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DELHI HIGH COURT ON LIMITED SCOPE OF SECTION 34 APPEAL

A. Introduction

The High Court of Delhi (“**DB-HC**”) in *Raghnath Builders Pvt. Ltd.* case,¹ held on November 8, 2023, that under Section 34² of the Arbitration and Conciliation Act, 1996 (the “**Act**”) it was not within the scope of the Single Judge (“**SJ**”) to reinterpret the parties’ contract and substitute the finding of the Arbitrator’s despite it being un-reasoned.

B. Facts

1. Ananth Raj Limited (“**ARL**”) entered into a development agreement of owned by Raghnath Builders Pvt Ltd. (“**RBPL**”).
2. Per RBPL, ARL failed to obtain necessary sanctions in time to commence work. As such, RBPL revoked the Special Power of Attorney and General Power of Attorney (“**POAs**”) executed in favour of ARL’s representatives.
3. Aggrieved by this revocation, ARL initiated arbitration proceedings. In response, RBPL terminated the contract. ARL filed Section 11³ petition for appointment of arbitrator, which was allowed. Arbitrator awarded in favour of RBPL.
4. ARL filed objections under Section 34 of the Act. The SJ allowed the objections under Section 34 and Arbitral Award was set aside.
5. RBPL challenged the order in appeal before the DB. It contended that the SJ went beyond the scope of Section 34 by re- appreciating merits. Two issues arose *i.e.*, whether POA’s were revocable and whether the contract was validly terminated.

C. DB HC’s Judgment & Reasoning:

The DB-HC:

1. Held that scope of a challenge under Sections 34 and 37 of the Act is limited to the grounds stipulated in Section 34 as held in *MMTC Limited*.⁴
2. Relied on the Supreme Court (**SC**)’s thorough analysis of the judicial literature regarding the extent of interference under Section 34 based on public policy in *Associate Builders*⁵ where it was held that that: “[W]hen a decision is made to set aside an award on the basis of “public policy,” the term “justice” simply

¹*Raghnath Builders Pvt Ltd vs. Anant Raj Limited*, (2023) SCC OnLine Del 7202.

² Section 34: Application for setting aside arbitral award.

³ Section 11: Appointment of Arbitrator.

⁴ *MMTC Limited vs. Vedanta Ltd.*(2019)4 SCC 163.

⁵ *Associate Builders vs. DDA*, (2015) 3 SCC 49.

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refers to an award that shocks the conscience of the court. A court cannot possibly include what it determines to be unfair, given the circumstances of a case, by replacing the Arbitrator's decision with what it sees as "just."

3. Referred to *Ssangyong Engineering and Construction Co. Ltd.* decision⁶ and said: "...a change that has been brought in by the Amendment Act, 2015 is that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short that the arbitrator's view is not even a possible view to take."⁷
4. Opined that if the arbitrator "wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction" and that would fall within the new ground of patent illegality added to Section 34 (2⁸)(a).
5. Further noted that: "[I]nterpretation of contract is a matter for the arbitrator to determine, even it gives rise to determination of a question of law."⁹
6. Noted that grounds under Section 34 of the Act are limited and not equivalent to an appeal.
7. Allowed the appeal and set aside the SJ order and restored the arbitral award.

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⁶ *Ssangyong Engineering and Construction Co. Ltd. vs. NHAI*, (2019)15 SCC 131

⁷ Para 40 of the Judgment.

⁸ Provides for grounds on which an arbitral award may be set aside.

⁹ Para 47 of the Judgment.

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