwise, it is required to be noted that the award of the Arbitral Tribunal was an ex parte award and no evidence was before the Arbitral Tribunal on behalf of the respondents. We are not opining on whether the Arbitral Tribunal was justified in proceeding with the further proceedings ex parte or not. Suffice it to record that before the Arbitral Tribunal, such evidence was not there and nothing was on record on the amalgamation of the plots.*

20. *The affidavit thus discloses specific document and the evidence requires to be produced. In that view of the matter, **a strong exceptional case** is made out by the respondents to permit them to file affidavits/adduce additional evidence. However, at the same time, the appellant also can be permitted to cross-examine and/or produce contrary evidence.*

14.10. By relying on ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal's case,*** his submission is that the Hon'ble Supreme Court appreciated the distinction between Clause (a) of Sub-section (2) of Section 34 and Clause (b) of Sub-section (2) of Section 34 and was of the opinion that there was no error committed by the High Court and confirmed the earlier order. Thus, he submits that even the Hon'ble Supreme Court having recognised the distinction between application of Clause (a) of Sub-section (2) of Section 34 and Clause (b) of Sub-section (2) of Section 34, the Section 34 Court ought to have appreciated this aspect and allowed the application of the petition.

14.11. He relied upon the decision of the Hon'ble Supreme Court in ***Venture Global Engg. v. Satyam Computer Services Ltd[3].,*** more particularly paras 36 to 46 thereof, which are reproduced hereunder for easy reference;

> ***36.*** *It is well known that fraud cannot be put in a straitjacket and it has a very wide connotation in legal parlance. In the decision of the House of Lords in Reddaway (Frank) & Co. Ltd. v. George Banham & Co. Ltd. [1896 AC 199 : (1895-99) All ER Rep 133 (HL)] , Lord Macnaghten explained the multifarious aspects of fraud very lucidly, and which we quote:*
>
> *"But fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court."*
>
> *(AC at p. 221 of the Report).*
>
> ***37.*** *The aforesaid elucidation by the learned Law Lord has also been accepted in the celebrated treatise on fraud (see Kerr on Fraud and Mistake,*

[3] (2010) 8 SCC 660

7th Edn., p. 1). Kerr has also referred to Story's Equity Jurisprudence and defined "fraud" as:

"Fraud, in the contemplation of a civil court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another."

38. *In Indian law, namely, the Contract Act, the said common law doctrine of fraud has been assimilated in Section 17 of the said Act. A very wide definition of "fraud" has been given, which is as under:*

"17. 'Fraud' defined.—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, *it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."*

39. *Therefore, this Court is unable to accept the contention of the learned counsel for the respondent that the expression "fraud in the making of the award" has to be narrowly construed. This Court cannot do so primarily because fraud being of "infinite variety" may take many forms, and secondly, the expression "the making of the award" will have to be read in conjunction with whether the award "was induced or affected by fraud".*

40. *On such conjoint reading, this Court is unable to accept the contentions of the learned counsel for the respondents that facts which surfaced subsequent to the making of the award, but have a nexus with the facts constituting the award, are not relevant to demonstrate that there has been fraud in the making of the award.* ***Concealment of relevant and material facts, which should have been*** *disclosed before the arbitrator, is an act of fraud. If the argument advanced by the learned counsel for the respondents is accepted, then a party, who has suffered an award against another party who has concealed facts and obtained an award, cannot rely on facts which have surfaced subsequently even if those facts have a bearing on the facts constituting the award. Concealed facts in the very nature of things surface subsequently. Such a construction would defeat the principle of due process and would be opposed to the concept of public policy incorporated in the Explanation.*

41. *In English arbitration law, a somewhat similar provision for challenging an award is contained in Section 68(2)(g) of the 1996 Arbitration Act, which reads as follows:*

"68(2)(g) The award being obtained by fraud or the way in which it was procured being contrary to public policy."

Commenting on the said provision, Russell (Russell on Arbitration, 23rd Edn.) stated that an "award will be obtained by fraud if the consequence of deliberate concealment is an award in favour of the concealing party". (p. 497, paras 8-100)

42. *In Elektrim SA v. Vivendi Universal SA [2007 EWHC 11 (Comm) : (2007) 2 All ER (Comm) 365] Aikens, J. held that the words "obtained by fraud" must refer to an award being obtained by the fraud of the party to the arbitration or by the fraud of another to which the party to the arbitration was a privy. The learned Judge at p. 82 of the Report held that:*

"an award will only be obtained by fraud if the party which has deliberately concealed the document has, as a consequence of that concealment, obtained an award in its favour. The party relying on Section 68(2)(g) must therefore also prove a causative link between the deliberate concealment of the document and a decision in the award in favour of the other successful party."

43. *In Profilati Italia SRL v. Paine Webber Inc. [(2001) 1 All ER (Comm) 1065 : (2001) 1 Lloyd's Rep 715] while construing Section 68(2)(g) of the English Arbitration Act, it has been held that where an important document which should have been disclosed has been deliberately withheld resulting in the party withholding obtaining the award, the Court may consider that the award was "procured" in a manner contrary to public policy and such conduct is not far removed from fraud (para 19, p. 720).*

> ***44.*** *This Court also holds that the facts concealed must have a causative link. And if the concealed facts, disclosed after the passing of the award,* ***have a causative link with the facts constituting or inducing the award, such facts are relevant in a setting-aside proceeding*** *and award may be set aside as affected or induced by fraud. The question in this case is therefore one of relevance of the materials which the appellant wants to bring on record by way of amendment in its plea for setting aside the award.*
>
> ***45.*** *Whether the award will be set aside or not is a different question and that has to be decided by the appropriate court. In this appeal, this Court is concerned only with the question whether by allowing the amendment, as prayed for by the appellant, the Court will allow material facts to be brought on record in the pending setting-aside proceeding. Judging the case from this angle, this Court is of the opinion that in the interest of justice and considering the fairness of procedure, the Court should allow the appellant to bring those materials on record as those materials are not wholly irrelevant or they may have a bearing on the appellant's plea for setting aside the award.*
>
> ***46.*** *Nothing said in this judgment will be construed as even remotely expressing any opinion on the legality of the award. That question will be decided by the court where the setting-aside proceeding is pending. The proceeding for setting aside the award may be disposed of as early as possible, preferably within 4 months.*

14.12. By relying on ***Venture Global's case,*** his submission is that if any award has been obtained by fraud, there being a concealment which is realised subsequently, which has a causative link to the award being passed. An opportunity has to be provided for production of those documents which would establish that there was concealment.

14.13. He relies upon the decision of this Court in ***M/s Karnataka State Electronics Development Corporation Limited vs. M/s Lakshmi Nirman Pvt Ltd***[4]., more particularly para 10, 17, 19, 20, 24, 25, 26 thereof, which are reproduced hereunder for easy reference;

> ***10.*** *He submits that the decision of the Co-ordinate Bench of this Court has been upheld by the Hon'ble Apex Court in the case of* ***Alpine Housing Development Corporation Pvt. Ltd. vs. Ashok S. Dhariwal and others*** *reported in* ***2023 SCC Online SC 55,*** *more particularly paragraph Nos.24 and 25 thereof, which are reproduced hereunder for easy reference:-*
>
> **"***24****.*** *The ratio of the aforesaid three decisions on the scope and ambit of section 34(2)(a) pre-amendment would be that applications under sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in section 34(2)(a) and section 34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under section 34 of*

[4] WP No.11530 of 2020 dated 21.11.2024

*the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; an application for setting aside the arbitral award will not **ordinarily** require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties' the cross-examination of the persons swearing in to the affidavits should not be allowed **unless absolutely necessary** as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under section 34(2)(a), then the party who has assailed the award on the grounds set out in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed **unless absolutely necessary**.*

*25**.** Now so far as the submission on behalf of the appellant that the requirement of "furnishing proof" as per pre-amendment of section 34(2)(a) of the Arbitration Act shall not be applicable to the application for setting aside the award on the grounds set out in section 34(2)(b) and the submission that in the execution proceedings the subsequent development of refusing to grant permission for amalgamation of the plots can be considered and it will be open for the applicants to point out in the execution proceedings that the award is not capable of being executed is concerned, at the outset, it is required to be noted that even for establishing that the arbitral* *award is in conflict with Public Policy of India, in a given case, the evidence may have to be led and by leading evidence, the person who is challenging the award on that ground can establish and prove that the arbitral award is in conflict with Public Policy of India and/or the subject matter of dispute is not capable of settlement by arbitration under the law for the time being in force. However, at the same time, from the record before the arbitrator, if the same can be established and proved that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the Public Policy of India, in that case, the person may not be permitted to file the affidavit by way of evidence/additional evidence."*

17. *Section 34(2) (a) of the Act as it stood prior to the amendment is as under:-*

"34. Application for setting aside arbitral award. - *(1) xxxx*

(2) An arbitral award may be set aside by the Court only if, -

(a) the party making the application ***furnishes proof that****,-*

(i) xxxxx"

19. *The essential difference is, in clause (a) where the words "furnishes proof that" were substituted by the words "establishes on the basis of the record of the arbitral tribunal that".*

20. *This substitution has been interpreted by the Co-ordinate Bench of this Court by holding that in proceedings filed under Section 34 of the Act prior to the amendment, applicant could furnish proof of any particular aspect which would satisfy the requirement of Section 34(2) (a). Thus, in view of Section 34(2) (a) of the Act as it stood* *prior to the amendment which came into effect on 30.08.2019 provided an opportunity to the applicant to in a Section 34 proceedings furnish proof of any particular aspect which would in my considered opinion go beyond what is available on the records.*

