$~32

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

\+ LPA 315/2025 & CM APPL. 29498/2025

RAMCHANDER ...Appellant

Through: Mr. Anil Goel, Mr. Aditya Goel and Ms. Pranjal Sharma, Advocates. (Through VC).

versus

UNION OF INDIA & ANR. ...Respondents

Through: Mr. Om Prakash, SPC, Mr. Chandresh Pratap, Ms. Swati Mishra and Mr. Nitish Pande, Advocates.

Date of Decision: 15th May, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

1. Present Letters Patent Appeal has been filed assailing the judgement dated 11.03.2025 passed by the learned Single Judge dismissing the writ petition bearing W.P.(C) 2839/2020 filed by the appellant and further seeking direction to the respondents to refund the amount of Rs.5,54,079/- along with interest @ 18% per annum from the date of payment of the said extra amount till realization in full, to the appellant, along with exemplary costs.

2. The appellant entered into a Lease Agreement with the Railways on 09.06.2008, for leasing parcel space in brake vans in Train No.2280-R Ex.

HNZM to JHS, for a period of three years with a clause for extension of lease by a further period of two years. The lease rate was Rs.5,114/- per day. Clause 18.1 of the Agreement provided for extension of the lease by two years at a lease rate of 25% more than the lump sum lease freight rate.

3. The case of the appellant is that on 17.01.2011, he sent a request for extension of lease period for two years and offered to pay 25% extra freight i.e. Rs.6,392.50/- however, the Railways did not extend the Lease Agreement despite several reminders which constrained the appellant to file a petition bearing OMP No.246/2011 under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as *'1996 Act'*). *Vide* order dated 04.08.2011, the said petition was allowed by the learned Single Judge of this Court and the appellant was permitted to operate the lease for two years at an enhanced lease rate of 25% plus 2% development charge, subject to the appellant invoking the arbitration agreement within six weeks, which the appellant did on 10.08.2011 and the Railways appointed a sole Arbitrator. The appellant filed the Statement of Claim seeking refund of Rs.5,54,079/- along with pre-reference, post-reference and *pendente lite* interest @ 18% per annum. The case of the appellant before the learned Arbitrator was that the Railways had received this amount as excess payment being over and above the enhanced lease rate of 25%. However, the learned Sole Arbitrator passed the Award on 26.05.2015, rejecting the claim of the appellant for refund of Rs.5,54,079/-.

4. The said Arbitral Award was challenged before the learned Single Judge of this Court by filing a petition under Section 34 of the 1996 Act, bearing OMP (COMM) 5/2015 titled '*Ramchander vs. Union of India &*

Another'. Vide judgement dated 28.08.2017, the Award dated 26.05.2015 was set aside holding that it was passed in ignorance of the judgment of this Court in OMP No.754/2010 dated 04.08.2011, as also other judgments, directing renewal of lease under similar facts at an enhanced rate of 25% and thus suffered from patent illegality.

5. The appellant thereafter filed an application being IA No.4321/2018 under Sections 152 and 151 of the CPC, 1908 for rectification/clarification of the judgment dated 28.08.2017 on the ground that he had also sought a direction for refund of Rs.5,54,079/- with interest, however, there was no such direction for refund, which was a clerical/typographical mistake apparent on the face of the record arising out of an accidental slip and omission by the Court. However, the said application was dismissed *vide* order dated 11.07.2019, holding that as the award had been set aside, necessary consequences would follow as per law and it was not for the Court to give directions and to accept the claims of the appellant. It was also observed that the appellant was free to take steps as per law. Aggrieved thereof, the appellant had preferred an appeal bearing FAO(OS)(COMM) No.359/2019 under Section 37 of the 1996 Act, however, the Court declined to condone the delay of 621 days in filing the appeal as no sufficient cause was shown and consequently, the appeal was dismissed *vide* order dated 13.12.2019. Thereafter, the appellant preferred the underlying writ petition seeking refund of the excess amount paid, which was however dismissed by the learned Single Judge *vide* impugned order dated 11.03.2025. Aggrieved thereof, the present appeal has been filed.

6. Mr. Goel, learned counsel for the appellant at the outset submits that

vide judgment dated 28.08.2017 passed in OMP (COMM) 5/2015, this Court allowed the petition under Section 34 of the 1996 Act and set aside the award of the learned Arbitrator whereby the appellant's claim for refund of Rs.5,54,079/- was rejected. The said judgment was not challenged by the Railways and attained finality. Thus, the respondent/Railways was bound to refund the amount and on their failure to do so, the appellant had no other remedy but to file the underlying writ petition which has been erroneously dismissed by the learned Single Judge *vide* the impugned order.

