

GYAN PRAKASH ARYA

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v.

M/S TITAN INDUSTRIES LIMITED

(Civil Appeal No. 6876 of 2021)

NOVEMBER 22, 2021

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**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

*Arbitration and Conciliation Act, 1996 – s.33 – Modification of award – Scope and ambit – Original award passed considering the claim made by the claimant as per its original claim and as per the statement of the claim made – Subsequent application u/s.33 for modification of original award – Maintainability of – Held: Only in a case of arithmetical and/or clerical error, the award can be modified and such errors only can be corrected – In the instant case, what was claimed by the original claimant in the statement of claim was awarded – Therefore, order by the arbitrator in application u/s.33 was beyond the scope and ambit of s.33 of the Act.*

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**Allowing the appeal, the Court**

**HELD:** The original award was passed considering the claim made by the claimant as per its original claim and as per the statement of the claim made and therefore subsequently allowing the application under Section 33 of the 1996 Act to modify the original award in exercise of powers under Section 33 of the 1996 Act is not sustainable. In the instant case, it cannot be said that there was any arithmetical and/or clerical error in the original award passed by the arbitrator. What was claimed by the original claimant in the statement of claim was awarded. Therefore, the order passed by the arbitrator on an application filed under Section 33 of the 1996 Act and thereafter modifying the original award cannot be sustained. [Para 12][7-D, E-F]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.6876 of 2021.

From the Judgment and Order dated 18.03.2021 of the High Court of Karnataka at Bengaluru in M.F.A. No. 7098 of 2018 (AA).

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A Sukumar Pattjoshi, Sr. Adv., Shekhar G. Devasa, Manish Tiwari,  
Shashi Bhushan Nagar for M/s Devasa & Co., Advs. for the Appellant.

Sajan Poovayya, Sr. Adv., Vikram Hegde, Shravanth Arya Tandra,  
Ms. Raksha Agarwal, Shantanu Lakhotia, N. S. Sriraj Gowda, Sharan  
Balakrishna, Advs. for the Respondent.

B The Judgment of the Court was delivered by  
**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment  
and order dated 18.03.2021 passed by the High Court of Karnataka at  
C Bengaluru in M.F.A. No.7098 of 2018 (AA), by which the High Court  
has dismissed the said appeal preferred by the appellant herein under  
Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter  
referred to as the ‘1996 Act’) and has confirmed the judgment and order  
passed by the XXIX<sup>th</sup> Additional City Civil & Sessions Court dismissing  
arbitration suit (A.S. No. 12/2011) under Section 34 of the 1996 Act and  
D confirming the Arbitral Award dated 04.12.2010, further modified vide  
order dated 14.01.2011, the original appellant has preferred the present  
appeal.

2. That the appellant and the respondent herein had entered into  
an agreement dated 9.7.2003. A dispute arose between the parties relating  
E to recovery of pure gold weighing 3648.80 grams said to have been in  
the possession of the appellant herein. The respondent invoked the  
arbitration clause contained in the agreement dated 9.7.2003. The High  
Court appointed a retired District Judge as the sole arbitrator to adjudicate  
the dispute between the parties. The respondent filed a claim petition  
F before the learned arbitrator seeking the following reliefs:

“a) to direct the respondent to deliver pure gold weighing 3648.80  
grams to the claimant or in the alternative direct the respondent to  
pay the claimant a sum of Rs.27,00,112.00 towards the cost of  
pure gold weighing 3648.80 grams (calculated at the rate of Rs.740  
G per gram);

b) to direct the respondent to pay to the claimant a sum of  
Rs.11,74,545.00 towards the interest amount due on the said  
amount of Rs.27,00,112.00 (value of pure gold weighing 3648.80  
grams) from June 2003 till date of filing of this claim and further

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interest on the said amounts at 18% per annum during the pendency of these proceedings and until realization of the same; A

c) to direct the respondent to pay to the claimant a sum of Rs.26,50,338.00 towards the loss which has been caused to the claimant on account of the defaults committed by the respondent; and B

d) award costs of the proceedings and such other and further reliefs which are just in the interest of justice and equity.”