24. *Though the petitioner had produced the ledger extract with the journal entry, the Arbitrator came to a conclusion that there is no independent document which has been produced to establish such a direction or observation by the CAG and rejected this contention while passing the award. Perusal of the award and cross-examination would indicate that at no point of time was the petitioner put to notice as regards the production of the said report even though Ex.R.26 relating to ledger entry and journal entry had been accepted by the claimant witness No.2 in his cross-examination.*

25. *Such being the case, the petitioner being under the bonafide belief that the journal entries made as also the balance sheet produced where a Chartered Accountant had certified that the withholding was on account of the report of the CAG would be sufficient and not produced the report. There is some substance in the submission and claim made by learned counsel for the petitioner. In this regard, the petitioner having produced the balance sheet and ledger entries, the document now which is sought to be produced would indicate a specific reference made at item No.10 of the report that a deduction has to be made on account of liquidated damages to the full extent of 5% permissible under the contract which had not been done by the petitioner. It is in that background that pending resolution of the said issue, the amount was withheld.*

> ***26.*** *Thus, in my considered opinion this aspect would have to be considered in detail while dealing with Section 34 of the Act, as such, the finding of the Section 34 Court that no grounds have been made out and no valid reasons have been shown is not sustainable.*

14.14. By relying on ***M/s Lakshmi Nirman Pvt Ltd's Case***, his submission is that this Court in the said matter was considering the aspect of an application filed under Clause (a) of Sub-section (2) of Section 34 prior to the amendment and distinguished the provision prior to and post the amendment and came to conclusion that the essential difference prior to and post the amendment is that the words "furnishes proof that" were substituted by the words "establishes on the basis of the record of the Arbitral Tribunal that".

14.15. Thus, he submits that insofar as Clause (a) of Sub-section (2) of Section 34 is concerned, the amendment would be applicable requiring the person challenging an award to establish on the basis of the record of the arbitral tribunal and would not permit such person to furnish proof thereof. This decision, which has been relied by the Section 34 Court, he submits that was not applicable to the present facts inasmuch as this Court had considered Clause (a) of Sub-section (2) of Section 34 in ***M/s Lakshmi Nirman Pvt Ltd case*** and not Clause (b) of Sub-section (2) of Section 34. The requirement of Clause (a) of Sub-section (2) of Section 34 could not have been applied to that under Clause (b) of Sub-section (2) of Section 34 there being no such restriction or requirement.

14.16. Thus, he submits that the restriction being only insofar as Clause (a) of Sub-section (2) of Section 34 is concerned, that restriction could not be imported into Clause (b) of Sub-section (2) of Section 34. In this regard, he submits that the reason for it is that if an award is obtained by fraud vitiating everything, the Court ought to have taken that factor into account.

14.17. As regards the contention raised by the respondent No.1 before the Section 34 Court, that IA No.2 of 2024 was accompanied by a Memorandum of Facts and not an affidavit, he submits that it is only those applications which are enumerated under Rule 18 of the Karnataka

Civil Rules of Practice, 1967 which are required to be accompanied by an affidavit. All other applications could be accompanied by a Memorandum of Facts. Rule 18 of the Karnataka Civil Rules of Practice, 1967 is reproduced hereunder for easy reference;

> ***18.*** *(1) Every Interlocutory Application shall be indicated by the abbreviation "I.A." and shall be consecutively numbered in each suit, appeal or proceeding in which it is filed.*
>
> *(2) All facts, on which an applicant relies for making the prayer or obtaining the relief sought in the application, shall be set out in an affidavit accompanying the application. Where, however, the facts on which the application is based appear from the records of the case in the Court or relate to any act or conduct of the applicant's pleader himself, the Court may permit a memorandum of facts signed by the applicant's pleader to be filed instead of an affidavit:*
>
> *Provided that it shall not be necessary to file any affidavit but only a memorandum of facts signed by the pleader in interlocutory applications seeking any relief other than the relief's of temporary injunction, attachment, arrest, appointment of guardian or the appointment of receiver or amendment of a pleadings.*
>
> *(3) Every Interlocutory Application shall bear the cause title of the main matter in which it is made and shall set out the names of the applicants and the opponents and their respective ranks in the main matter, the provision of law under which it is made and the*

> *prayer or relief sought, in clear and precise terms.*
>
> *(4) The application shall be signed by the applicant or his pleader, who shall enter the date on which such signature is made and in the date on which the application is made.*
>
> *(4)(a) The order sheet shall contain a separate column indicating the number of interlocutory applications pending on the date of each hearing and the Bench Clerk shall note the numbers of undisposed of interlocutory applications; and the Presiding Officer shall endeavour for disposal of such applications expeditiously.]*
>
> *(5) The order recorded in the order sheet shall disclose clearly the serial number of the Interlocutory Application, if it relates to any such application.*

14.18. As regards alleged delay in filing of the RTI application and/or the production of documents, his submission was that it took some time for the petitioner to realise that there was a false occupancy certificate which had been produced. A verification having been done, the petitioner made an application under the RTI Act, as regards which Document No.2 was furnished subsequently. Document No.1 without Document No.2 could not be considered independently; it is for that reason that after obtaining Document No.2, an application was filed to produce both Document No.1 and 2 and as such, it is the date of obtaining Document No.2 which is required to be taken into consideration and not Document No.1.

14.19. As regards the contention that the petitioner is not the author or the applicant under the RTI Act, his submission is that the person who had filed the application is the agent of the petitioner. The petitioner made an application through the said agent in pursuance of which the documents were furnished. If the contention is that the petitioner is not the author of the documents furnished under RTI Act, his submission is that those documents are official documents. Similarly, as the fabricated occupancy certificate was relied upon by the Arbitral Tribunal, these documents issued by the very same authorities can be relied upon by the Section 34 Court.

14.20. On that basis, he reiterates that the award has been passed on the basis of consideration of a fraudulent document, this Court ought to exercise its supervisory jurisdiction under Article 227 of the Constitution of India set aside the impugned order passed by the Section 34

Court and allow the application under I.A. No.2 of 2024 and permit the petitioner to produce the documents received under the RTI Act.

15. Sri.Nishanth.A.V., learned counsel appearing for the respondent No.1 would submit that;

15.1. The jurisdiction under Article 227 is supervisory and not appellate jurisdiction and this Court ought not to exercise such jurisdiction, unless it is established that there is a jurisdictional error or patent perversity.

15.2. In that regard, he relies upon ***Shalini Shyam Shetty v. Rajendra Shankar Patil***[5]**,** more particularly para 44, 45 and 49 thereof, which are reproduced hereunder for easy reference;

> ***44.*** *In para 38 sub-para (4) at SCC p. 695 of the Report, the following principles have been laid down in Surya Dev Rai [(2003) 6 SCC 675] and they are set out:*
>
> *"38.(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave*

[5] (2010) 8 SCC 329

injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

45. *Sub-paras (5), (7) and (8) of para 38 are also on the same lines and extracted below: (Surya Dev Rai case [(2003) 6 SCC 675] , SCC pp. 695-96)*

"38.(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

*(6)****

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

49. *On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in

Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore

abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for

> *protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*
>
> *(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.*

15.3. By relying on ***Shalini Shyam Shetty's case,*** the learned Counsel submitted that the scope of interference under Article 227 is narrowly circumscribed. He contended that this Court does not sit in appeal over the orders of the subordinate courts and cannot reappreciate the facts, reassess the evidence, or substitute its own view merely because another view is possible. According to him, the supervisory jurisdiction is intended only to ensure that subordinate courts act within the limits of their jurisdiction and follow the law. Interference is therefore justified only where the impugned order suffers from a jurisdictional error, patent perversity, a manifest failure of justice, or a violation of the principles of natural justice. In the absence of any such exceptional circumstance, he submitted that the extraordinary jurisdiction under Article 227 ought not to be invoked. According to him, the petitioner has merely sought to challenge the correctness of the findings recorded by the Tribunal, which is impermissible in proceedings under Article 227. He therefore submitted that the petition deserves to be dismissed in limine.

15.4. He relies upon the decision of Hon'ble Supreme Court in ***Radhey Shyam v. Chhabi Nath***[6], more particularly para 24, 27 and 29 thereof, which are reproduced hereunder for easy reference;

> ***24.*** *It is the above holding, correctness of which was doubted in the referring order already mentioned above.*
>
> ***27.*** *Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.*
>
> ***29.*** *Accordingly, we answer the question referred as follows:*
>
> ***29.1.*** *Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.*
>
> ***29.2.*** *Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.*

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[6] (2015) 5 SCC 423

> ***29.3.*** *Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled.*

15.5. By relying on ***Chhabi Nath***, the learned Counsel submitted that the distinction between the jurisdiction under Articles 226 and 227 of the Constitution is now well settled. He contended that judicial orders are not amenable to challenge under Article 226 and that the jurisdiction under Article 227 is confined to supervisory correction of jurisdictional errors and not to re-examination of the merits of the decision. According to him, the supervisory jurisdiction cannot be exercised as if this Court were sitting in appeal over the findings recorded by the court below.

15.6. His submission is that the Arbitration and Conciliation Act, 1996 provides a self-contained and exhaustive mechanism governing challenges to arbitral awards. The jurisdiction of the Court under Section 34 is deliberately narrow and is confined to the statutory grounds expressly enumerated therein. A Court exercising jurisdiction under Section 34 is not empowered to reassess the evidence, reappreciate the material on record, or substitute its own view for that of the arbitral tribunal merely because another view is possible. The supervisory jurisdiction of this Court under Article 227 cannot be invoked to enlarge the scope of scrutiny beyond what is statutorily permissible under Section 34 of the Arbitration and Conciliation Act, 1996.

