

HIGH COURT FOR THE STATE OF TELANGANA

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CIVIL REVISION PETITION No.865 OF 2023

**Between:**

M/s. Hyderabad Metropolitan Development Authority,  
Office at Swarna Jayanti Complex, Sanjeev Reddy  
Nagar Road, Ameerpet, Hyderabad, Telangana,  
Rep.by its Metropolitan Commissioner and another.

.....Petitioners

And

M/s,.Ramky Elsamex Hyderabad Ring Road Limited,  
Office at 15<sup>th</sup> floor, Ramky Gradiose, Ramky Towers  
Complex, Gachibowli, Hyderabad, rep.by its  
Authorized Representative, Mr. Bhogeshwara Rao,  
s/o.Demudu.

.....Respondent

DATE OF JUDGMENT PRONOUNCED : 21.04.2023

**HON'BLE SRI JUSTICE P. NAVEEN RAO  
AND  
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

1. Whether Reporters of Local Newspapers : **Yes**  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : **No**  
see the fair copy of the Judgment ?

**\* HON'BLE SRI JUSTICE P.NAVEEN RAO  
AND  
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA  
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.....Respondent

!Counsel for the petitioners : Sri Raji Shankar Dvivedi rep. Sri Y.Rama  
Rao

Counsel for the Respondent : Sri D.Prakash Reddy rep. Sri M.Pranav

<Gist :

>Head Note:

?Cases referred:

(2014) 7 SCC 255

Civil Appeal No. 4956 of 2019 dt 1.5.2019

2022 SCC OnLine Del 3401

2018 (11) SCC 470

**HON'BLE SRI JUSTICE P.NAVEEN RAO**  
**&**  
**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**CIVIL REVISION PETITION NO.865 OF 2023**

**ORDER:** (*Per Hon'ble Sri Justice P.Naveen Rao*)

Heard Sri Rajiv Shanker Dvivedi learned counsel appearing for Sri Y.Rama Rao for the petitioners and Sri D.Prakash Reddy, learned senior counsel appearing for Sri M.Pranav for respondent.

2. Petitioners have entered into concession agreement on 18.8.2007 with respondent for execution of work of designing, construction, development, finance, operation and maintenance of eight lane access controlled expressway under Phase II-A programme of the Outer Ring Road to Hyderabad from Tukuguda to Shamshabad on Build Operate and Transfer (BOT) basis. Clause 39 of the concession agreement dated 18.8.2007 provides for resolution of disputes. Clause 39.2 provides for referring unresolved dispute to a Board of Arbitrators comprising three Arbitrators, out of which, each party shall select one Arbitrator and third Arbitrator should be appointed in accordance with the Rules of Arbitration.

3. According to respondent, petitioners are required to pay more than  12 crores and as dispute was not resolved amicably, respondent took recourse to Clause 39.2 to appoint a retired Judge of this Court as

Arbitrator. Petitioners appointed a Retired Chief Engineer, Roads and Buildings Department as their nominee. Both Arbitrators could not come to an agreement regarding appointment of third Arbitrator. In those circumstances, respondent herein filed Arbitration Application No.88 of 2021 before this Court under Section 11 (5) & (6) of the Arbitration and Conciliation Act, 1996 (for short the Act, 1996). As both parties left it to the Court to decide about third Arbitrator, by order dated 12.8.2021, the then Hon'ble Chief Justice of this Court appointed Hon'ble Sri Justice Challa Kodanda Ram (Retired) as umpire. Accordingly, the arbitral proceedings commenced.

4. It appears on 11.2.2022 order No.5 was passed by the Arbitral Tribunal regarding payment of fee to the Arbitrators. On 10.9.2022, the 7<sup>th</sup> sitting of the Arbitral Tribunal was held wherein the Tribunal passed Order No.9. From the reading of the said order, it appears, earlier, parties were asking for adjournment on the ground that they were negotiating for settlement. Again on 10.9.2022 request was made for further adjournment of Arbitral proceedings on the same ground. The Arbitral Tribunal, while acceding to the request, granted adjournment for two months for reporting settlement, subject to condition that both parties should deposit fee of the members in terms of Order No.5 dated 11.2.2022 within two weeks from that date. The Tribunal further observed that if parties fail to deposit the fee as directed, the Arbitral

Tribunal proceedings should stand terminated as it would be construed that parties have no interest for proceeding with present arbitral proceedings.