7. Learned counsel submits that the learned Single Judge has overlooked the judgments rendered by the Hon'ble Supreme Court particularly in ***Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private Limited: (2021) 7 SCC 657,*** wherein the Hon'ble Apex Court had observed that in law where the Court sets aside award passed by the majority members of the arbitral tribunal, the underlying dispute would be required to be decided afresh in an appropriate proceedings. On that basis, he states that the filing of the underlying writ petition cannot be said to be not maintainable. He asserts that learned Single Judge has committed an error in law and the matter be remanded back for adjudication on merits. He emphasizes that it is not disputed by the respondent-Railways that the appellant had made excess payment to it and was thus entitled to refund of the same with appropriate interest.

8. Learned counsel also contends that the petition under Section 34 of the 1996 Act preferred by the appellant was allowed by this Court setting aside the rejection of its claim by the sole arbitrator and had recorded extensive findings of fact which ought to be read in favour of the appellant. According

to him, once such findings of fact have been recorded in favour of appellant, it was incumbent upon the respondent-Railways to refund the excess amount. To that extent, he contends that appellant need not have initiated any appropriate proceedings.

9. Learned counsel also relies upon the judgment passed by a Coordinate Bench of this Court in ***Union of India & Ors. vs. Aurangzeb Choudhary & Anr., LPA 51/2013*** decided on 19.09.2014, to submit that some of the contractors who are similarly situated were, in fact, granted refund by the respondent-Railways. In that context, he contends that the appellant too is similarly situated and notwithstanding the fact that the appellant has invoked the arbitration proceedings under the 1996 Act, the appellant cannot be prevented or precluded from exercising its right of refund by means of filing a writ petition before this Court. In his opinion, in ***Dakshin Haryana Bijli Vitran Nigam Limited*** *(supra),* the Supreme Court, in similar circumstances, had permitted the affected party to get its dispute resolved afresh in appropriate proceedings. According to learned counsel the underlying writ petition would tantamount to "*appropriate proceedings*" as postulated by the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Limited*** *(supra).*

10. It is further contended that Railways have, *vide* their letter dated 10.10.2011, confirmed to have received the said amount in excess from the appellant. Learned counsel also states that the respondent-Railways being the State under Article 12 of the Constitution of India cannot unjustly enrich itself at the cost and prejudice of the appellant. In that context, learned counsel relies upon the judgment in ***Urban Improvement Trust, Bikaner vs. Mohan Lal, 2010 (1) SCC 512*** passed by the Supreme Court and ***Virender Sharma***

vs. Director, Enforcement Directorate, LPA No.27/2012 decided on 13.01.2012, passed by a Coordinate Bench of this Court.

11. Having heard learned counsel for the appellant, perusing the impugned judgement and examining the records of the case, we are unable to accede to the submissions addressed on behalf of the appellant.

12. It is not disputed that the excess amount paid by the appellant to the respondent is acknowledged by the respondent-Railways and on non-payment thereof, the appellant had invoked the arbitration clause in the contract executed between the parties. It is also not disputed that the sole Arbitrator had not agreed with the submissions of the appellant and had rejected the claim of refund of Rs.5,54,079/- with interest. The Arbitral Award dated 26.05.2015 was challenged under Section 34 of the 1996 Act. *Vide* judgment dated 28.08.2017, learned Single Judge had set aside the Arbitral Award holding that the said award was passed in ignorance of the judgment of another learned Single Judge in OMP No.754/2010 dated 04.08.2011 and observed that the said award suffered from patent illegality.

13. The appellant appears to have filed an application under Sections 151 and 152 of CPC, 1908 seeking rectification/clarification of the judgment dated 28.07.2017, seeking direction for refund of Rs.5,54,079/- with interest. The said application was dismissed on 11.07.2019 by this Court holding that no directions to that extent could be passed and necessary consequences ought to follow as per law once the Arbitral Award was set aside in the judgment dated 28.07.2017.

14. Instead of invoking appropriate proceedings, the appellant preferred an appeal under Section 37 of the 1996 Act. However, a Coordinate Bench of this

Court declined to condone the delay of 621 days in filing the appeal and dismissed the application seeking condonation of delay and consequently, the appeal itself *vide* order dated 13.12.2019.