15.7. It was therefore submitted that the petitioner's request to produce additional documents, if permitted, would necessarily require the Court to revisit the factual matrix, evaluate fresh material, and undertake a reappreciation of the evidence that was before, or ought to have been before, the arbitral tribunal. Such an exercise, according to the learned Counsel, falls completely outside the limited scope of proceedings under Section 34 and is equally impermissible in proceedings under Article 227. He therefore submitted that the attempt to introduce additional evidence is nothing but an indirect effort to reopen the merits of the arbitral award, which the statutory scheme expressly prohibits.

15.8. He relies on decision of the Hon'ble Supreme Court in ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[7]**,** more particularly para 22, 26 and 28 thereof, which are reproduced hereunder for easy reference;

> ***22.*** *The 1996 Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith, by taking into account the United Nations Commission on International Trade Law ("Uncitral") Model Law on International Commercial Arbitration and the Uncitral Conciliation Rules. One of the principal objectives of the 1996 Act is to minimise the supervisory role of Courts in the arbitral process. With respect to Part I of the 1996 Act, Section 5 imposes a bar on intervention by a judicial authority except where provided for, notwithstanding anything contained in any other law for the time being in force. An application for setting aside an arbitral award can only be made in accordance with provisions of Section 34 of the 1996 Act.*
>
> ***26.*** *A cumulative reading of the Uncitral Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv SainikKalyan Nigam*

[7] (2022) 1 SCC 131

Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] , Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)

28. *This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.*

15.9. By relying ***DMRC's case,*** his submission is that the Arbitration and Conciliation Act, 1996 is founded on the principle of minimal judicial intervention. He contended that Section 5 expressly restricts judicial intervention except to the extent specifically provided under the Act, and consequently, a challenge to an arbitral award can be examined only within the limited parameters prescribed under Section 34.

15.10. He further submitted that the Hon'ble Supreme Court has repeatedly held that while exercising jurisdiction under Section 34, this Court cannot undertake an appreciation or reappreciation of either the facts or the law considered by the arbitral tribunal. This Court is not expected to scrutinise the correctness of the findings as an appellate forum, nor is it permitted to substitute its own view merely because another view may also be possible. The statutory grounds for setting aside an award cannot be expanded by resorting to a detailed reassessment of the evidence or by re-examining the merits of the dispute.

15.11. According to him, the petitioner's request to place additional documents on record is, in substance, an attempt to reopen the factual foundation of the dispute and invite the Court to reassess the evidence that was, or ought to have been, placed before the arbitral tribunal. Entertaining such a request would necessarily require the Court to travel beyond the confines of Section 34 and convert proceedings for setting aside an arbitral award into a de facto appellate exercise, which is expressly prohibited by the scheme of the 1996 Act.

15.12. He further submitted that the Hon'ble Supreme Court has cautioned against the growing tendency of courts to interfere with arbitral awards by re-evaluating the factual matrix and subsequently characterising the award as suffering from perversity or patent illegality. Such an approach, according to the learned Counsel, defeats the legislative object of ensuring finality of arbitral awards and preserving party autonomy by limiting judicial intervention. He therefore submitted that the present application for production of additional documents deserves to be rejected as it seeks to achieve indirectly what the petitioner is prohibited from doing directly under Section 34 of the Act.

15.13. He relies on decision of the Hon'ble Supreme Court in ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust*[8],** more particularly para 40, 41 and 42 thereof, which are reproduced hereunder for easy reference;

> ***40.*** *It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.*

[8] (2023) 15 SCC 781

41. *A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.*

42. *To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)*

"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

'7. … It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into

consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.'

In Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)

'10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.' "

15.14. By relying on ***PSA Sical Terminals Pvt. Ltd*** the learned Counsel, again reiterated and submitted that the law is now well settled that a Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act cannot act as an appellate Court. The Hon'ble Supreme Court has held that this Court cannot re-appreciate the evidence or examine whether a different conclusion could have been reached. Its jurisdiction is confined only to the grounds specifically provided under Section 34.

15.15. He further submitted that even the ground of patent illegality is of a limited nature. An award can be said to suffer from patent illegality only when the defect goes to the root of the matter, such as where the finding is based on no evidence, where vital evidence has been ignored, or where irrelevant material has been relied upon. Mere errors in appreciation of evidence or an incorrect view on facts or law do not permit interference. According to him, the Hon'ble Supreme Court has consistently held that the Court cannot reassess the evidence under the guise of examining patent illegality.

15.16. Referring to the amendments made to Section 34 by the Arbitration and Conciliation (Amendment) Act, 2019, the learned Counsel submitted that Parliament has now made its intention clear by providing that an application under Section 34 shall be decided on the basis of the record of the arbitral tribunal. According to him, this requirement is not confined only to Clause (a) of Sub-section (2) of Section 34, but equally applies to Clause (b) of Sub-section (2) of Section 34. Therefore, there is no basis for drawing any distinction between the two clauses on the question of receiving additional material.

15.17. He submitted that the contention of the petitioner that additional documents can be produced while considering the grounds under Clause (b) of Sub-section (2) of Section 34, though not under Clause (a) of Sub-section (2) of Section 34, is artificial and unsupported by the language of the statute. If such a course is permitted, it would enable a party to improve its case by placing fresh material before the Court, even though such material was never before the arbitral tribunal. That, according to him, would be contrary to the legislative intent and would enlarge the limited scope of proceedings under Section 34.

15.18. The learned Counsel therefore submitted that the present application seeking permission to produce additional documents is not maintainable and deserves to be rejected.

15.19. He relies upon the decision of this Court in ***M/s Karnataka State Electronics Development Corporation Limited vs. M/s Lakshmi***

Nirman Pvt Ltd*[9]*, more particularly paras 19, 20, 21 and 22 thereof, which are reproduced hereunder for easy reference;

> *19. The essential difference is, in clause (a) where the words "furnishes proof that" were substituted by the words "establishes on the basis of the record of the arbitral tribunal that".*
>
> *20. This substitution has been interpreted by the Co-ordinate Bench of this Court by holding that in proceedings filed under Section 34 of the Act prior to the amendment, applicant could furnish proof of any particular aspect which would satisfy the requirement of Section 34(2) (a). Thus, in view of Section 34(2) (a) of the Act as it stood prior to the amendment which came into effect on 30.08.2019 provided an opportunity to the applicant to in a Section 34 proceedings furnish proof of any particular aspect which would in my considered opinion go beyond what is available on the records.*
>
> *21. It is for this reason by way of amendment, the same can be restricted to "establishes on the basis of record of the arbitral tribunal that", i.e., to say that post the amendment, there could be no other document which could be produced other than what is already available before the arbitral tribunal for consideration of the matter under Section 34 of the Act.*
>
> *22. This aspect having been considered by the Co-ordinate Bench of this Court in Ashok S. Dhariwal's case supra which has also been upheld by the Hon'ble Apex Court in* ***Alpine Housing Development Corporation Pvt. Ltd. case.*** *It is clear that any proceedings filed under Section 34 of the Act prior to amendment coming into force at the discretion of the Court an application for leading further evidence could be considered and allowed. Thus, there is no statutory*

[9] WP No.11530 of 2020 dtd. 21.11.2024

bar on an application to be considered and allowed prior to the amendment to Section 34 of the Act.

15.20. By relying on ***M/s Lakshmi Nirman,*** the learned Counsel submitted that the judgment clearly explains the effect of the amendment made to Clause (a) of Sub-section (2) of Section 34 of the Arbitration and Conciliation Act with effect from 30.08.2019. He submitted that, prior to the amendment, the provision permitted an applicant to "furnish proof" in support of the grounds urged under Section 34. Consequently, in appropriate cases, this Court could permit the parties to adduce additional evidence beyond the material that was before the arbitral tribunal.

15.21. He submitted that the position has undergone a fundamental change after the amendment. By substituting the words "furnishes proof that" with the words "establishes on the basis of the record of the arbitral tribunal that", Parliament has made it clear that an application under Section 34 is now required to be decided only on the basis of the material that formed part of the arbitral record. According to him, after the amendment, parties cannot be permitted to produce fresh documents or lead additional evidence in support of their challenge to the arbitral award.

15.22. The learned Counsel further submitted that this Court, **in M/s Lakshmi Nirman Pvt. Ltd.,** has itself recognised this distinction between the legal position before and after the amendment. He pointed out that, in that case, permission to produce additional evidence was granted only because the proceedings had been instituted before the amendment came into force. The Court specifically observed that, under the unamended provision, there was no statutory bar to permitting additional evidence in an appropriate case.

15.23. He therefore submitted that the reliance placed by the petitioner on **M/s Lakshmi Nirman Pvt. Ltd.** is misplaced. According to him, the said decision does not support the petitioner's case. On the contrary, it recognises that the legal position has materially changed after the amendment of Clause (a) of Sub-section (2) of Section 34. Since the present proceedings have been instituted after the amendment came into force, the petitioner cannot seek permission to produce additional documents by relying upon a principle that was applicable only to proceedings governed by the unamended provision. He therefore submitted that the application is liable to be rejected.

15.24. He further submits that additional evidence under Clause (b) of Sub-section (2) of Section 34 is permissible only in an exceptional case and not for the mere asking and in this regard he relies upon the decision of the Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal***[10]**,** more particularly para 15, 16 and 20 thereof, which are reproduced hereunder for easy reference;

> ***15.*** *The ratio of the aforesaid three decisions on the scope and ambit of Section 34(2)(a) pre-amendment would be that applications under Sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in Section 34(2)(a) and Section 34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of the 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under Section 34*

[10] (2023) 19 SCC 629

of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under Section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties' the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the Court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under Section 34(2)(a), then the party who has assailed the award on the grounds set out in Section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed unless absolutely necessary.

