

---

**(2013) 11 KAR CK 0374**  
**In the Karnataka High Court**  
**Case No : C.R.P. No. 490 of 2013**

|                                          |            |
|------------------------------------------|------------|
| The Karnataka Jesuit Educational Society | APPELLANT  |
| Vs                                       |            |
| M/s. Salarpuria Properties Private Ltd.  | RESPONDENT |

---

**Date of Decision :** 22-11-2013

**Acts Referred:**

**Citation :** (2014) 2 AKR 206 : (2014) ILR (Kar) 1635 : (2014) 1 KCCR 765

**Hon'ble Judges :** Aravind Kumar, J

**Bench :** Single Bench

**Advocate :** Ajesh Kumar S, for the Appellant; Suraj Govindaraj, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Aravind Kumar, J.—Respondent before the arbitral tribunal has invoked revisional jurisdiction of this court namely u/s 115 of C.P.C. by questioning the order dated 17.08.2013 passed by arbitral tribunal, Annexure-A whereunder the Hon"ble learned Arbitrator has passed the following order:

1. Both sides requested me not to press my letter dated 08.01.2013. So, I withdraw my withdrawal letter from the Arbitration, consequently, it is restored to its original file.
2. As to the question of transposing the respondent as claimant and claimant as respondent, it is seen that the said application was not served on the claimant - Salarpuria Properties Pvt. Ltd., on this short ground it will have to be dismissed and it is so dismissed.
3. CW 1 is not present today as the case was posted for arguments today on the application of transposition.
4. Mr. Suraj Govinda Raj, says he is not free in the month of October 2013 as he is going abroad.
5. Today, the Respondent has given a cheque to the arbitrator towards arbitrator

fee for a sum of Rs. 99,000/- after deducting TDS of Rs. 11,000/- from Rs. 1,10,000/-.

6. The Respondent has also given a cheque for Rs. 20,000/- towards secretarial charges of Mr. S.M. Keshava Rao.

7. The claimant is directed to keep its witness present for further cross-examination of the CW 1 on the next date of sitting.

8. By the consent of both the sides, the next date of sitting in the case is fixed on 8th November 2013 at 5.30 pm for further cross examination of CW 1, venue being the Home Office of the Arbitrator.

9. With the consent of the parties, further date is also fixed on 19th November 2013 at 5.30 pm for further cross-examination of CW 1 if need be.

It is the contention of Sri. Ajesh Kumar, learned counsel appearing for respondent that the procedure agreed to before the arbitral tribunal has been deviated by sole Arbitrator or arbitral tribunal and as such clause (a) to sub-section (2) of section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act" for sake of brevity) has been violated on the ground that arbitral tribunal having issued a show cause notice to the claimant u/s 25 of the Arbitration and Conciliation Act had the right to dismiss the claim if sufficient cause was not shown and pursuant to the said show cause notice he had intimated the parties namely claimant and respondent his desire to withdraw from the arbitral proceedings due to claimant not showing any interest in proceeding with the matter and as such proceedings had come to an end and in that view of the matter Arbitrator could not have reviewed his earlier order as there is no provision under Arbitration and Conciliation Act, 1996 and now by virtue of recalling the claimant's witness to tender himself for cross examination it would nullify the show cause notice dated 13.10.2012 and revive the arbitration proceedings which is impermissible. He would further elaborate his submission by contending that revision petitioner had filed an application under Order I Rule 10(2) read with Order XXII Rule 1-A seeking transposition i.e., from being respondent to come on record as claimant and arbitral tribunal having allowed the application it could not have recalled the said order by dismissing the said application and as such he submits that this court in exercise of revisional jurisdiction has to revise the order passed by arbitral tribunal and as such he prays for setting aside the proceedings of the arbitral tribunal dated 17.08.2013 Annexure-A. In support of his submission he relies upon the following Judgments:

1. Sailaja Kanta Mitra and Ors. Vs. State of West Bengal
2. ITI Ltd., Vs. Siemens Public Communication Network Ltd.,
3. Union of India Vs. Mysore Paper Mills Ltd., and others
4. Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others
5. Ramachandra Aggarwal and Anr. Vs. State of UP and Anr.

2. Per contra, Sri. Suraj Govindaraj, learned counsel appearing on behalf of claimant would submit that show cause notice issued by arbitral tribunal on 13.10.2012 was withdrawn by arbitral tribunal itself in the proceedings dated 17.08.2013 at the joint request of claimant and respondent and as such respondent cannot have any grievance against the proceedings of the arbitral tribunal dated 17.08.2013. He would submit that insofar submission of the parties made before Arbitral Tribunal and withdrawal show cause notice issued u/s 25 of the Act by the Arbitrator proceedings had not been terminated or concluded by arbitral tribunal and as such arbitral tribunal did not lose its power to proceed with the adjudication, and question of proceedings coming to an end does not arise inasmuch as undisputedly there is no order passed by the arbitral tribunal that dispute between the parties having been concluded due to termination of proceedings. He would elaborate his submission by contending that CW-1 who had examined on behalf of claimant was not tendered for cross examination and it is because of such lapse delay occurred before arbitral tribunal and subsequently application has been filed seeking recall of said order and as such there is no infirmity in the order of arbitral tribunal recalling the witness for being examined/cross examined. In support of his submission he has relied upon the Judgment of Hon'ble Apex Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, .