3. The learned arbitrator passed an award dated 04.12.2010 directing the appellant herein to return to the claimant/respondent within three months from the date of the award 3648.80 grams of pure gold along with interest @ 18% per annum calculating the value of gold at Rs.740 per gram from 24.07.2004 and up to the date of delivery of the quantity of gold. The learned arbitrator also passed an award that in the alternative, the appellant shall pay to the claimant/respondent within the said period of three months, the market value of 3648.80 grams of pure gold along with interest @ 18% per annum calculating the value of the gold at Rs. 740 per gram from 24.07.2004 till the date of payment. C D

4. Subsequently, the respondent filed an application under Section 33 of the 1996 Act and requested to modify the award dated 04.12.2010 by correcting computational/arithmetical/clerical error by deleting “at Rs. 740 per gram as claimed in the claim statement” at page 14, second para, line 20 and to delete “Rs.740.00 per gram” at page 17, para 15(b), line 3, and substitute the same by “Rs.20,747/- per 10 grams” at page 17, para 15(b), line 3. E

5. The learned arbitrator allowed the said application under Section 33 of the 1996 Act vide order dated 14.01.2011 and corrected the original award dated 04.12.2010 as under: F

“a) the respondent is directed to return to the claimant within three months from today 3,648.80 grams of pure gold along with interest @ 18% per annum calculating the value of gold at Rs.740.00 per gram from 24.07.2004 and up to the date of delivery of that quantity of gold. G

b) in the alternative, the respondent shall pay to the claimant within the said period of three months the market value of 3,648.80 grams of pure gold at [Rs.20,747.00 per 10 grams ... value substituted] H

A along with interest thereon at 18% per annum from 24.07.2004 and up to the date of payment.

c) the respondent is directed to pay to the claimant within three months from today a sum of Rs.50,000.00 (rupees fifty thousand only) as the probable loss suffered by the claimant due to his failure to keep up to the time schedule in fulfilling his responsibility as a job worker. If he fails to pay that amount within three months, it shall carry interest @ 18% per annum from the date of this award and up to the date of payment.

B d) claimant is also entitled to cost which shall include the expenses shared by the claimant along with respondent for arranging the venue for arbitration.

C e) advocate's fee Rs.30,000.00"

6. Being aggrieved, the appellant herein filed an arbitration suit under Section 34 of the 1996 Act before the City Civil Court. The said Court dismissed the said suit under Section 34 of the 1996 Act. Further, appeal under Section 37 of the 1996 Act has been dismissed by the High Court, by the impugned judgment and order.

7. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court and the City Civil Court and the order passed by the learned arbitrator allowing the application under Section 33 of the 1996 Act and modifying the award dated 04.12.2010 as above, the original appellant – respondent before the arbitrator has preferred the present appeal.

8. Shri Sukumar Pattjoshi, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that the order passed by the learned arbitrator allowing the application under Section 33 of the 1996 Act and consequently modifying the original award dated 04.12.2010 as above, is beyond the scope and ambit of the jurisdiction of the arbitrator under Section 33 of the 1996 Act.

8.1 It is submitted that as such there was no arithmetical and/or clerical error in the original award passed by the learned arbitrator and what was awarded by the learned arbitrator was as per the original claim made by the claimant and even the discussion by the learned arbitrator was on the claim as made by the original claimant after a discussion on merits and on appreciation of the evidence on record.

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8.2 It is submitted that in exercise of powers under Section 33 of the 1996 Act, only an arithmetical and/or clerical error can be corrected in the award. It is submitted that in the application under Section 33 of the 1996 Act, the respondent – original claimant came out altogether with a new claim which was not permissible in an application under Section 33 of the 1996 Act. A

8.3 It is therefore submitted that both, the City Civil Court as well as the High Court have materially erred in upholding the order passed by the learned arbitrator allowing the application filed under Section 33 of the 1996 Act and modifying the award in purported exercise of powers under Section 33 of the 1996 Act. B

9. Shri Sajan Poovayya, learned Senior Advocate appearing on behalf of the respondent, as such, is not a position to defend the order passed by the learned arbitrator allowing the application under Section 33 of the 1996 Act and modifying the award. However, he submitted that what has been modified by the learned arbitrator on an application filed under Section 33 of the 1996 Act is in the context of the alternative prayer and the relief being granted by the learned arbitrator. Even if the original award stands as it is, the respondent – claimant shall be entitled to return of the gold which was the first and primary relief claimed and granted by the learned arbitrator. C D

10. We have heard the learned counsel for the respective parties at length. E

10.1 At the outset, it is required to be noted that in exercise of powers under Section 33 of the 1996 Act, the learned arbitrator has modified his earlier award dated 04.12.2010. The original claim made by the respondent – original claimant is reproduced hereinabove. While passing the original award, the learned arbitrator passed an award as under: F