16. *Now so far as the submission on behalf of the appellant that the requirement of "furnishing proof" as per pre-amendment of Section 34(2)(a) of the Arbitration Act shall not be applicable to the application for setting aside the award on the grounds set out in Section 34(2)(b) and the submission that in the execution proceedings the subsequent development of refusing to grant permission for amalgamation of the plots can be considered and it will be open for the applicants to point out in the execution proceedings that the award is not capable of being executed is concerned, at the outset, it is required to be noted that even for establishing that the arbitral award is in conflict with public*

> *policy of India, in a given case, the evidence may have to be led and by leading evidence, the person who is challenging the award on that ground can establish and prove that the arbitral award is in conflict with public policy of India and/or the subject-matter of dispute is not capable of settlement by arbitration under the law for the time being in force. However, at the same time, from the record before the arbitrator, if the same can be established and proved that the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India, in that case, the person may not be permitted to file the affidavit by way of evidence/additional evidence.*
>
> ***20.** The affidavit thus discloses specific document and the evidence requires to be produced. In that view of the matter, a strong exceptional case is made out by the respondents to permit them to file affidavits/adduce additional evidence. However, at the same time, the appellant also can be permitted to cross-examine and/or produce contrary evidence.*

15.25. By relying on ***Alpine Housing Development Corpn. (P) Ltd's case,*** his submission therefore is that proceedings under Section 34 of the Arbitration and Conciliation Act are summary in nature and are intended to be decided expeditiously. He submitted that the Hon'ble Supreme Court has held that, as a general rule, an application under Section 34 has to be decided on the basis of the record that was before the arbitral tribunal and that additional evidence is not to be permitted as a matter of course.

15.26. He further submitted that the Hon'ble Supreme Court has recognised that additional evidence may be permitted only in rare and exceptional cases, where such evidence is necessary for deciding a ground available under Section 34 and the relevant material is not already part of the arbitral record. Even in such cases, the Court has cautioned that such permission should be granted only where it is absolutely necessary. According to him, the exception cannot be treated as the rule.

15.27. The learned Counsel submitted that the petitioner has not made out any exceptional circumstance warranting the production of additional documents. The application is only an attempt to place material before the Section 34 Court which was never produced before the arbitral tribunal. Such a course, according to him, would amount to permitting a party to improve its case after the arbitral proceedings have concluded, which is contrary to the scheme and object of the Act.

15.28. He further submitted that the Section 34 Court has committed no error in rejecting I.A. No. 2 of 2024. According to him, the Section 34 Court was bound to consider the application in the light of the amended provisions of Section 34 and the law laid down by the Hon'ble Supreme Court. Once the statute requires the Court to examine the validity of the award on the basis of the arbitral record, it cannot permit parties to produce fresh documents except in the rarest of cases where exceptional circumstances are clearly established.

15.29. The learned Counsel therefore submitted that if parties are permitted to produce additional documents as a matter of routine in proceedings under Section 34, the very purpose of arbitration would be defeated. The object of the Act is to ensure speedy and final resolution of disputes with minimal judicial intervention. Allowing parties to lead fresh evidence at the stage of Section 34 would convert summary proceedings into full-fledged trials, resulting in delay and defeating the legislative intent. He therefore submitted that the impugned order does not suffer from any jurisdictional error or perversity warranting interference by this Court under Article 227 of the Constitution.

15.30. On the basis of the above arguments he submits that the order passed by Section 34 Court is proper and correct, does not require any interference and the writ petition is required to be dismissed.

16. Heard Sri.Pradeep Nayak, learned counsel appearing for the petitioner and Sri.Nishanth.A.V, learned counsel appearing for respondent No.1. Perused papers.

17. The points that would arise for consideration are;

(i) Whether, after the amendment to Section 34 of the Arbitration and Conciliation Act, 1996 by Act 33 of 2019, a Court exercising jurisdiction under Section 34 can permit a party to produce additional documents which were not part of the record before the arbitral tribunal?

(ii) Whether the restriction contained in Section 34(2)(a), requiring the applicant to establish its case on the basis of the record of the arbitral tribunal, is confined

only to clause (a), or whether the same principle also governs proceedings founded on the grounds specified in Section 34(2)(b), including a plea that the award is vitiated by fraud or is contrary to the public policy of India?

(iii) Whether a party challenging an arbitral award on the ground that the award was induced or affected by fraud can, as a matter of right, produce additional evidence before the Section 34 Court, or whether such permission can be granted only in rare and exceptional circumstances?

(iv) Whether the petitioner has made out an exceptional case warranting reception of the additional documents sought to be produced through I.A. No.2 of 2024, having regard to the nature of the documents, the stage at which they came into existence or came to the petitioner's knowledge, and their relevance to the grounds urged under Section 34(2)(b)?

(v) Whether the Section 34 Court committed any jurisdictional error, patent illegality or perversity in rejecting I.A. No.2 of 2024 on the ground that the additional documents did not form part of the arbitral record?

(vi) Whether the impugned order calls for interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India?

(vii) What Order?

18. This Court answers the above points as follows:

19. **<u>Answer to Point No.(i):</u> Whether, after the amendment to Section 34 of the Arbitration and Conciliation Act, 1996 by Act 33 of 2019, a Court exercising jurisdiction under Section 34 can permit a party to produce additional documents which were not part of the record before the arbitral tribunal?**

And

<u>Answer to Point No.(ii):</u> Whether the restriction contained in Section 34(2)(a), requiring the applicant to establish its case on the basis of the record of the arbitral tribunal, is confined only to clause (a), or whether the same principle also governs proceedings founded on the grounds specified in Section 34(2)(b), including a plea that the award is vitiated by fraud or is contrary to the public policy of India?

19.1. Both the points being related, are taken up for consideration together:

19.2. Sri.Pradeep Nayak, learned counsel for the petitioner, submitted that the impugned order proceeds on a wrong reading of the law. His contention is that Sub-section (2) of Section 34 contains two distinct clauses. Clause (a) sets out grounds which the party challenging the award must establish, and it was clause (a) alone that the 2019 amendment touched, by substituting the words "furnishes proof that" with the words "establishes on the basis of the record of the arbitral tribunal that". Clause (b), which deals with grounds that the Court itself finds, including that the award is against the public policy of India and that its making was induced or affected by fraud, was left untouched. From this he argued that the restriction to the arbitral record is confined to clause (a), and that a Court under Section 34 is not, as a matter of law, disabled from receiving material outside the record.

19.3. He relied on the decision of a Co-ordinate Bench of this Court in ***Ashok S. Dhariwal vs. M/s Alpine Housing Development Corporation Private Limited*** [WP No.50799 of 2019 dated 01.09.2021] (paragraphs 13 and 14), and in particular on the reasoning that the exposition confining a Section 34 Court to the arbitral record cannot be applied merely because the ground urged relates to clause (b) of Sub-section (2) of Section 34, and that if the Court is to find whether the award is liable to be set aside under clause (b) of Sub-section (2) of Section 34, all necessary material must be available to it. He submitted that this decision was carried in appeal and affirmed by the Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal*** [(2023) 19 SCC 629] (paragraphs 15, 16 and 20), where the Hon'ble Supreme Court accepted that even for establishing that an award is in conflict with the public policy of India evidence may in a given case have to be led, and that in an exceptional case a party may be permitted to adduce additional evidence.

19.4. He further relied on ***Venture Global Engg. v. Satyam Computer Services Ltd.*** [(2010) 8 SCC 660] (paragraphs 39, 40, 44 and 45), for the proposition that fraud is of infinite variety, that concealment of material facts which ought to have been disclosed before the arbitrator is itself an act of fraud, and that facts which surface after the making of the award, if they have a causative link with the facts constituting the award, are relevant and may be brought on record. As to ***M/s Karnataka State***

Electronics Development Corporation Limited v. M/s Lakshmi Nirman Pvt. Ltd. [WP No.11530 of 2020 dated 21.11.2024] (paragraphs 17, 19 and 20), on which the Section 34 Court relied, his submission was that the decision dealt with Clause (a) of Sub-section (2) of Section 34 and with proceedings instituted before the amendment, and cannot be read as laying down an absolute bar for Clause (b) of Sub-section (2) of Section 34.

19.5. Sri Nishanth A.V., learned counsel for respondent No.1, submitted that the Arbitration and Conciliation Act, 1996 is a self-contained code founded on the principle of minimal judicial intervention. He drew attention to Section 5 of the Act and submitted that a Court under Section 34 must act strictly within the confines of that provision and cannot reassess the evidence or substitute its own view. He relied on ***Delhi Airport Metro Express (P) Ltd. v. DMRC*** [(2022) 1 SCC 131] (paragraphs 22 and 26), to submit that the object of the Act is to minimise the supervisory role of Courts in arbitral proceedings and that judicial interference with arbitral awards is limited to the grounds mentioned in Section 34 and on ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust*** [(2023) 15 SCC 781] (paragraph 40) to submit that it is a settled legal position that the Court under Section 34 does not sit as a Court of appeal and does not reappreciate the evidence.

19.6. On the effect of the amendment, his submission was that the requirement of deciding the matter on the basis of the arbitral record is not confined to Clause (a) but governs the whole of Section 34, and that any distinction drawn between Clause (a) and Clause (b) of Sub-section (2) of Section 34 for the purpose of receiving fresh material is artificial and unsupported by the language of the statute. He relied on ***M/s Lakshmi Nirman Pvt. Ltd.*** (paragraphs 19, 20 and 22) to show that after the amendment no document beyond the arbitral record can be produced, and that permission in that case was granted only because the proceedings there were instituted before the amendment. He also relied on the decision of the Hon’ble Supreme Court in ***Alpine Housing***

Development Corpn. (P) Ltd. (paragraphs 15, 16 and 20) to submit that additional evidence, even under Clause (b) of Sub-section (2) of Section 34, is permissible only in a rare and exceptional case, and never for the mere asking.