3. Having heard the learned advocates appearing for the parties I am of the considered view that following point would arise for my consideration:

Whether the office objection is to be sustained or over ruled?

4. In order to answer the point formulated above it would be necessary to take note of Section 115 of C.P.C. which has been invoked in the instant case by the Revision Petitioner and it reads as under:

115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears--

(a) to have exercised a jurisdiction not vested in it by law, or -

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court

subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation- In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding].

5. Proviso to sub-section (1) of Section 115 came to be substituted by Act 46 of 1999 with effect from 01.07.2002. It has been specifically provided in sub-section (1) as well as proviso that High Court would be empowered to call for record of any case and "it has been decided by any court subordinate to such High Court" and "in which no appeal lies thereto", which gives the jurisdiction for this court to exercise revisional jurisdiction. Proviso mandates that High Court will not or shall not u/s 115(1) vary or reverse any order made in order to decide an issue in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. Thus, first test the petitioner has to pass would be is that petitioner has to demonstrate that the proceedings arising out of court or before other authority if it had been decided in its favour would have reached finality; and (2) no appeal lies against such order.

6. In other words it would mean that if the said order which is under revision is reversed or varied or modified by Revisional court it should result in culmination of proceedings or in other words suit or proceedings should come to an end. Then only revisional court would exercise its jurisdiction as otherwise it would not. It also means that where a case or proceedings coming to end would be the subject matter of revision. The Hon'ble Apex Court in the case of Baldevdas Shivalal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, while examining the proviso to section 115 has held as to what amounts to "case decided" and "a case not decided". It has been held as under:

10. It may also be observed that by ordering that a question may properly be put to a witness who was being examined, no case was decided by the Trial Court. The expression "case" is not limited in its import to the entirety of the matter in dispute in an action. This Court observed in Major S.S. Khanna Vs. Brig. F.J. Dillon, that the expression "case" is a word of comprehensive import: it includes a civil proceeding and is not restricted by anything contained in S. 115 of the Code to the entirety of the proceeding in a civil Court. To interpret the expression "case" as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant where it is most needed and may result in the perpetration of gross injustice. But it was not decided in Major S.S. Khanna Vs. Brig. F.J. Dillon, that every order of the Court in the course of a suit amounts to a case decided. A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or

obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of Section 115 of the Code of Civil Procedure.

7. In the background of contours laid down by Hon"ble Apex Court facts on hand requires to be examined.

On account of dispute between the parties the sole Arbitrator came to be appointed by consent of parties and a claim petition was filed by claimant which was responded to by respondent by filing statement of objections as well as counter claim. Issues came to be finalized by arbitral tribunal. In lieu of examination-in-chief of claimant affidavit of the witness was filed. For filing of affidavit of respondent matter was adjourned before the arbitral tribunal. From time to time i.e., between 28.05.2010 to 01.08.2012 matter has been adjourned before the arbitral tribunal for cross examination of CW-1. On account of CW-1 being absent it was adjourned. However, CW-1 did not turn up for cross examination. No acceptable reason was assigned by Arbitral Tribunal. As such on 13.10.2012 show cause notice was issued by arbitral tribunal indicating Arbitrator had right to dismiss the case if sufficient cause is not shown by claimant. On 08.01.2013 learned Arbitrator expressed his desire to withdraw from the proceedings due to the claimant not showing any cause. Matter stood thereat and no further orders was passed by Arbitral Tribunal. Subsequently respondent filed an application under Order I Rule 10(2) read with Order XXIII Rule 1A seeking transposition as claimant and it was allowed on 20.02.2013. In its sitting held on 20.02.2013 (11th Sitting) arbitral tribunal directed that the respondent should file an affidavit on or before 10.03.2013 after serving a copy on the other side enclosing the day"s proceedings to be sent to the learned counsel for claimant by speed post. Subsequently on 14.06.2013 an application has been filed by the original claimant seeking recall of witness and to tender evidence. In its 12th sitting matter was taken up for consideration by arbitral tribunal. On 17.08.2013 in its 13th sitting both the parties requested the arbitral tribunal not to press his letter dated 08.01.2013 whereunder learned Arbitrator has indicated his intention to withdraw from arbitration proceedings. Hence, at the joint request of the parties the learned Arbitrator has withdrawn his letter dated 08.01.2013. Thus, it can be noticed at this juncture itself that the contention of Sri. Ajesh Kumar that arbitral tribunal by itself withdrew earlier communication dated 08.01.2013 cannot be accepted and deserves to be rejected and accordingly it is rejected.

8. Be that as it may. Arbitral tribunal noticed that application for transposition which had been filed by respondent therein (revision petitioner) and allowed on 20.02.2013 had not been served on the claimant therein (respondent). As such it has dismissed said application by order dated 17.08.2013 and posted the matter for cross examination of CW-1 to be recorded on 08.11.2013. It is this order which is sought for being revised by this court.

