

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMERCIAL APPEAL NO.82 OF 2023

BETWEEN:

SRI C. C. KONDAIAH
CLASS-I CONTRACTOR (PWD AND KUWS AND DB)
S/O LATE CHINNAIAH
AGED ABOUT 72 YEARS
RESIDING AT NO.793
9TH CROSS
VIJAYANAGAR
4TH STAGE, FIRST PHASE
MYSURU-570 017.

...APPELLANT

(BY SRI. VIVEK HOLLA, ADV. A/W
SRI. CHANDRASHEKAR S., ADV.)

AND:

1. MYSORE CITY CORPORATION
SAYYAJI RAO ROAD
MYSURU-570 001
REPRESENTED BY ITS COMMISSIONER
2. SRI R. GURURAJAN
FORMER JUDGE
HIGH COURT OF KARNATAKA
SOLE ARBITRATOR

ARBITRATION AND CONCILIATION CENTRE
 BENGALURU, DOMESTIC AND INTERNATIONAL
 3RD FLOOR
 KHANIJA BHAVAN
 RACECOURSE ROAD
 BANGALORE-560 001

...RESPONDENTS

(BY SRI. HEMANTH P., ADV. FOR
 SMT. GEETHA DEVI M. P., ADV. FOR R1;
 V/O DATED 21.06.2024, R2 IS SOLE ARBITRATOR, HENCE
 NOTICE NOT ISSUED)

THIS COMAP IS FILED UNDER SECTION 13 (1A) OF THE
 COMMERCIAL COURTS ACT, 2015 R/W SECTION 37 (1) (B) OF
 THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO
 SET ASIDE THE ORDER/JUDGEMENT DATED 13.12.2022 PASSED
 IN COM.A.P. NO. 01/2021 BY THE COURT OF THE II ADDITIONAL
 DISTRICT AND SESSIONS JUDGE, MYSURU (ANNEXURE-A) AND
 ALLOW THE SUIT COM.A.P. NO. 01/2021 ON THE FILE OF THE
 COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
 MYSURU FILED UNDER SECTION 34 OF THE ARBITRATION AND
 CONCILIATION ACT, 1996 AND CONSEQUENTLY AND ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND
 RESERVED FOR JUDGMENT ON 28.08.2026 AND COMING ON FOR
 PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN
 J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
 and
 HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This Commercial Appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015 read with Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 challenging the judgment dated 13.12.2022 passed by the II Additional District and Sessions Judge, Mysuru, ('Commercial Court' for short) in Com.A.P.No.01/2021, whereby the Commercial Court rejected the application filed by the appellant herein under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and dismissed the petition filed under Section 34 of the Arbitration and Conciliation Act and confirmed the Arbitral Award dated 08.08.2019.

2. We have heard Shri. Vivek Holla, learned counsel appearing for the appellant and Shri. Hemanth. P, learned counsel appearing for respondent No.1.

3. It is contended by the learned counsel appearing for the appellant that respondent No.1 invited tenders on 06.06.2009 for the work of "Improvement of Bund between

Karanji Lake of Zoo to develop Community Park” at Mysuru. The appellant emerged as the successful bidder, pursuant to which, a contract agreement was executed and a work order was issued on 31.08.2009. The original contract value was Rs.3,59,10,615/- and the stipulated period for completion of work was nine months. During the execution of the work, an order of temporary injunction dated 23.03.2010 was passed in O.S.No.509/2010, restraining the continuation of the work. The injunction was vacated on 22.02.2012 pursuant to a compromise entered into between the parties to the suit. Thereafter, the scope of the work was increased and the revised project cost of Rs.4,48,50,000/- was approved by the Government by order dated 13.02.2013. The appellant completed the original, as well as the additional work and submitted its final bill in the year 2014. For disputes having arisen regarding payment of the balance amount and the appellant’s claims towards additional expenditure, idling and escalation costs, the appellant invoked the arbitration clause.

4. The sole Arbitrator, by award dated 08.08.2019 in Arbitration Case No.194/2018, rejected the appellant's claims and imposed costs of Rs.1,00,000/-. The appellant preferred an appeal under Section 34 of the Arbitration and Conciliation Act before the Commercial Court. The Commercial Court held that the scope of interference with an arbitral award under Section 34 of the Arbitration and Conciliation Act is limited and does not permit reappreciation of the evidence or substitution of the Court's view for that of the Arbitrator. On examining the arbitral record, the Commercial Court found that the Arbitrator had considered the claims raised by the appellant and rejected them for want of proof.