19.7. Section 34 has been extracted in full in the submissions of the petitioner recorded above. What is material is the structure of sub-section (2) of Section 34. Clause (a) opens with the words *"**<u>the party making the application establishes on the basis of the record of the arbitral tribunal that</u>**"*, and then lists grounds, such as incapacity, invalidity of the arbitration agreement, want of proper notice and the like. Clause (b) is worded differently, it opens with the words *"**<u>the Court finds that</u>**"*, and covers two grounds, that the subject-matter is not capable of settlement by arbitration, and that the award is in conflict with the public policy of India. Explanation 1 to Sub-section (2) then makes it clear that an award is in conflict with the public policy of India, inter alia, if *"**<u>the making of the award</u>**

was induced or affected by fraud or corruption…".

19.8. Two things follow at once from a plain reading.

19.9. First, the phrase tying the applicant to the record of the arbitral tribunal appears only in Clause (a). The 2019 amendment placed those words in Clause (a) and nowhere else. Clause (b) was not amended and continues to speak of what the Court "finds". A restriction that the Legislature has written into one clause cannot be read by the Court into another clause where it does not appear, particularly in a statute of this kind where every word has been weighed.

19.10. Second, the fraud ground is, by its very description, one that the Court "finds" under Clause (b). Fraud in the making of an award will very often come to light only after the award, and material establishing it will, in the nature of things, lie outside the arbitral record. To hold that such material can never be looked at is to render the fraud ground very nearly a dead letter.

19.11. The Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd.*** (paragraph 15), while affirming that proceedings under Section 34 are summary and that ordinarily nothing beyond the arbitral record is required, in paragraph 16 went on to hold that ***"...<u>even for establishing that the arbitral award is in conflict with public policy of India, in a given case, the evidence may have to be led...</u>",*** and that in an exceptional case a party who assails the award on such a ground can be permitted to file an affidavit in the form of evidence, though only where it is absolutely necessary. On the facts of that very case, the Hon'ble Supreme Court, in paragraph 20 found that ***"...<u>a strong exceptional case is made out by the respondents to permit them to file affidavits...</u>"*** and to adduce additional evidence, with a corresponding liberty to the other side to cross-examine. The decision therefore squarely recognises that a Court under Section 34 has the power to receive material outside the arbitral record. What it lays down is not a bar on the power, but a strict discipline on its exercise.

19.12. The Co-ordinate Bench decision in ***Ashok S. Dhariwal vs. Alpine Housing Development Corporation Private Limited***, [WP No.50799 of 2019 dated 01.09.2021] which stands affirmed by the Hon'ble Supreme Court, is to the same effect. This Court there, in paragraph 13 held that the principle confining a Section 34 Court to the arbitral record ***"…cannot be excluded only because the ground urged by the petitioner could perhaps relate to a ground permissible under Section 34(2)(b)…"***, and in paragraph 14 the Court held that if the Section 34 Court is to decide whether the award is liable to be set aside under clause (b), ***"…all the necessary material will have to be available to the civil Court…".*** That reasoning applies directly to the question this Court is now answering. It confirms that the power to receive material outside the record survives the amendment, at least where the ground pressed falls under Clause (b) of Sub-section (2) of Section 34.

19.13. The decision in ***Venture Global*** reinforces the same conclusion in the specific context of fraud. The Hon'ble Supreme Court in paragraphs 39 and 40 held that fraud is infinite in variety, that "...***concealment of relevant and material facts, which should have been disclosed before the arbitrator, is an act of fraud..."***, and that a party who has suffered an award obtained by concealment cannot be shut out from relying on facts which surface later. It further in paragraphs 44 and 45 held that where the concealed facts, disclosed after the passing of the award, have a causative link with the facts constituting or inducing the award, ***"...such facts are relevant in a setting-aside proceeding and award may be set aside as affected or induced by fraud..."***, and that in the interest of justice the party should be allowed to bring those materials on record. It is true that ***Venture Global*** arose in the context of an amendment to the pleadings and predates the 2019 amendment. But the principle it states, that subsequently discovered fraud with a causative link to the award is relevant and may be brought on record, is a principle about the nature of fraud, not about the pre-amendment text, and it is not displaced by the amendment. Indeed, since the amendment left Clause (b) of Sub-section (2) of Section 34 untouched, the principle applies with undiminished force.

19.14. This court now turns to the authorities pressed by the first respondent. The decision of the Hon'ble Supreme Court in ***Delhi Airport Metro Express (P) Ltd. v. DMRC*** [(2022) 1 SCC 131] (paragraphs 22 and 26), holds that one of the principal objects of the Act is to minimise the supervisory role of Courts, that Section 5 bars intervention except as provided, and that a Court under Section 34 must refrain from appreciation or reappreciation of matters of fact and law. Similarly, the decision of the Hon'ble Supreme Court in ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust*** [(2023) 15 SCC 781] (paragraph 40), holds that the Court under Section 34 is not an appellate Court and does not reappreciate the evidence. This court respectfully accepts both. But neither decision touches the question before this Court. Both are concerned with the standard the Court applies when it finally decides whether to set aside an award, they forbid a merits review dressed up as a public policy or patent illegality challenge. Neither decides the anterior and different question of what material a Court may look at while deciding a Clause (b) ground. To receive a document that goes to whether the award was procured by fraud, is not to reappreciate the evidence that was before the arbitrator; it is to decide a statutory ground that, by its nature, cannot be confined to that evidence. The decisions in ***DMRC*** and ***PSA Sical Terminals Pvt. Ltd*** are therefore distinguished as dealing with a different stage and a different question, and they do not stand in the way of the conclusion that this Court has reached.

19.15. As regards to the decision of this Court in ***M/s Karnataka State Electronics Development Corporation Limited v. M/s Lakshmi Nirman Pvt. Ltd.*** [WP No.11530 of 2020 dated 21.11.2024] (paragraphs 19 and 20), the decision on which the Section 34 Court chiefly relied. It records the essential difference brought about by the amendment, that in clause (a) the words "***furnishes proof that***" were substituted by the words "***establishes on the basis of the***

<u>record of the arbitral tribunal that",</u> and it observes that after the amendment there could be no document other than what is already on the arbitral record for the purpose of Clause (a) of Sub-section (2) of Section 34. Read fairly, that decision is about Clause (a). It was dealing with an application founded on Clause (a), and it was dealing with proceedings instituted before the amendment, which is why it permitted additional evidence there. It does not hold, and could not have held consistently with ***Alpine Housing***, that clause (b) grounds are subject to the same rigid textual bar, or that fraud discovered after the award can never be looked at. To the extent the Section 34 Court read ***Lakshmi Nirman*** as laying down an absolute bar for all of Section 34, that reading is, with respect, wider than the decision warrants. ***Lakshmi Nirman*** is therefore distinguished, and it does not govern a clause (b) fraud case such as the present one.

19.16. The position in law has to be examined from the language of Section 34(2)(a) and Section 34(2)(b). The amendment made in the year 2019 tightened Clause (a) of Sub-section (2) of

Section 34 by expressly requiring the Court, while considering the grounds contained therein, to have regard to the arbitral record. No corresponding words were introduced in Clause (b) of Sub-section (2) of Section 34. Clause (b) continues to be separately worded and proceeds on the basis of what the Court ***"finds".***

19.17. The distinction is significant. Where the Legislature amends one clause and leaves the neighbouring clause in its existing form, the natural inference is that the amendment was intended to operate upon the clause which was amended. There is no justification for importing into Clause (b) a restriction which the Legislature expressly placed only in Clause (a). Such an interpretation would require this Court to add words to Clause (b) which are not found in the statutory provision.

19.18. The submission of Sri.Nishanth.A.V., learned counsel for respondent No.1 that the requirement of confining the Court to the arbitral record governs the whole of Section 34 cannot, therefore, be accepted. The language introduced by the 2019 amendment is specific to Clause (a), and there is no corresponding statutory language in Clause (b).

19.19. The distinction, however, does not confer an unrestricted power to receive fresh material and it does not mean that a party can place additional material before this Court as a matter of right merely by invoking Clause (b) of Sub-section (2) of Section 34. The concern regarding the finality of arbitral proceedings is legitimate. Arbitration is intended to bring the dispute to an end, and a proceeding under Section 34 cannot be permitted to become an appeal or a second round of adjudication on facts.

19.20. The principle of minimal judicial intervention continues to govern the exercise of jurisdiction under Section 34. The Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal,*** [(2023) 19 SCC 629], (paragraphs 15, 16, 18, 19 and 20) has explained that the normal position is that the Court considers the award and the arbitral record. Additional evidence is not to be received merely because a party wishes to supplement or improve its case. Such material can be permitted only in an exceptional situation where the ground under Clause (b) of Sub-section (2) of Section 34 cannot properly be determined from the existing record and production of the additional material is absolutely necessary for deciding that ground.

19.21. Therefore, the distinction between Clauses (a) and (b) is real, but narrow. Under Clause (a), the limitation flows directly from the statutory language introduced by the 2019 amendment. Under Clause (b), there is no such express statutory prohibition. Nevertheless, the exercise of jurisdiction remains subject to the principle of minimal intervention and the exceptional circumstances in which material outside the arbitral record may become necessary for deciding a particular ground under Clause (b).

