



2025:DHC:10244-DB



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

% ***Judgment reserved on: 28.10.2025***

Judgment pronounced on: 21.11.2025

+ **FAO(OS) 28/2025 and CM APPL.12652/2025**

KRISHAN KUMAR & ANR.Appellants

Through: **Mr. Praveen Suri and Ms. Amol Kaur, Advocates.**

versus

M/S SHAKUNTALA AGENCY PVT LTD AND ORS.

.....Respondents

Through: **Nemo.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, under Section 37 of the **Arbitration and Conciliation Act, 1996**¹, has been filed to challenge the **Orders dated 25.07.2024 and 31.01.2025**². The Order dated 25.07.2024 was passed in OMP No. 437/2011, whereby the learned Single Judge dismissed the Petition filed by the Appellants under Section 34 of the A & C Act, assailing the Arbitral Award dated 08.03.2008 passed by the learned **Arbitrator**³. Subsequently, by Order dated 31.01.2025

¹ A&C Act

² Impugned Orders

³ Arbitral Tribunal



passed in Review Petition No. 22/2025 in OMP No. 437/2011, the learned Single Judge dismissed the Review Petition filed by the Appellants.

BRIEF FACTS:

2. Shorn of unnecessary details, the facts germane to the institution of the present appeal are as follows:

- (a) Plots situated in the Village Nangal Dewat, Delhi, were acquired for the development of an International Airport by the Government agencies, including the **Delhi Development Authority**⁴ and Airport Authority of India and in lieu of the acquisition, the DDA had allotted various plots ranging from 250 sq. mtrs. to 350 sq. mtrs. at village Rangpuri, Delhi, to the residents of village Nangal Dewat, Delhi.
- (b) Accordingly, the father of the Appellants and Respondent Nos. 2 and 3, Late Mr. Zile Singh, was allotted a plot measuring 350 sq. mtrs. [plot no. 66] in Vasant Kunj (erstwhile Village Rangpuri), Delhi, as per the allotment policy.
- (c) Respondent No. 1, *M/s Shakuntla Agency Pvt. Ltd.*, through its representative, Sh. Iqbal Singh entered into an Agreement to Sell with Late Sh. Zile Singh, during his lifetime, with respect to the aforesaid plot.
- (d) The said **Agreement to Sell was executed on 26.12.2005**⁵ for a total sale consideration of ₹2,25,00,000/-, out of which ₹15,00,000/- was paid by cheque and ₹60,00,000/- in cash.
- (e) Late Sh. Zile Singh passed away on 22.01.2006, leaving behind the Appellants and Respondents No. 2 and 3 as his legal heirs.

⁴ DDA

⁵ Agreement to Sell



Thereafter, their names were mutated in the records of the DDA in respect of the said property. It is alleged by the Appellants that in the Agreement to Sell, the plot number was originally mentioned as Plot No. 61 and later altered to Plot No. 66, without the counter-signatures of either party.

- (f) It is the case of the Respondent that after the demise of Late Sh. Zile Singh, payments of ₹35,00,000/- on 14.03.2006 and ₹40,00,000/- on 19.09.2006 were made to Appellant No. 1, which were duly acknowledged. Further payments of ₹6,00,000/- each were made by cheques dated 15.02.2007 and 10.03.2007 in favour of Appellant No. 2.
- (g) Upon failure of the Appellants to execute the sale deed, Respondent No. 1 issued a legal notice dated 29.06.2007 invoking the arbitration clause contained in the Agreement to Sell.
- (h) On 16.11.2007, Appellant No. 1 appeared before the learned Arbitral Tribunal. The Appellants, however, did not file any Statement of Defence, lead any evidence or further participate in the arbitral proceedings.
- (i) By the Arbitral Award dated 08.03.2008, the learned Arbitral Tribunal allowed the claim of the Respondent No.1 and directed the Appellants and Respondent Nos. 2 and 3 to execute the sale deed in favour of the Respondent No.1 in respect of the said property.
- (j) Thereafter, the Appellants preferred a Petition under Section 34 of the A&C Act, bearing O.M.P. No. 437/2011, challenging the award dated 08.03.2008. The said Petition came to be dismissed



by the learned Single Judge *vide* Impugned Order dated 25.07.2024.