9. The very object of the Arbitration and Conciliation Act 1996 being brought into

force would indicate that main object of the Act is; (i) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration; (ii) to minimize the supervisory role of courts in the arbitral process amongst others as specifically enumerated in the statement of objects and reasons of the Act. Thus, keeping in mind the laudable object with which "Act" has come into force the order in revision has to be examined.

10. At the outset it requires to be noticed that the Arbitration and Conciliation Act is a complete code by itself. The grievance of Sri. Ajesh Kumar is that a specific procedure having been agreed upon between the parties to be adopted in the arbitral proceedings cannot be deviated to the right of either of the parties and Act does not provide for review or recall of its earlier order and only recourse left to the aggrieved person would be to challenge the order passed by arbitral tribunal if the proceedings has reached finality. In the instant case such a situation has not arisen at all inasmuch as undisputedly arbitral tribunal has not terminated the proceedings. Though learned Arbitrator has expressed his intention to withdraw from the arbitral proceedings by his communication dated 08.01.2013, thereafter at the joint request of both the parties on 17.08.2013 learned Arbitrator has withdrawn the said letter. Even otherwise section 34 of the Act is a complete answer to all the contentions raised by Sri. Ajesh Kumar. A party to the arbitral proceedings if being aggrieved by an arbitral award can apply u/s 34 seeking for setting aside such award in accordance with sub-section (2) and sub-section(3). Insofar as present controversy is concerned sub clause (V) of clause (a) of sub-section (2) requires to be taken note of and it is extracted herein below.

(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

11. A perusal of the above provision would indicate that if very composition of arbitral tribunal or arbitral proceedings is not in accordance with the agreement of the parties then the recourse to the aggrieved person is to challenge the award by filing a petition u/s 34 of the Act. Here in the instant case the grievance of the revision petitioner is with regard to procedure adopted by arbitral tribunal. If the revision petitioner is aggrieved by the procedure of the Arbitral Tribunal on the ground it was not in consonance with the agreement of parties then recourse left open is to challenge the same subsequently after award is passed.

12. If the courts were to exercise revisional jurisdiction u/s 115 of C.P.C. or supervisory jurisdiction under Article 227 of the Constitution of India at the intermediary stage of the proceedings the very purpose of Arbitration Act would get defeated. Proceedings before arbitral tribunal would get stagnated on account of such orders being interfered by courts. That is not the purpose and intent of the Act. Time and again the Hon"ble Apex Court has cautioned courts should be loath in exercising revisional or supervisory jurisdiction. The Hon"ble

Apex Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, whereunder has held as follows:

45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. u/s 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting u/s 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal u/s 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 and 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course a right of appeal is available to them u/s 37 of the Act even at an earlier stage.

(Emphasis supplied by me)

13. In the instant case the revision petitioner has not been able to demonstrate that the case has been decided finally by arbitral tribunal or in the alternate that if revision petition is entertained the case/proceedings would get decided finally before Arbitral Tribunal. Such a situation will not arise inasmuch as power exercised by arbitral tribunal to permit the claimant to tender evidence cannot be held as an order passed without jurisdiction. Secondly revisional jurisdiction cannot be exercised when there is an appeal provision and in the instant case the aggrieved party has a remedy of filing a petition u/s 34 seeking for setting aside the arbitral award if clause (i) to clause (v) of clause (a) of sub-section (2) is satisfied or in other words aggrieved party can invoke section 34 to seek for setting aside the award on the grounds enumerated in sub-section (2) of section 34. Thirdly for this court to exercise revisional jurisdiction order of court should be available to find out as to whether such order has to be revised or not. None of the ingredients are present in the case.

14. Arbitral tribunal does not come within four corners of court though the word "court" is not defined in C.P.C., it has been defined under Arbitration Act, 1996 in Section 2(e) as under:

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

Only when Principal Civil Court having original jurisdiction in a District or High Court exercising ordinary original jurisdiction and an order is passed then this court can clutch jurisdiction to exercise revisional jurisdiction as otherwise not. In the instant case arbitration proceedings has been delayed on account of claimant as rightly contended by Sri. Ajesh Kumar but that would not be a ground for this court to interfere and very revision petition itself is not maintainable. Hence, Office objection is sustained.

In the result I pass the following:

#### ORDER

1. Civil Revision Petition is hereby dismissed with costs.
2. Order dated 17.08.2013 passed by Arbitral Tribunal, Bangalore is hereby affirmed.
3. A sum of Rs. 15,000/- payable by revision petitioner to respondent within two weeks from today. Arbitral tribunal would be at liberty to regulate the costs levied by this court in this proceedings while passing the Final Award.
4. Registry to communicate this order to arbitral tribunal.
5. Amount in deposit i.e., a sum of Rs. 15,000/- made by the revision petitioner is ordered to paid to the respondent by Registry on proper identification of respondent's authorised representative.