19.22. Fraud demonstrates why the two clauses cannot be treated identically, the ground of fraud provides the clearest illustration of the distinction.

19.23. Explanation 1(i) to Sub-section (2) of Section 34 provides that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud. Fraud, particularly where it involves concealment of a material fact, may come to light only after the arbitral proceedings have concluded. Material which establishes the concealment may, therefore, by its very nature, be unavailable during the arbitral proceedings.

19.24. The Hon'ble Supreme Court in ***Venture Global***, (paragraph 40) recognised that concealed facts may surface subsequently. This aspect assumes significance while considering the scope of Clause (b) of Sub-section (2) of Section 34.

19.25. If the restriction introduced in Clause (a) were to be treated as an absolute limitation applicable equally to Clause (b), a serious difficulty would arise. In a case where an award was allegedly obtained by concealing a material fact, the evidence necessary to establish the concealment may necessarily be outside the arbitral record. If such evidence were excluded solely because it was not part of that record, the statutory ground relating to an award induced or affected by fraud could, in an appropriate case, become incapable of being effectively established.

19.26. Such a consequence cannot ordinarily be attributed to the Legislature. Having expressly recognised fraud as a circumstance which may render an award contrary to the public policy of India, the Legislature cannot be presumed to have intended that the Section 34 Court should be prevented from considering material which, by reason of the very nature of the alleged fraud, could not have been available to the arbitral tribunal.

19.27. This does not, however, mean that every allegation of fraud permits a party to introduce fresh evidence before this Court. The threshold remains high. The material must have a direct bearing upon the statutory ground; its consideration must be genuinely necessary for deciding that ground; and there must be a satisfactory explanation as to why the material was not available, and could not reasonably have been produced, before the arbitral tribunal.

19.28. The decisions relied upon by the first respondent do not require the restriction contained in Clause (a) to be extended to Clause (b). This Court has already considered the decisions in ***DMRC*** and ***PSA Sical Terminals Pvt. Ltd*.** Those decisions emphasise the limited nature of the jurisdiction exercised under Section 34 and the restraint which the Court must maintain while examining an arbitral award. They are authorities on the standard and scope of judicial interference. They do not decide the distinct question as to whether the specific restriction introduced by the 2019 amendment in Clause (a) must also be read into Clause (b).

19.29. The distinction is important. The question as to how far the Section 34 Court may interfere with an arbitral award is different from the question as to what material the Section 34 may, in an exceptional case, consider while determining a particular statutory ground under Clause (b) of

Sub-section (2) of Section 34. The former does not necessarily determine the latter.

19.30. The same reasoning applies to ***Lakshmi Nirman**.* The decision considered the question in the context of Clause (a). The observations contained in paragraphs 19 and 20 must, therefore, be understood in that statutory setting. The decision cannot be read as having decided that the express restriction applicable to Clause (a) is equally applicable to Clause (b).

19.31. The legal position which emerges is therefore clear. The 2019 amendment introduced an express statutory limitation in Clause (a) by requiring the Section 34 Court to have regard to the arbitral record while considering the grounds falling under that clause. The Legislature did not introduce the same restriction in Clause (b). The express limitation applicable to Clause (a) cannot, merely by interpretation, be incorporated into Clause (b).

19.32. At the same time, Clause (b) does not give a party an unrestricted right to produce fresh evidence before the Section 34 Court. The ordinary rule remains that the award and the arbitral record constitute the principal material for consideration. Departure from that rule is justified only in a rare and exceptional case where the additional material is genuinely necessary for deciding a ground under Clause (b), where that ground cannot effectively be determined on the existing record, and where the material could not, in the circumstances of the case, reasonably have formed part of the arbitral record.

19.33. The distinction may therefore be stated in simple terms. Under Clause (a), the restriction is statutory and express. Under Clause (b), there is no corresponding statutory bar, but the reception of material outside the arbitral record remains exceptional and is controlled by the limited nature of the jurisdiction under Section 34 and the principle of minimal judicial intervention.

19.34. This construction preserves both the statutory scheme and the finality of arbitral proceedings. It prevents Clause (b) from becoming a means of reopening the arbitral dispute while, at the same time, ensuring that a statutory ground such as fraud is not rendered ineffective merely because the evidence necessary to establish it could not have formed part of the arbitral record.

19.35. The issue, therefore, is not whether the Section 34 Court possesses a general power to receive fresh evidence in a proceeding under Section 34(2)(b). It does not. The issue is whether the particular material sought to be produced in the present case satisfies the narrow and exceptional test applicable to material outside the arbitral record and is genuinely necessary for determining the ground raised under Section 34(2)(b).

19.36. Accordingly, this Court answers point No.(i) by holding that even after the amendment to Section 34 by Act 33 of 2019, a Court exercising jurisdiction under Section 34 is not wholly forbidden from permitting a party to produce documents that were not part of the arbitral record. Such a course is open in a rare and exceptional case, particularly where the ground pressed falls under clause (b) of Sub-section (2) of Section 34, including a plea that the award was induced or affected by fraud. There is no absolute bar.

19.37. This court answers point No. (ii) by holding that the restriction in Clause (a) of Sub-section (2) of Section 34 requiring the applicant to establish its case on the basis of the record of the arbitral tribunal is, in its strict textual form, confined to Clause (a). It does not, in those rigid terms, govern proceedings founded on the grounds in Clause (b), including a plea that the award is vitiated by fraud or is contrary to the public policy of India. Clause (b) is governed by the general rule of minimal intervention, under which fresh material may be received, but only in a rare and exceptional case and only where it is necessary to decide the Clause (b) ground and could not have formed part of the arbitral record.

20. **<u>Answer to Point No.(iii):</u> Whether a party challenging an arbitral award on the ground that the award was induced or affected by fraud can, as a matter of right, produce additional evidence before the Section 34 Court, or whether such permission can be granted only in rare and exceptional circumstances?**

20.1. Sri.Pradeep Nayak's submissions on this point flow from his reliance on ***Venture Global*** and ***Alpine Housing***, already noticed. His position was that where an award is shown to have been obtained by fraud, and the concealment comes to light only after the award, the party must be given an opportunity to produce the documents that establish the concealment, and that the Section 34 Court wrongly shut out that opportunity.

20.2. Sri.Nishanth.A.V., learned counsel for respondent No.1 laid particular stress on this point. Relying on the decision of the Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal*** [(2023) 19 SCC 629] (Paragraph 15 and Paragraph 20), he submitted that additional evidence, even under Clause (b), is permissible only in a rare and exceptional case, never for the mere asking, and only where it is absolutely necessary. His contention was that the petitioner sought to treat the exception as the rule, and that no exceptional case had been made out.

20.3. On the principle involved, there is not much of divergence in the submission made by the two sides. A party challenging an award on the ground that it was induced or affected by fraud does not have an unqualified right to lead additional evidence before the Section 34 Court. Both ***Venture Global*** (paragraphs 40 and 44) and ***Alpine Housing*** (paragraphs 15 and 16), on which the petitioner himself relies, make that plain. The right is not a right at large; it is a controlled liberty, available only when the strict conditions the Hon'ble Supreme Court has laid down are satisfied.

20.4. Those conditions may be stated simply.

20.4.1. First, the ground pressed must genuinely be a Clause (b) ground, here, that the making of the award was induced or affected by fraud within the meaning of Explanation 1(i) to Sub-section (2) of Section 34.

20.4.2. Second, the material sought to be produced must be relevant to that ground and must have a causative link with the facts constituting or inducing the award, as ***Venture Global*** requires (paragraph 44).

20.4.3. Third, the material must be of a kind that could not, in the nature of things, have formed part of the arbitral record, typically because the fraud or concealment surfaced only after the award.

20.4.4. Fourth, the reception of the material must be genuinely necessary to decide the ground, and not a device to reopen the merits; as ***Alpine Housing*** puts it, it is to be allowed only where it is "**absolutely necessary"** (paragraph 15).

20.4.5. Fifth, where such material is received, the opposite party must be given a fair opportunity to meet it, including, where warranted, an opportunity to cross-examine, again as ***Alpine Housing*** directs (Paragraph 20).

20.5. So understood, the exception does not negate the general rule and does not endanger the finality that ***DMRC*** and ***PSA Sical Terminals Pvt. Ltd*** rightly protect. A Section 34 Court that receives, in a fit case, a document going to fraud is not converting itself into a Court of appeal and is not reappreciating the arbitrator's evidence. It is doing no more than the statute requires when a Clause (b) ground of fraud is raised. The safeguard against abuse lies not in a blanket refusal to look at anything outside the record, but in the strict application of the above mentioned five conditions.

20.6. Nothing in this finding decides whether the award in this case was in fact obtained by fraud. That is a question for the Section 34 Court, if and when it receives the documents and hears both sides. Whether the occupancy certificate was genuine or fabricated, and whether its use amounts to fraud in the making of the award, are questions that turn on disputed facts and can be answered only after evidence and a fair contest. A Court exercising supervisory jurisdiction under Article 227 does not decide such disputed questions itself.

20.7. Accordingly, this Court answers point No.(iii) by holding that a party challenging an award on the ground of fraud has no right, as a matter of course, to produce additional evidence before the Section 34 Court. Such permission may be granted only in a rare and exceptional case, where the conditions set out above are satisfied and where the reception of the material is absolutely necessary to decide the clause (b) ground, with a corresponding opportunity to the other side to meet it.