15. After such dismissal of the aforesaid appeal, the appellant filed the underlying writ petition on the premise that the ratio laid down by the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd***. *(supra)*, granted him such opportunity.

16. We find from the perusal of the impugned judgment that the learned Single Judge has examined the judgments relied upon by the appellant as also the respondent in ***Bhaven Construction through Authorized Signatory Premjibhai K. Shah vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr., (2022) 1 SCC 75, Nivedita Sharma vs. Cellular Operators Association of India & Ors., (2011) 14 SCC 337, Dakshin Haryana Bijli Vitran Nigam Ltd***. *(supra)* including ***Deep Industries Ltd. vs. Oil and Natural Gas Corporation Ltd. & Anr***., **2020 (15) SCC 706** to conclude that though the jurisdiction of the High Court under Article 226 cannot be ousted as it is an inviolable part of the Constitution of India, yet, it would not be prudent to exercise such discretion when the remedy lies in a statutory regime. In order to reach such conclusion, learned Single Judge has relied upon the judgment of ***Bhaven Construction*** *(supra)*. In para 17 of the impugned judgment, learned Single Judge has also considered the ratio laid down by the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd***. *(supra)* and concluded that the ratio laid down therein does not enure to the benefit of the appellant. In fact, it was held that the expression *"appropriate proceedings"* would mean proceedings under the arbitration regime and could

not mean or connote a writ petition under Article 226 of the Constitution of India.

17. We have no reason to disagree with the well considered opinion rendered by the learned Single Judge, nor do the submissions addressed by the learned counsel for the appellant appeal to us to take a divergent view.

18. Having regard to the fact that the appellant had consciously elected to undertake the remedial/redressal mechanism provided under the 1996 Act, it was not open to the appellant to switch over tracks midway to the proceedings under Article 226 of the Constitution of India. Undoubtedly, once the Arbitral Award rejecting the claim of the appellant was set aside in proceedings under Section 34 of the 1996 Act, the appellant had no choice other than to look for further redressal under the very same Act. Instead of invoking appropriate proceedings under the 1996 Act, the appellant rather chose to challenge the said order of the learned Single Judge dismissing the application for rectification of the judgement dated 28.07.2017, in an appeal under Section 37 of the 1996 Act. It was only thereafter, that the appellant resorted to seeking refund from the respondent-Railways by way of the underlying writ petition.

19. In our considered opinion, such remedy was not available to the appellant for the reason that, **(i)** the appellant had himself elected to seek refund by way of invoking the arbitration proceedings under the provisions of the 1996 Act; **(ii)** once the learned Single Judge had set aside the Arbitral Award in the proceedings under the 1996 Act, the *"appropriate proceedings"* to be invoked by the appellant necessarily would be circumscribed within the four corners of 1996 Act; **(iii)** the reliance upon the judgment of Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd***. *(supra)* in the context of

"appropriate proceedings" was misplaced inasmuch as such proceedings would be those emanating or provided under the 1996 Act itself; and **(iv)** in case this Court were to agree or accede to the submissions of the appellant, then in every case where the original claimant is dissatisfied with the Arbitral Award or the orders passed in a petition under Section 34 of the 1996 Act, would, instead of undertaking the remedial measures or other *"appropriate proceedings",* switch over to the discretionary reliefs under Article 226 of the Constitution of India, which is impermissible.

20. At this juncture, it would be apposite to extract para 4(xx)(f) of ***Dakshin Haryana Bijli Vitran Nigam Ltd***. *(supra)* hereunder:-

> "*...(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.*
>
> *Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.*
>
> *In McDermott International Inc. vs. Burn Standard Co. Ltd., this Court held as under :*
>
> > *"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."*

It is clear from the above ratio that the *"appropriate proceedings"* are to be necessarily found within the four corners of the 1996 Act. That apart,

the Supreme Court in ***Bhaven Construction*** *(supra)* had cautioned that the exercise of writ jurisdiction by the High Court under Article 226 of the Constitution of India in matters relating to the Arbitration Act, *"must be in exceptional rarity"* and not as a matter of course.

21. Thus, for the reasons stated above, we do not find any grounds to interfere with the detailed and well reasoned judgment of the learned Single Judge. Accordingly, the appeal is dismissed alongwith the pending applications, if any.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 15, 2025*/rl*