5. Second petitioner herein filed I.A.No.1 of 2023 before the Arbitral Tribunal under Section 32 of the Act, 1996 praying the Arbitral Tribunal not to proceed further as mandate of the Arbitral Tribunal was already terminated vide orders dated 10.9.2022. On the scope of application and relief to be granted in the said application, there was difference of opinion among the Arbitrators. The Presiding Arbitrator and one Co-Arbitrator rejected the application and held that the Arbitral Tribunal would proceed to hear the arguments on merits and decide the dispute accordingly. In the dissenting opinion, the other Co-Arbitrator held that arbitral proceedings stood terminated under Section 32 of the Act, 1996, therefore, mandate of the Arbitral proceedings also stood terminated. Aggrieved by the majority decision of the Arbitral Tribunal, this revision is preferred.

6. According to Sri Rajiv Shanker Dvivedi learned counsel appearing for petitioners, Order No. 9 of the Arbitral Tribunal dated 10.9.2022 is very specific, that in the event of non deposit of the fee as directed by the Tribunal by either of the parties, the Arbitral proceedings stand terminated. Once Arbitral proceedings are terminated, it is no more permissible for the Arbitral Tribunal to continue the proceedings. No

power is vested in the Arbitral Tribunal to resume the proceedings which were already terminated. According to learned counsel, Section 38 of the Act, 1996 applies to the instant case. Section 38 is a cascading provision, it first envisages fixation of fee payable to the Arbitrators and deposit of the amount fixed as advance for the costs referred to in Sub-section (8) of Section 31 which it expects will be incurred in respect of claim; may fix fee and costs for counter claim. By referring to second proviso, appended to Sub-section (2) of section 38, he would submit that Tribunal is vested with power to terminate Arbitral proceedings in the event of both or one of the parties to the Arbitral proceedings, does not pay their share of fee and costs. Order passed by the Tribunal on 10.9.2022 is traceable to second proviso appended to Sub-section (2) of Section 38 of the Act, 1996.

7. In support of his contentions, learned counsel appearing for petitioners placed reliance on the following decisions:

**Lalitkumar V Sanghavi Vs Dharamdas V Sanghavi and others<sup>1</sup> Sai Babu Vs M/s. Clariya Steels Pvt Ltd<sup>2</sup> and MS Vag Educational Services v. Aakash Educational Services Ltd<sup>3</sup>.**

8. *Per contra*, according to Sri D.Prakash Reddy, learned senior counsel appearing for respondent, Arbitral proceedings were not

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<sup>1</sup> (2014) 7 SCC 255

<sup>2</sup> Civil Appeal No. 4956 of 2019 dt 1.5.2019

<sup>3</sup> 2022 SCC OnLine Del 3401

terminated. He submits that it is also evident from the fact that even after 10.9.2022, petitioners participated in the Arbitral proceedings. As rightly observed by the majority members of the Arbitral Tribunal, the threat of termination of the Arbitral proceedings were not taken seriously by both the parties and both parties decided to continue with the proceedings as evident from the subsequent conduct of petitioners. He would further submit that respondent after deducting Income Tax at Source (TDS), has deposited ₹ 4,50,000/- to the account of each of the Arbitrators on 23.9.2022 i.e., within two weeks time granted by the Tribunal and same was communicated to the Arbitrators through e-mail.

9. He would further submit that petitioners have never raised objection on continuation of the Arbitral proceedings and by their conduct and participating in the subsequent Arbitral proceedings, the conditional order was waived and they deemed to have agreed for continuation of Arbitral proceedings. He would submit that from a careful reading of clause 6 of the order dated 10.9.2022, the termination of the Arbitral proceedings would arise only in the event of both parties not depositing the fee, as a corollary if one party has deposited fee payable to arbitrators, clause 6 of the order, is not attracted.