- (k) The Appellants preferred a Review Petition against the Order dated 25.07.2024, which was also dismissed by the learned Single Judge *vide* Impugned Order 31.01.2025.
- (l) Aggrieved by the afore-noted Impugned Orders of the learned Single Judge, the Appellants have instituted the present Appeal before us.

SUBMISSIONS OF THE APPELLANTS:

3. The arguments of the learned counsel appearing for the Appellants have been mercifully confined to two grounds.

4. The foremost ground urged by learned counsel for the Appellants is premised on an **Allotment Letter dated 07.09.2006⁶**.

5. It is the contention of the learned counsel for the Appellants that the said Allotment Letter contained a negative covenant which prohibited no further sale of the subject property, meaning thereby that if the Arbitral Award and the Impugned Orders were to be given effect to, it would perpetuate a patent illegality insofar as the same would be against the law. He would contend that the presence of a negative covenant would negate the possibility of any transfer of property, rendering the same an illegality. The learned counsel for the Appellants, to buttress this argument, would rely upon the judgment of the Hon'ble Supreme Court in **G.T. Girish v. Y Subba Raju⁷**.

6. At the very outset, it needs to be noted that the said document never formed part of the original arbitral record, and it is on this

⁶ Allotment Letter

⁷ (2022) 12 SCC 321



fundamental premise that the learned Single Judge has held that since the said document did not form part of the record before the learned Arbitral Tribunal, a challenge to the Award on a ground which emanates from such a document which was absent and unable to have been subjected to judicial scrutiny was not permissible.

7. The other ground on which the challenge to the Impugned Order is based relates to the alleged discrepancy in the Plot number referred to in the undated Notice that preceded the Section 21 Notice dated 22.10.2007. It is his contention that since, admittedly, the Notice referred to a plot that, in his opinion, did not exist, the Award as well as the Orders impugned herein, have to be set aside.

ANALYSIS AND FINDING:

8. We have heard the learned Counsel appearing for the Appellants at length and have carefully perused the Impugned Orders, the Arbitral Award, and the entire record of the present Appeal.

9. At the outset, we note that we are conscious of the limited scope of jurisdiction conferred upon this Court while adjudicating a challenge under Section 37 of the A&C Act, and the extent of interference permissible in such an appeal is narrow, as has been consistently laid down by the Hon'ble Supreme Court in a catena of decisions. In a recent judgment, ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***⁸, the Hon'ble Supreme Court summarized the settled position as follows:

“11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally

⁸ 2024 SCC OnLine SC 2632



akin to and limited to the grounds enumerated under Section 34 of the Act.

12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of **Bharat Coking Coal Ltd. v. L.K. Ahuja**, it has been observed as under:

“11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside.”

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In **Dyna Technology Private Limited v. Crompton Greaves Limited**, the court observed as under:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate



jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of **MMTC Limited v. Vedanta Limited**, it has been held as under:

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

18. Recently a three-Judge Bench in **Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking referring to MMTC Limited** (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.



CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. **It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.** Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”

(emphasis supplied)

10. In light of the principles governing the scope and ambit of examination under Section 37 of the A&C Act, we now proceed to consider the first contention raised by the Appellants. It is noted that the Appellants have placed strong reliance on the judgment of the Hon’ble Supreme Court in **G.T. Girish** (*supra*).

11. There is no cavil with the proposition of law laid down in **G.T. Girish** (*supra*). However, it is necessary to note that the said judgment



was rendered in the context of a civil suit, involving a completely distinct factual and procedural background, and not in the context of arbitral proceedings such as the present case. Arbitral proceedings, by their very nature, are fundamentally different from civil suits and are governed by a self-contained procedural framework under the A&C Act, which prescribes specific standards of procedure, scope of evidence, and limits of judicial intervention.