21. **<u>Answer to Point No.(iv):</u> Whether the petitioner has made out an exceptional case warranting reception of the additional documents sought to be produced through I.A. No.2 of 2024, having regard to the nature of the documents, the stage at which they came into existence or came to the petitioner's knowledge, and their relevance to the grounds urged under Section 34(2)(b)?**

<u>And</u>

22. **<u>Answer to Point No.(v):</u> Whether the Section 34 Court committed any jurisdictional error, patent illegality or perversity in rejecting I.A. No.2 of 2024 on the ground that the additional documents did not form part of the arbitral record?**

<u>And</u>

23. <u>Answer to Point No.(vi):</u>Whether the impugned order calls for interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India?

23.1. Points No.(iv), (v) and (vi) are closely interconnected. Point No.(iv) concerns whether the petitioner has made out an exceptional case warranting reception of the additional documents sought to be produced through I.A. No.2 of 2024. Point No.(v) concerns the legality of the order of the Section 34 Court in rejecting the application on the ground that the documents did not form part of the arbitral record. Point No.(vi) concerns whether the impugned order warrants interference by this Court under Article 227. All the points are, therefore, taken up together.

23.2. Sri.Pradeep Nayak., learned counsel for the petitioner submitted that the facts of the present case make out an exceptional case in clear terms. The occupancy certificate stated to have been issued on 27.04.2017 was the very document on which the learned Arbitrator relied while rejecting the petitioner's claim for compensation for delay. The subsequent reply dated 14.02.2022 to the Right to Information application and the reply dated 07.12.2023 enclosing the Inspection Report dated 15.05.2023 of the Executive Officer, Taluk Panchayat, Devanahalli, according to the petitioner, disclose that the Anneshwara Gram Panchayat does not have the alleged occupancy certificate in its records and that no such certificate was issued in accordance with the applicable regulations.

23.3. It was submitted that these are official documents emanating from the concerned authorities and that the later documents came into existence only after the arbitral proceedings. They therefore could not have formed part of the arbitral record. More importantly, they have a direct bearing upon the petitioner's contention that the award was induced or affected by fraud, which is a ground specifically falling under Clause (b) of Sub-section (2) of Section 34.

23.4. The petitioner also explained the delay in producing the documents. According to him, the reply dated 14.02.2022 could not, by itself, be treated as conclusive and it was necessary to obtain further verification from the concerned authority. The Inspection Report dated 15.05.2023 and the subsequent reply dated 07.12.2023 were the material documents which completed that verification. The delay, therefore, was not deliberate but arose from the process of obtaining and verifying the relevant official material.

23.5. The objection that the Right to Information application was not made by the petitioner personally was sought to be answered by submitting that it had been made through his agent. In any event, it was contended that the documents now relied upon are official communications issued by public authorities and their consideration cannot be excluded merely because the petitioner was not the person who formally submitted the application.

23.6. On the question of the form of the application, reliance was placed upon Rule 18 of the Karnataka Civil Rules of Practice, 1967. It was submitted that an affidavit was not mandatory for an application of this nature and that a memorandum of facts signed by the pleader was sufficient.

23.7. Sri.Nishanth.A.V., learned counsel for respondent No.1 on the other hand, submitted that no exceptional case had been established. According to him, the application was belated, particularly since the reply dated 14.02.2022 was available before the Section 34 petition was instituted on 23.08.2022. It was further contended that no satisfactory explanation had been given for the subsequent delay. The petitioner was not the applicant under the Right to Information Act; the application had been made by one Mr. Nandakumar. It was also submitted that the petitioner had himself relied upon the occupancy certificate during the arbitral proceedings and could not thereafter approbate and reprobate. According to the first respondent, the occupancy certificate had merely been produced as a document issued by the competent authority and there was no fabrication on the part of the first respondent. The application, it was submitted, was in substance an attempt to reopen the merits of the arbitral dispute.

23.8. The principles governing this issue have already been considered while answering Point Nos.(i) to (iii) and need not be repeated in detail. The essential question is whether, in the facts of the present case, the petitioner has crossed the threshold of an exceptional case warranting reception of material outside the arbitral record.

23.9. This Court is conscious that it is exercising supervisory jurisdiction under Article 227 and is not sitting as an appellate Court over the Section 34 Court. Ordinarily, where a Court exercising jurisdiction has considered the relevant material and has adopted one of the views reasonably available in law, this Court would not substitute its own view merely because another view is possible.

23.10. The present case, however, stands on a different footing.

23.11. The Section 34 Court did not reject I.A. No.2 of 2024 after considering whether the particular facts of the case constituted an exceptional circumstance under Clause (b) of Sub-section (2) of Section 34. It proceeded on a more fundamental premise, namely, that after the 2019 amendment Section 34 Court could look only at the arbitral record and that documents outside that record could not be received. That premise is contrary to the legal position already determined under Points Nos.(i) to (iii).

23.12. The amendment introduced a specific record-based restriction in Clause (a). No corresponding restriction was introduced in Clause (b). Further, as noticed from ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal,*** [(2023) 19 SCC 629] (paragraphs 15 and 16) **,** even in the context of clause (b), additional material may be received in an exceptional case. The existence of a power to receive such material is therefore not in dispute in law; the question is whether the facts of the present case satisfy the exceptional standard.

23.13. The petitioner has crossed the exceptional threshold on the facts of the present case, this Court is satisfied that the petitioner has crossed that threshold.

23.14. The documents sought to be produced are not stray documents, documents having only a remote connection with the dispute, or documents intended merely to supplement an otherwise complete case. They go directly to the genuineness and existence of the occupancy certificate dated 27.04.2017, which was the very document relied upon in rejecting the petitioner's claim for compensation for delay.

23.15. The significance of the subsequent official material is therefore fundamental. The petitioner contends that the authority which is said to have issued the occupancy certificate does not have any such certificate in its records. The Inspection Report and the subsequent official reply are stated to support that contention. If the petitioner's assertion is ultimately established, the very foundation upon which the learned Arbitrator rejected the claim would require reconsideration.

23.16. The connection between the documents and the ground under Clause (b) of Sub-section (2) of Section 34 is consequently direct and substantial. The documents are relied upon not merely to seek a fresh appreciation of the evidence relating to delay but to establish a circumstance which, according to the petitioner, goes to the validity of the very document upon which the arbitral finding rests and thereby to the allegation that the award was induced or affected by fraud.

23.17. The documents also satisfy the requirement of subsequent availability. The Inspection Report is dated 15.05.2023 and the reply enclosing it is dated 07.12.2023. These documents plainly could not have formed part of the arbitral record at the relevant stage. Their subsequent emergence is not attributable to any failure on the part of the petitioner to produce material that was already before him during the arbitral proceedings.

23.18. The earlier reply dated 14.02.2022 stands on a somewhat different footing, since it was available before the Section 34 petition was filed. That circumstance, however, does not destroy the exceptional character of the case when the two documents are considered together. The petitioner's explanation is that the earlier reply did not by itself provide complete verification and that the subsequent inspection and report were necessary to ascertain the position from the official records of the concerned authority. Whether that explanation is ultimately sufficient is a matter which can be examined by the Section 34 Court. It does not justify excluding the material altogether, particularly when the subsequent official material has a direct bearing on the authenticity of the document relied upon in the award.

23.19. The requirements of relevance, causative connection and subsequent availability are thus satisfied. The material is sufficiently proximate to the ground under Clause (b) of Sub-section (2) of Section 34 and sufficiently significant to warrant its reception.

23.20. The objections raised by the first respondent do not justify rejection of the application, the objection regarding delay does not justify exclusion of the documents. The petitioner has furnished an explanation which cannot be said to be inherently untenable. The second and more significant set of material was obtained only on 07.12.2023, following the inspection conducted on 15.05.2023. The explanation that the earlier reply required further verification cannot be rejected at the threshold.

23.21. Similarly, the fact that the Right to Information application was submitted by Mr. Nandakumar does not render the official replies incapable of consideration. The petitioner has stated that the application was made through his agent. More importantly, the material now relied upon consists of official communications emanating from the concerned authorities. The identity of the person who submitted the application may be relevant while assessing the evidentiary value of the documents, but it is not a ground for refusing to take them on record.

23.22. The contention that the petitioner himself referred to the occupancy certificate before the learned Arbitrator also does not conclude the matter. The petitioner has explained that the reference was made in the context of the area covered by the certificate and that its genuineness was not admitted. Whether the petitioner's earlier conduct amounts to an admission or constitutes approbation and reprobation can be considered after the documents are brought on record. It cannot be used to prevent the very material which is relied upon to challenge the authenticity of the certificate from being considered.

23.23. Likewise, the submission that the first respondent did not fabricate the certificate does not answer the issue which arises. The petitioner's case is that the certificate was not issued by the authority which it purports to represent. Whether the first respondent was responsible for fabrication, whether there was knowledge or concealment, and whether such conduct affected the making of the award are questions on the merits of the fraud ground. They cannot furnish a reason to exclude the documents which are directly relied upon to raise that ground.

23.24. The first respondent will, of course, be entitled to contest the documents, their authenticity, their evidentiary value and the conclusions sought to be drawn from them. Taking the documents on record does not amount to accepting the allegations contained therein as proved.

23.25. The objection regarding the absence of an affidavit in support of I.A. No.2 of 2024 is also without substance.

23.26. Rule 18 of the Karnataka Civil Rules of Practice, 1967 as extracted in the submissions, makes provision for the manner in which facts relied upon in interlocutory applications are to be stated. The proviso to sub-rule (2) dispenses with an affidavit in interlocutory applications seeking relief other than the categories specifically referred to therein, and permits a memorandum of facts signed by the pleader.

23.27. An application seeking permission to produce documents does not fall within the categories for which an affidavit is mandatory. Consequently, the absence of an affidavit could not constitute a valid ground for rejecting I.A. No.2 of 2024.

23.28. The rejection of the application on that ground, therefore, also proceeds on an erroneous understanding of the applicable procedural rule.