5. It was further found from the order sheet of the arbitral proceedings that sufficient opportunity had been afforded to the appellant to present his case and therefore, the Commercial Court rejected the contention that the award had been passed in violation of the principles of natural justice. The Commercial Court also rejected the appellant's application under Order XLI Rule 27 of the Code

of Civil Procedure for production of additional documents, holding that the appellant had failed to establish that, despite due diligence, the documents could not have been produced before the Arbitrator and that additional evidence could not be permitted merely to fill the lacunae in the appellant's case. It was held that the appellant had failed to establish any ground under Sections 34(2) or 34(2-A) of the Arbitration and Conciliation Act and that the award was neither contrary to public policy nor vitiated by patent illegality. Accordingly, by judgment dated 13.12.2022, the Commercial Court dismissed Com.A.P.No.01/2021 and confirmed the arbitral award dated 08.08.2019.

6. The learned counsel appearing for the appellant contends that the award is contrary to the terms of the contract and the evidence on record and is vitiated by patent illegality and perversity. It is submitted that the work remained stalled for nearly 23 months owing to the interim order passed in O.S.No.509/2010 and that the consequent delay and idling charges towards labour, machinery and materials were attributable to respondent No.1. Following

the compromise in the said suit, the scope of work was enlarged and the appellant executed additional work on the assurance that the revised expenditure would be paid. Though the original contract value was Rs.3,59,10,615/- and the Government, by order dated 13.02.2013, approved an enhanced project cost of Rs.4,48,50,000/-, the appellant claims to have incurred Rs.5,43,87,477/-, against which only Rs.4,06,60,790/- was paid, leaving a balance of Rs.1,37,26,687/-. It is contended that the learned Arbitrator erroneously relied upon Clause 40 of the contract to reject the claim for price variation without considering the prolonged interruption and enlargement of the scope of work and disregarded the Government Order as well as the admissions of RW-1 regarding the amount paid and the satisfactory completion of the work.

7. It is further contended that the learned Arbitrator rejected the application for appointment of a Commissioner to inspect the worksite and proceeded to pass the award, without affording sufficient opportunity of hearing and without awaiting the outcome of the proceedings instituted

by the appellant challenging the rejection of the application for appointment of a Commissioner, in violation of the principles of natural justice. It is further contended that the Commercial Court has erroneously treated the limited scope of interference under Section 34 of the Arbitration and Conciliation Act, as an absolute bar to interference, despite the award suffering from perversity and patent illegality and wrongly rejected the application for production of additional documents, which were material to establish the delay, enlargement of the scope of work and the resultant financial loss. It is also contended that the imposition of costs of Rs.1,00,000/- by the Arbitrator is unsupported by reasons.

8. The learned counsel appearing for the appellant has relied on the decision of the Apex Court in the case of ***Sepco Electric Power Construction Corporation v. GMR Kamalanga Energy Limited*** reported in ***(2026) 2 SCC 542***.

9. The learned counsel appearing for respondent No.1 submits that the revised contract value of Rs.4,48,50,000/- had been fixed after taking into account

the site conditions and the additional work and therefore, the appellant's further claim towards variation and additional work is untenable. It is contended that the temporary injunction in O.S.No.509/2010 was confined to a limited portion of the project site and did not prevent the appellant from continuing the remaining work, which was in fact carried out and paid for. Out of the revised contract value, Rs.4,06,60,790/- had already been paid; the remaining admissible amount could be claimed only upon production of the documents prescribed under the Government order and the agreement. It is further submitted that the Arbitrator considered all the claims and the evidence on record and passed a reasoned award after affording sufficient opportunity to the appellant.

10. Having considered the contentions advanced, we notice that the claimant had filed an affidavit in lieu of examination-in-chief and marked Exhibits C1 to C9 by consent before the learned Arbitrator. Exhibits C10 to C13 were also marked in the course of examination-in-chief. The claimant was cross-examined at length. He admitted that

the cost of work was enhanced by the Government for the additional value of work and states that he employed 50 employees but the details could not be produced. The Junior Engineer was examined as RW-1 and Exhibits R1 to R11 were marked. She stated that the suit was filed in respect of the road in front of Shree Anjaneyaswamy Temple and that the same was compromised by construction of a ramp. She stated that the Government revised the contract work to Rs.448.50 lakhs and she contended that Rs.4,06,60,790/- was paid.

11. Thereafter, it is stated that on the basis of a letter written by the Commissioner, the Government admitted a revision in the contract price and the revised price took into account the enhancement in the work as well. The Sole Arbitrator specifically records in the Award that despite several opportunities, the claimant did not address arguments before the Tribunal. In the circumstances, the arguments of the opposite party were considered and findings were recorded on each of the issues framed. It was the claimant's case before the Tribunal that the scope of the

work had been revised to Rs.5,43,87,477/-. However, it was found that no evidence had been produced before the Tribunal to show that the value of the work had been revised from Rs.4,48,50,000/- to Rs.5,43,87,477/-. It was further found that there is no document to support the claim of price variation in the pleading or in the agreement between the parties.