12. The procedural and substantive contours of arbitration are governed exclusively by the self-contained special statute enacted for that purpose, i.e., the A&C Act. That statute is premised on two core policy objectives being expedition in dispute resolution and finality and sanctity of arbitral awards. These objectives form the guardrails of the A&C Act's limited grounds for interference and its restricted scope for admitting fresh evidence at the post-award stage.

13. Unlike the position in ***G.T. Girish*** (*supra*), the present case is materially different. The document which the party now seeks to place reliance upon was never before the original adjudicatory forum, viz, the learned Arbitral Tribunal, at any stage of the arbitral proceedings. That factual distinction assumes critical significance, as the A&C Act does not permit collateral re-litigation of issues which could, and ought to, have been raised before the learned Arbitral Tribunal. Such re-examination is permissible only within narrowly defined and exceptional circumstances expressly recognized under the statute.

14. Where arbitral proceedings are regulated by the A&C Act, the central inquiry on an application under Section 34 is not whether a party can now produce additional material, but whether the material in question was made available to the learned Arbitral Tribunal at the



appropriate stage and, if not, whether there exists a permissible exception to permit its belated introduction.

15. In this connection, the decision of the Hon'ble Supreme Court in ***Alpine Housing Development Corpn. (P) Ltd. v. Ashok S. Dhariwal***⁹ is relevant, which considers the circumstances in which fresh evidence may be admitted at the Section 34 stage and underscores that such admission is permissible only in *extraordinary cases* thereby evidence cannot be permitted to be taken in a routine or mechanical manner merely because a case is claimed to fall within one of the grounds enumerated under Section 34 of the A&C Act. The party claiming must have to demonstrate that the case falls in an *extraordinary case*, and in our considered opinion, the Appellants' case does not fall in that exception. The Hon'ble Supreme Court in ***Alpine Housing Development*** (*supra*) minutely analysed Sub-section(2)(a) & (2)(b) of Section 34 of the A&C Act and held as follows:

“14. The decision of this Court in ***Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd.***, (2009) 17 SCC 796 again fell for consideration of this Court in the subsequent decision in ***Canara Nidhi Ltd. v. M. Shashikala***, (2019) 9 SCC 462. After taking note of the observations made in para 21 in ***Emkay Global Financial Services Ltd. v. Girdhar Sondhi***, (2018) 9 SCC 49, thereafter it is observed by this Court in ***Canara Nidhi Ltd. v. M. Shashikala***, (2019) 9 SCC 462 that the legal position is thus clarified that Section 34 application will not ordinarily require anything beyond the record that was before the arbitration and that cross-examination of persons swearing in to the affidavits should not be allowed *unless absolutely necessary*.

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

⁹ (2023) 19 SCC 629



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 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.

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.”

16. A perusal of the paragraphs of ***Alpine Housing Development*** (*supra*) extracted hereinabove would lead us to conclude that while



there is no absolute prohibition on the adducing of evidence in support of a challenge raised under Section 34 (2)(b) of the A&C Act at the stage of Petition under Section 34 of the A&C Act, however, the same is to be done only in *exceptional circumstances*.

17. It bears note that in the present case, the Appellants had originally participated in the arbitral proceedings but thereafter chose to abstain from the same. The learned Single Judge, in the Impugned Order dated 25.07.2024, clearly recorded the factual position that when the matter was first listed before the learned Arbitral Tribunal on 16.11.2007, the presence of the Appellant No. 1 was duly recorded, and his signature, in English, appears on the order sheet of that date. Accordingly, he was aware of the arbitral proceedings. However, he thereafter failed to file a Statement of Defence, did not attend the subsequent hearings, and did not lead any evidence. The learned Single Judge, in the Impugned Order dated 25.07.2024, concluded that, owing to such conduct, the factual assertions made in the Statement of Claim stood admitted. The relevant portion of the Impugned Order reads as follows:

“4. Mr. Dubey sought to contend that the arbitral proceedings were *ex parte* as the petitioners never got to know of the proceedings and infact came to know of the impugned award only when the respondents filed an execution petition, seeking execution of the award.