10. He would submit that even assuming that Arbitral proceedings were terminated by virtue of order dated 10.9.2022, mandate of Arbitrators was not terminated and therefore Arbitrators are entitled to

commence and continue the proceedings. Only in terms of Section 32(3), if a decision is made, mandate of Arbitrators stands terminated and only in such event, Arbitrators cannot continue the proceedings further. He would also contend that revision under Article 227 of the Constitution of India is not maintainable.

11. He would further submit that three decisions relied upon by the learned counsel appearing for petitioners have no application to the facts of this case.

12. Though learned senior counsel extensively referred to Section 25 of the Act, 1996 and the decision of the Hon'ble Supreme Court in **SREI Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.**,<sup>4</sup> both counsel agreed that in the facts of this case, Section 25 is not attracted. Further, learned counsel for petitioners clarified that section 25 and section 38 are not similar. Under Section 25 of the Act, 1996 it is permissible for the Arbitrators to commence the proceedings as held by Hon'ble Supreme Court in above decision but when section 38 is attracted, Arbitral proceedings stands terminated and no power is vested in the Arbitral Tribunal to resume the Arbitral proceedings.

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<sup>4</sup> 2018 (11) SCC 470



13. Short, but interesting issue for consideration is on account of orders passed by the Arbitral Tribunal on 10.9.2022, whether Arbitral proceedings stood terminated?

14. To appreciate the rival contentions, the relevant Sections for consideration are Sections 31(8)<sup>5</sup>, 31A(1)<sup>6</sup>, 32<sup>7</sup> and 38<sup>8</sup> of Act, 1996.

15. According to Section 31(8) Costs of arbitration should be fixed by the Arbitral Tribunal in accordance with Section 31-A. Section 31-A is

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<sup>5</sup> **S.31. Form and contents of arbitral award.** – (1) to (7) xxxx

**(8)** The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.

Explanation.—For the purpose of clause (a), “costs” means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses, (ii) legal fees and expenses, (iii) any administration fees of the institution supervising the arbitration, and (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

<sup>6</sup> **S.31A. Regime for costs.**—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

(a) whether costs are payable by one party to another; (b) the amount of such costs; and (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to— (i) the fees and expenses of the arbitrators, Courts and witnesses; (ii) legal fees and expenses; (iii) any administration fees of the institution supervising the arbitration; and (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

<sup>7</sup> **S.32. Termination of proceedings.**—(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute, (b) the parties agree on the termination of the proceedings, or (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

<sup>8</sup> **38. Deposits.**—(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim. (2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

about regime for costs. Section 38 deals with deposits. According to sub-section (1), the Tribunal is competent to fix the amount of deposit or supplementary deposit as the case may be as advance for the costs referred to in Sub-section (8) of section 31 which it would expect to incur in respect of the claim submitted to it. Whenever there is a counter claim, Arbitral Tribunal is competent to fix separate amount of deposit for claim and counter claim. According to Sub-section (2), deposit referred to in Sub-section (1) should be payable in equal shares by the parties. First proviso to Sub-section (2) enables one party to pay the share of the other party also if the other party fails to pay its share. According to second proviso, where either party fails to pay share in respect of claim or counter claim, the Arbitral Tribunal can suspend or terminate the Arbitral proceedings in respect of the claim or counter claim. Sub-Section (3) enables rendering of accounts on such termination.

16. It is thus clear that according to second proviso to Sub-section (2), the Tribunal is competent to terminate Arbitral proceedings in case of failure of one party or both parties to the dispute not paying the deposit as directed by the Tribunal.

17. Section 32 of the Act, 1996 is in three parts. (i) According to Sub-Section (1), Arbitral proceedings get terminated when final arbitral award is passed or by an order of the Arbitral Tribunal under Sub-section (2).

According to Sub-section (2), Arbitral Tribunal shall issue an order for termination of the arbitral proceedings where the claimant withdraws his claim, unless respondent objects to such withdrawal; (ii) where both parties agreed for termination of proceedings; and (iii) where Arbitral Tribunal finds that the continuation of the proceedings has **for any other reason** becomes **unnecessary** or **impossible**.