23.29. The above discussion brings the matter to the central question under Point No.(v). The Section 34 Court rejected I.A. No.2 of 2024 on the footing that the documents sought to be produced were outside the arbitral record and, therefore, could not be considered after the 2019 amendment. That reasoning cannot be sustained.

23.30. The legal position determined under Points Nos.(i) to (iii) makes it clear that the 2019 amendment did not impose an absolute record-based prohibition upon Clause (b) of Sub-section (2) of Section 34. The restriction introduced by the amendment was directed to Clause (a). Clause (b) remained separately worded. The Hon'ble Supreme Court in ***Alpine Housing*** (paragraphs 15 and 16) has also recognised the possibility of receiving additional evidence in an exceptional case under Clause (b).

23.31. The petitioner's case was specifically founded upon fraud under Clause (b). The documents sought to be produced were directly relevant to that ground. The subsequent official material could not have formed part of the arbitral record. The petitioner had thus placed before the Section 34 Court material which required consideration under the correct legal test.

23.32. Instead of undertaking that exercise, the Section 34 Court treated the absence of the documents from the arbitral record as an absolute bar. In doing so, it did not consider the relevance of the documents, their connection with the occupancy certificate, the subsequent date on which the material came into existence or was obtained, the allegation of fraud, or whether the facts constituted the exceptional circumstance recognised in law.

23.33. The Section 34 Court, therefore, did not merely reach an erroneous conclusion after exercising a discretion vested in it. It declined to exercise the jurisdiction vested in it on the basis of an erroneous understanding that such jurisdiction did not exist.

23.34. The error is consequently one going to jurisdiction. The Section 34 Court applied to a case falling under Clause (b), a restriction which the Legislature had expressly introduced only in Clause (a). In doing so, it treated the 2019 amendment as an absolute prohibition against receiving any material outside the arbitral record. That interpretation is contrary to the statutory scheme and to the law declared by the Hon'ble Supreme Court in ***Alpine Housing*** (paragraphs 15, 16 and 20). This constitutes a jurisdictional error, because the Court declined to exercise a power which it possessed under Section 34(2)(b).

23.35. It also constitutes patent illegality, because the rejection of the application rests upon an erroneous interpretation of the statutory provision and results in a restriction being imposed upon Clause (b) which the Legislature did not enact.

23.36. The order is also perverse in its approach, inasmuch as the Section 34 Court failed to consider material circumstances which were directly relevant to the question before it. The

Court proceeded on the assumption that the documents could never be received because they were outside the arbitral record and, on that assumption, did not examine whether the present case constituted the exceptional circumstance recognised under Clause (b). The failure to consider the relevant statutory distinction and the material circumstances bearing upon the application renders the conclusion unsustainable.

23.37. The submission of Sri.Nishanth.A.V., learned counsel for respondent No.1 that the order represents a possible or plausible view and that this Court should not interfere under Article 227 cannot, therefore, be accepted. This is not a case where the Section 34 Court considered the correct legal test, evaluated the relevant circumstances and arrived at a conclusion with which this Court merely disagrees. The Section 34 Court applied the wrong legal test at the threshold and, as a consequence, failed to exercise the jurisdiction vested in it.

23.38. The caution that Article 227 jurisdiction is supervisory and must be exercised sparingly is undoubtedly well settled. This Court does not sit as an appellate Court over every order passed by a subordinate Court. However, that principle cannot be invoked to sustain an order which proceeds upon a fundamental misconception of the jurisdiction available to the Section 34 Court.

23.39. In ***Shalini Shyam Shetty v. Rajendra Shankar Patil***, [(2010) 8 SCC 329] (paragraph 49), the Hon'ble Supreme Court, while delineating the scope of supervisory jurisdiction, recognised that interference is permissible where a subordinate Court has failed to exercise a jurisdiction which it does possess. The present case falls within that principle.

23.40. Interference in the present case does not amount to appellate reappreciation of the arbitral dispute. This Court is not deciding whether the occupancy certificate was in fact fabricated, whether fraud has ultimately been established, or what effect the documents should have upon the arbitral award. This Court is correcting the legally erroneous refusal to receive material which, on the facts of the case, satisfies the exceptional threshold under Section 34(2)(b).

23.41. Once that threshold is crossed, the documents cannot be kept outside the record merely because they were not part of the arbitral record. To do so would give the record-based restriction applicable to Clause (a) an operation which the Legislature has not given it in Clause (b).

23.42. In the facts of the present case, this Court is satisfied that the petitioner has made out an exceptional case warranting reception of the additional documents.

23.43. The documents are directly connected with the occupancy certificate which formed the foundation of the adverse finding on the petitioner's claim for delay compensation. The subsequent official material raises a specific and substantial question regarding the existence and authenticity of that certificate. The later documents came into existence only after the arbitral proceedings and could not, therefore, have formed part of the arbitral record. The material has a direct nexus with the ground of fraud under Section 34(2)(b).

23.44. The objections raised by the first respondent may go to the weight, authenticity and ultimate effect of the documents, but they do not justify their exclusion from the record. Those objections remain open to the first respondent in the Section 34 proceedings.

23.45. The Section 34 Court, by rejecting the application solely on the ground that the documents were outside the arbitral record, committed a jurisdictional error, patent illegality and perversity. The impugned order, to that extent, cannot be sustained.

23.46. Accordingly, the order rejecting I.A. No.2 of 2024 is liable to be set aside. Since the material placed before this Court satisfies the exceptional threshold and since the rejection of the application proceeded upon an erroneous legal premise, no useful purpose would be served by remitting the application to the Section 34 Court for a fresh decision on the same question.

23.47. Accordingly, this Court answers point No.(iv) by holding that the petitioner has made out an exceptional case warranting reception of the additional documents sought to be produced through I.A. No.2 of 2024, having regard to their nature, their subsequent availability, their direct nexus with the occupancy certificate relied upon in the arbitral award, and their relevance to the ground under Section 34(2)(b).

23.48. This Court answers point No.(v) by holding that the Section 34 Court committed a jurisdictional error, patent illegality and perversity in rejecting I.A. No.2 of 2024 on the premise that the additional documents did not form part of the arbitral record. The Section 34 Court failed to appreciate the distinction between Clauses (a) and (b) of Sub-section (2) of Section 34, applied the record-based restriction applicable to Clause (a) to the fraud ground under Clause (b), and consequently failed to exercise the jurisdiction vested in it to consider the exceptional case pleaded by the petitioner.

23.49. This Court answers point No.(vi) by holding that the impugned order calls for interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

23.50. Consequently, the impugned order rejecting I.A. No.2 of 2024 is required to be set aside to that extent. I.A. No.2 of 2024 is also required to be allowed. The additional documents produced along with the application would have to be taken on record in the proceedings under Section 34.

23.51. It is clarified that taking the documents on record does not amount to a finding that their contents are proved, that the occupancy certificate dated 27.04.2017 is fraudulent or invalid, or that the award was in fact induced or affected by fraud. The first respondent shall be entitled to contest the authenticity, admissibility, relevance and evidentiary value of the documents before the Section 34 Court. The Section 34 Court shall consider the documents along with the objections of the parties and determine their effect in accordance with law.

23.52. The present order is confined to the question of reception of the additional documents. No opinion is expressed on the ultimate merits of the ground of fraud or on the effect which the documents may have upon the validity of the arbitral award.

24. **<u>Answer to Point No.(vii):</u> What order?**

24.1. In view of all the above reasons and the answers to the above points, this Court passes the following:

ORDER

i. The writ petition is ***allowed in part***.

ii. The impugned order dated 16.09.2025 passed by the learned XV Additional City Civil and Sessions Judge (CCH-3), City Civil and Sessions Court, Bengaluru, on I.A. No.2 of 2024 in A.P. No.182/2022, is **set aside**.

iii. Consequently, **I.A. No.2 of 2024 is allowed**.

iv. The additional documents produced along with I.A. No.2 of 2024 shall **be taken on record in A.P. No.182/2022**.

v. Taking the documents on record shall not amount to an expression of opinion by this Court that the contents of the documents stand proved, that the occupancy certificate dated 27.04.2017 was fabricated or was not issued by the concerned authority, or that the arbitral award was in fact induced or affected by fraud. The first respondent shall be at liberty to raise all objections available in law regarding the authenticity, admissibility, relevance and evidentiary value of the documents and the allegations founded upon them.

vi. The Section 34 Court shall consider the documents so taken on record, together with the objections of the parties and the other material forming part of the proceedings, and shall determine the effect, if any, of the documents upon the grounds raised in A.P. No.182/2022, strictly in accordance with law. The observations contained in this order shall not be understood as findings on the ultimate merits of the allegation of fraud or on the effect of the documents upon the arbitral award.

vii. The first respondent shall be entitled, in accordance with law, to file its objections to the documents and to seek such further opportunity to place contrary material or otherwise meet the documents as may be permissible in law, including the safeguards recognised by the Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal,*** [(2023) 19 SCC 629].

viii. In view of the fact that I.A. No.2 of 2024 has itself been allowed by this Court, the prayer seeking a direction to the Section 34 Court merely to reconsider the application does not survive for separate consideration. To that extent, the relief sought in prayer (b) stands **granted**.

ix. The Section 34 Court shall proceed with A.P. No.182/2022 in accordance with law and shall endeavour to dispose of the proceedings as expeditiously as possible, keeping in view the time-frame contemplated under Section 34(6) of the Arbitration and Conciliation Act, 1996.

This Court has been assisted by Mr. Sourav, Law Clerk, in reviewing this Judgement.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

SR
List No.: 2 Sl No.: 4