“a) the respondent is directed to return to the claimant within three months from today 3,648.80 grams of pure gold along with interest @ 18% per annum calculating the value of gold at Rs.740.00 per gram from 24.07.2004 and up to the date of delivery of that quantity of gold. G

b) in the alternative, the respondent shall pay to the claimant within the said period of three months the market value of 3,648.80 grams H

- A of pure gold at Rs.740.00 per gram along with interest thereon at 18% per annum from 24.07.2004 and up to the date of payment.
- c) the respondent is directed to pay to the claimant within three months from today a sum of Rs.50,000.00 (rupees fifty thousand only) as the probable loss suffered by the claimant due to his failure to keep up to the time schedule in fulfilling his responsibility as a job worker. If he fails to pay that amount within three months, it shall carry interest @ 18% per annum from the date of this award and up to the date of payment.
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- d) claimant is also entitled to cost which shall include the expenses shared by the claimant along with respondent for arranging the venue for arbitration.
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- e) advocate's fee Rs.30,000.00"

Thus, the original award passed by the learned arbitrator was as per the original claim made by the respondent – original claimant and as per the statement of claim. Even, there was a specific finding by the learned arbitrator on the alternative relief of payment of value as on the date of the award. The relevant discussion reads as under:

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“However, in the relief para of the claim statement this rate has been shown as rs.740.00 per gram and the value of 3,648.80 grams due to them as Rs.27,00,112.00.

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The counsel for the claimant submitted that as has been laid down by the Hon'ble Supreme Court in the decision in Dhian Singh Sobha Singh and another vs. Union of India AIR 1958 SC 274 in an action of wrongful detention of plaintiff's chattel otherwise known as judgment for the plaintiff in detinue is for delivery of the chattel or payment of its value and damages for detention. The counsel for the respondent has submitted that in this case it can either be ordered for return of 3,648.80 grams of pure gold (24 carats) or in the alternative the payment of its value as on the date of the award. I think that this is a just and reasonable course to be followed. I also find that the claimant should be allowed appropriate interest on the said market value even in the event of the respondent returning the gold itself to the claimant. No doubt, the market value of gold has increased to a great extent as on today but in the absence of any reliable proof in this behalf I find that as claimed in the claim statement it is just and reasonable to

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allow interest on the market value of the balance gold in question at Rs.740 per gram as claimed in the claim statement and also interest on this amount at 18% per annum from the date of the claim statement and up to the satisfaction of the reliefs to be granted under this award issue Nos. 3 and 3a are answered accordingly.” A

11. Therefore, the original award passed by the learned arbitrator was as per the original claim made by the respondent in the statement of claim. Thereafter, in an application under Section 33 of the 1996 Act, the respondent prayed to modify the award as per the market value of 3648.80 grams of pure gold at Rs.20,747/- per 10 grams, instead of Rs.740 per gram and the learned arbitrator allowed the said application under Section 33 of the 1996 Act and modified the original award dated 04.12.2010. The modified award is reproduced hereinabove. B C

12. The original award was passed considering the claim made by the claimant as per its original claim and as per the statement of the claim made and therefore subsequently allowing the application under Section 33 of the 1996 Act to modify the original award in exercise of powers under Section 33 of the 1996 Act is not sustainable. Only in a case of arithmetical and/or clerical error, the award can be modified and such errors only can be corrected. In the present case, it cannot be said that there was any arithmetical and/or clerical error in the original award passed by the learned arbitrator. What was claimed by the original claimant in the statement of claim was awarded. Therefore, the order passed by the learned arbitrator on an application filed under Section 33 of the 1996 Act and thereafter modifying the original award cannot be sustained. The order passed by the learned arbitrator in the application under Section 33 of the 1996 Act is beyond the scope and ambit of Section 33 of the 1996 Act. Therefore, both, the City Civil Court as well as the High Court have committed a grave error in dismissing the arbitration suit/appeal under Sections 34 and 37 of the 1996 Act respectively. The modified award passed by the learned arbitrator allowing the application under Section 33 of the 1996 Act cannot be sustained and the same deserves to be quashed and set aside. D E F G

13. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and orders passed by the High Court in an appeal under Section 37 of the 1996 Act and City Civil Court in arbitration suit under Section 34 of the 1996 Act and H

- A the order passed by the learned arbitrator dated 14.1.2011 modifying the original award dated 04.12.2010 are hereby quashed and set aside. Consequently, the original award passed by the learned arbitrator dated 04.12.2010 stands restored. However, in the facts and circumstances of the case, there shall be no order as to costs.

Devika Gujral

Appeal allowed.