18. Paragraphs 5 and 6 of Procedural Order No.9 dated 10.9.2022 of the Arbitral Tribunal reads as under:

“5. The Arbitral Tribunal deemed it appropriate to grant two months for reporting settlement in all respects. The time of two months is granted subject to the condition that both the parties shall deposit the fee with the members of the Tribunal in terms of order NO. 5 dated 11.2.2022 within two weeks from today..

6. In event of the parties failing to deposit the fee as directed, this Arbitral proceeding shall stand terminated as it shall be construed that the parties have no interest in proceeding with the present Arbitration.”

19. It is thus seen that while granting time as sought by parties for reporting settlement, the Tribunal imposed a condition that grant of such time would be subject to parties depositing the fee in terms of order No.5 dated 11.2.2022 within two weeks from that date. In paragraph-6, the Tribunal held that in the event of parties failing to deposit the fee as directed, Arbitral proceedings stand terminated as it would be construed that the parties have no interest in proceeding with the present Arbitration.

20. Sri D.Prakash Reddy, learned senior counsel laid great emphasis on sub section 3 of section 32 to contend that even assuming that Arbitral proceedings stood terminated as per the order of the Arbitral Tribunal dated 10.9.2022 the mandate was not terminated and therefore it is within the competence of the Arbitral Tribunal to revive and continue the proceedings. We are afraid, we cannot countenance such argument for the following reasons.

21. In paragraph-6 of the order dated 10.9.2022, the Hon'ble Arbitral Tribunal clearly held that in the event of parties not depositing the fee as directed earlier, the Arbitral proceedings would stand terminated. The two paragraphs of the Order of the Hon'ble Arbitral Tribunal are traceable to second proviso to Section 38(2) of Act, 1996 and Section 32(1)(c) i.e., *become unnecessary or impossible*. It is impossible to conduct arbitral proceedings when one of the parties failed to deposit the amount and does not co-operate.

22. Once proceedings are terminated traceable to Section 38(2) read with Section 32(1)(c), the Arbitral Tribunal has no competence to revive the arbitral proceedings on the assumption that parties have never taken seriously the issue of termination of Arbitral proceedings. When statute operates the field, the understanding of the parties has no relevance. When proceedings stood terminated and when the Arbitral Tribunal has no competence to revive the Arbitral proceedings, merely because the

parties participated in the subsequent proceedings has no legal consequence. The parties cannot confer jurisdiction contrary to statutory mandate.

23. In the case on hand, clause 32(2)(c) is attracted. The Tribunal assumed that if parties do not make the deposit within the time granted, they are not interested in continuing the Arbitral proceedings. Though, the Tribunal may not have used the words **unnecessary** or **impossible**, the tone and tenor of the order dated 10.09.2022 would clearly indicate that it was **impossible** to continue the arbitral proceedings. It is impossible to continue arbitral proceedings if one of the parties are not keen in participating in the arbitral proceedings by not depositing the amount. Thus, having regard to the conduct of one of the parties, petitioners herein, in not depositing the fee directed to be paid by the Arbitral Tribunal, it was **impossible** for the Arbitral Tribunal to proceed with the case. It is not the case of the respondent that he paid the fee payable by the petitioners also as envisaged by first proviso to Section 38(2) of the Act, 1996. Therefore, reading together second proviso to Section 38(2) and Section 32(2)(c), the Arbitral proceedings stood terminated by virtue of the orders of the Arbitral Tribunal dated 10.9.2022. Once proceedings are terminated as per these clauses, it is no more permissible for the Arbitral Tribunal to commence or continue the Arbitral proceedings.

24. Section 32(3) of the Act, 1996 clearly holds that once Arbitral proceedings are terminated, the mandate given to the Arbitral Tribunal also gets terminated. In other words, the mandate comes to an end, the moment Arbitral proceedings stood terminated. The scheme of the Act does not envisage revival of Arbitral proceedings once Arbitral proceedings are terminated. Section 25 carves out an exception to scheme of Sections 32 and 38 of the Act, 1996 as held by the Hon'ble Supreme Court in **SREI Infrastructure Finance Ltd.** According to law propounded by the Hon'ble Supreme Court even if there was default of a party as envisaged in Section 25, it is permissible for the Arbitral Tribunal to continue proceedings. Sections 32 and 38 of the Act, 1996 do not envisage such course.