12. It was found that clause 40 of Exhibit C13 does not provide for price variation for a contract below twelve months. Further, the details of the orders passed in O.S.No.509/2010 was specifically taken note of by the Arbitral Tribunal and it was found that the injunction passed by the Civil Court did not prevent the execution or completion of the work. Further, with regard to the loss claimed to have been suffered also, it was found that the claimant did not place any material to prove the said loss. On the basis of the evidence placed on record and the pleadings and arguments, it was found that the claim was not liable to be allowed and it was rejected with costs. However, it was observed that the rejection of the claim will

not stand in the way of the claimant receiving an amount of Rs.2,74,586/- for which, the bill has been raised.

13. The appellant filed an application under Section 34 of the Arbitration and Conciliation Act specifically contending that the appellant had not been given a proper opportunity to place its arguments before the learned arbitrator. It is contended that though price variation is not available in a contract below twelve months, since the work was stalled for almost twenty three months by virtue of interim order granted in O.S.No.509/2010, the rejection of the claim for price variation on account of clause 40 of Annexure 'C' was unjustified. Further, it was contended that an application was filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence by producing a list of documents. It is stated that the application was rejected and the case was posted for arguments by the learned arbitrator. In spite of an application having been filed before the City Civil Judge, Bengaluru seeking extension of time for passing the award and despite the time having been extended, the learned

arbitrator had passed the impugned award on 08.08.2019. The Section 34 Court also considered the contentions raised and found that the contract entered into between the parties was signed on 31.08.2009 and the work was to have been completed within a period of nine months. Therefore, the price escalation was not applicable to the contract. It was further found that, though it was contended by the claimant that the total value of work had gone up to Rs.5,43,87,477/-, no material was placed on record before the learned arbitrator to support such a contention.

14. With regard to the claim of damages as well, it was found that the sole arbitrator had specifically considered the pleadings and the materials on record and had come to the conclusion that such claim was not liable to be allowed. It was further found that the learned arbitrator had granted all possible opportunity to the claimant to adduce evidence, however, the claimant did not place any evidence on record to support the contentions raised before the Tribunal. Further, it was found that adequate opportunity had been given to the claimant to state their case and a refusal on the

part of the claimant to place arguments before the Tribunal could not be attributed as a patent illegality in passing of the award.

15. We also notice that the grounds raised by the appellant to challenge the order of the Commercial Court are essentially those falling within the realm of findings of fact. The learned Sole Arbitrator had considered the contentions of the parties and had rendered finding on such contentions. It is trite law that reappriciation of the evidence or a substitution of opinion or reasoning is not warranted in an appeal under Section 37 of the Arbitration and Conciliation Act.

16. The scope of interference in an appeal under Section 37 of the Arbitration and Conciliation Act, is well settled. In ***MMTC Limited v. Vedanta Limited*** reported in ***(2019) 4 SCC 163***, the Apex Court held that interference under Section 37 cannot travel beyond the restrictions imposed by Section 34 and that the appellate Court cannot undertake an independent assessment of the merits of the award. In ***UHL Power Company Limited. v. State of***

Himachal Pradesh reported in **(2022) 4 SCC 116**, the Apex Court held that the jurisdiction of the appellate Court under Section 37 is even more circumscribed than that under Section 34.

17. In **Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking** reported in **(2023) 9 SCC 85**, the Apex Court reiterated that proceedings under Sections 34 and 37 do not involve the exercise of ordinary appellate jurisdiction and that the mere possibility of another view on the facts or interpretation of the contract does not warrant interference. In **Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others** reported in **2024 SCC OnLine SC 2632**, the Apex Court held that the Section 37 Court cannot reconsider the dispute on merits or reappreciate the evidence and may interfere only where the Section 34 Court has exceeded or failed to exercise the jurisdiction vested in it.

18. Therefore, once the Commercial Court, upon examining the arbitral record, has found that sufficient

opportunity was afforded to the appellant to present his case and that no ground under Section 34 of the Arbitration and Conciliation Act was made out, interference in an appeal under Section 37 of the Arbitration and Conciliation Act is unwarranted, unless the said findings are shown to be perverse or contrary to the record.

19. In the instant case, we find no such sustainable grounds raised warranting interference under Section 37 of the Arbitration and Conciliation Act. The appeal fails and the same is accordingly ***dismissed***.

All pending interlocutory applications shall stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

cp*