5. The submission cannot be accepted. The arbitral record reveals that on 16 November 2007 when the matter was listed before the learned Arbitrator for the first time, Petitioner 1's appearance was not only marked; *his signature in English* also figures on the page. Petitioner 1 does not dispute the fact that the signature in English figuring on the face of the order sheet dated 16 November 2007 is his. Ergo, it is clear that Petitioner 1 had appeared before the learned Arbitral Tribunal on 16 November 2007 and was therefore well aware of the arbitral proceedings. If Petitioner 1 remained absent from the proceedings thereafter, he did so at his own peril.



6. Petitioner 1 not only remained absent; he did not choose to file any Statement of Defence by way of response to the Statement of Claim filed by the respondent, ever participate in the arbitral proceedings after 16 November 2007 or lead any evidence. The result is that all assertions of fact contained in the SOC are deemed to have been admitted by the petitioner.”

18. As is apparent, the Appellants, for reasons best known to them, chose to abstain from the proceedings. The learned Single Judge has taken note of the same, and the Appellants herein have not raised any dispute to the factual finding in respect of the said voluntary abstinence from the arbitral proceedings. Even during the course of the hearing before us, when specific queries were posed on this aspect, learned counsel for the Appellant gave evasive responses.

19. A party, who once enters the forum, becomes aware of the proceedings and then, by its own choice, ceases to participate, cannot be permitted to, on a subsequent occasion, alleging procedural or evidentiary lapses, seek to overturn the consequences of its non-participation. To permit a party to benefit from deliberate non-participation and non-production of any documents would be to reward deliberate and wilful concealment and would subvert fundamental principles of procedural fairness and finality.

20. Having participated initially and then electing not to file pleadings, adduce evidence or otherwise contest the claimant’s case, the Appellants expressed their unambiguous decision to abstain from and not contest the proceedings. The award that followed is therefore the product of proceedings in which the Appellants chose to engage by disassociation and non-contestation.

21. The Appellants’ attempt, at the Section 34 stage, to rely upon a document which they never placed before the learned Arbitral



Tribunal, despite clearly being in possession of the same, must be viewed with strict disfavor. Where a party had the opportunity to produce material before the learned Arbitral Tribunal but elected not to do so, courts must decline to allow that party to agitate on such basis, in post-award proceedings, except in truly exceptional circumstances. Allowing otherwise would permit litigants to withhold documents strategically during arbitration and produce them at a later stage to completely frustrate and bring to nought the entire arbitral proceedings themselves. Such an act, to our mind, also borders on an abuse of the process of the Court.

22. We agree with the learned Single Judge's observation that accepting challenges to Awards on the basis of documents that, though in the possession of the challenging party, were never produced before the learned Arbitral Tribunal would seriously undermine the finality of Arbitral Awards. Such a practice would open a Pandora's box. It would encourage tactical non-production before the learned Arbitral Tribunal and subsequent attacks on awards on material or evidence that was never before the Tribunal. For these reasons, and because the Appellants have not demonstrated any compelling reason, such as impossibility of earlier production despite due diligence or other exceptional circumstances, to justify late production, their belated reliance on the unproduced document cannot be permitted.

23. The public policy exception to the enforcement of arbitral awards is to be construed in a narrow compass and invoked only in rare circumstances. It cannot be used as a convenient pretext by a litigant who, having knowingly entered into an agreement and



admittedly having derived substantial monetary benefits therefrom, despite being fully aware of any alleged legal prohibition, later elects to participate in the arbitral proceedings, after electing not to set up a defence before the learned Arbitral Tribunal.

24. To allow such a party to subsequently invoke “*public policy*” as a ground to resist or invalidate the award would amount to permitting a litigant to approbate and reprobate at the same time. Such conduct undermines the principles of finality and good faith that lie at the heart of the arbitral process, and would, in effect, turn the entire arbitration mechanism on its head.

25. It is a well-settled principle of law, encapsulated in the maxim *Nullus commodum capere potest de injuria sua propria* - no one should be permitted to take advantage of his own wrong. Conscious acts of default or deliberate omission by a party can never be a ground for judicial indulgence, for such conduct strikes at the foundation of fairness and equity. This principle transcends subject matter and jurisdiction. It is intrinsic to the very fabric and integrity of every judicial system. The Hon’ble Supreme Court, while reiterating this doctrine in *Municipal Committee Katra v. Ashwani Kumar*¹⁰, observed as under:

“18. The situation at hand is squarely covered by the latin maxim ‘*nullus commodum capere potest de injuria sua propria*’, which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of *Union of India v. Maj. Gen. Madan Lal Yadav*¹ observing as below:—

“28. ...In this behalf, the maxim *nullus commodum capere potest de injuria sua propria* — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped

¹⁰ 2024 SCC OnLine SC 840



to plead bar of limitation contained in Section 123(2).
In **Broom's Legal Maxim** (10th Edn.) at p. 191 it is stated:

“... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim *frustra legis auxilium invocat quaerit qui in legem committit*. He relies on **Perry v. Fitzhowe** [[L.R.] 8 Q.B. 757 : 15 LJ QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that “it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned”. At p. 195, it is further stated that “a wrong doer ought not to be permitted to make a profit out of his own wrong”. At p. 199 it is observed that “the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed”.

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, ‘a wrong doer ought not to be permitted to make profit out of his own wrong’. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition.”

26. Arbitral awards command deference and the scope of judicial interference under Section 34 of the A&C Act is deliberately limited. To set aside an award on the basis of a document that was plainly within the knowledge and control of the challenging party, but not



produced before the learned Arbitral Tribunal because the party chose not to, would, in our view, contravene public policy. Such an approach would reward tactical default and incentivize deliberate non-production of material during arbitration.

27. That apart, as rightly observed by the Learned Single Judge, on this ground, permitting the litigant to have a second bite at the proverbial arbitral cherry would be clearly uncalled for. In any event, the Appellants are effectively seeking an entire re-appreciation of the factual matrix and the evidence that existed before the learned Arbitral Tribunal, and the same is not in consonance with the limited permissible examination in proceedings under Section 37.

28. At the cost of repetition, even assuming that the principles laid down in ***Alpine Housing Development*** (*supra*) are applicable, the Appellants have failed to demonstrate the existence of any extenuating or extraordinary circumstances that would justify the belated admission of evidence. There is no cogent explanation for the non-participation by the Appellants in the entire Arbitral process. There is no material to suggest that it was impossible for the Appellants to produce the document before the learned Arbitral Tribunal despite the exercise of due diligence. It is also not the Appellants' case that the said document came into existence or their knowledge only after the passing of the Arbitral Award. In the absence of such rare and compelling circumstances, the Appellants cannot claim the benefit of the exception contemplated in ***Alpine Housing Development*** (*supra*), and their belated attempt to rely upon a document that was never placed before the learned Arbitral Tribunal must necessarily be rejected.



29. Turning now to the second contention of the learned counsel for the Appellants, we are in complete concurrence with the findings of the learned Single Judge insofar as he has not only held that the variance as respects the plot number is only a typographical error but also that at the stage of proceedings under Section 34 of the A&C Act, re-appreciation of facts is not permissible.

30. We also agree with the finding of the learned Single Judge that the said discrepancy in the plot numbers was not even in the Section 21 notice but was in an undated notice which preceded the same, and that certain other paragraphs of the very same notice referred to the correct plot number. Therefore, we find no merit in the said contention of the learned counsel for the Appellants.

31. In view of the foregoing, this Court is of the opinion that the Impugned Orders do not merit any interference and accordingly, the present Appeal stands dismissed.

32. The present Appeal, along with pending application(s), if any, shall stand disposed of in the aforesaid terms.

33. No orders as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 21, 2025/rk/sm/va