25. In **SREI Infrastructure Finance Ltd** (supra), the Arbitral Tribunal terminated arbitral proceedings holding that statement of claim was not filed. The claimant filed application to recall the orders. Holding that in view of order terminating the proceedings it cannot pass an order recommencing the arbitration proceedings, Arbitral Tribunal rejected the application. In exercise of revisional jurisdictional under Article 227 of the constitution of India, the Calcutta High Court held that the Arbitral Tribunal has power to recall its own orders. The Hon'ble Supreme Court held,

**“21.** When the Arbitral Tribunal without sufficient cause being shown by the claimant to file the claim statement can terminate the proceedings, subsequent to termination of proceedings, if the sufficient cause is shown, we see no impediment in the power of the Arbitral Tribunal to accept the show cause and permit the claimant to file the claim. The scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23(1) has expired. Thus, even after passing the order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the Arbitral Tribunal by accepting the show-cause and there is no lack of the jurisdiction in the Arbitral Tribunal to recall the earlier order on sufficient cause being shown.

**22.** Section 32 contains a heading “Termination of Proceedings”. Sub-section (1) provides that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) enumerates the circumstances when the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. The situation as contemplated under Sections 32(2)(a) and 32(2)(b) are not attracted in the facts of this case. Whether termination of proceedings in the present case can be treated to be covered by Section 32(2)(c) is the question to be considered. Clause (c) contemplates two grounds for termination i.e. (i) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary, or (ii) impossible. The eventuality as contemplated under Section 32 shall arise only when the claim is not terminated under Section 25(a) and proceeds further. The words “unnecessary” or “impossible” as used in clause (c) of Section 32(2), cannot be said to be covering a situation where proceedings are terminated in default of the claimant. The words “unnecessary” or “impossible” has been used in different contexts than to one of default as contemplated under Section 25(a). Sub-section (3) of Section 32 further provides that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings subject to Section 33 and sub-section (4) of Section 34. Section 33 is the power of the Arbitral Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature or to give an interpretation of a specific point or part of the award. Section 34(4) reserves the power of the court to adjourn the proceedings in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. On the termination of proceedings under Sections 32(2) and 33(1), Section 33(3) further contemplates termination of the mandate of the Arbitral Tribunal, whereas the aforesaid words are missing in Section 25. When the legislature has used the phrase “the mandate of the Arbitral Tribunal shall terminate” in Section 32(3), non-use of such phrase in Section 25(a) has to be treated with a purpose and object. The purpose and object can only be that if the claimant shows sufficient cause, the proceedings can be recommenced.

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**33.** We endorse the views of the Patna High Court [*Senbo Engg. Ltd. v. State of Bihar*, 2003 SCC OnLine Pat 1189 : AIR 2004 Pat 33] , the Delhi High Court [*Awasthi Construction Co. v. State (NCT of Delhi)*, 2012 SCC OnLine Del 5443 : (2013) 1 Arb LR 70] · [*ATV Projects India Ltd. v. Indian Oil Corpn. Ltd.*, 2013 SCC OnLine Del 1669 : (2013) 200 DLT 553] and the Madras High Court [*BHEL v. Jyothi Turbopower Services (P) Ltd.*, 2016 SCC OnLine Mad 4029 : (2017) 1 Arb LR 289] as noted above, insofar as they have held that the Arbitral Tribunal after termination of proceedings under Section 25(a) on sufficient cause being shown can recall the order and recommence the proceedings.

**34.** In the present case, the Arbitral Tribunal has rejected the application of the claimant by order dated 26-4-2012 taking the view that after an order is passed by it terminating the proceedings, it cannot pass the order recommencing the arbitration proceedings. In view of the above discussions, we are of the view that the Arbitral Tribunal committed an error in holding that it has no jurisdiction to recall an order terminating the proceedings under Section 25(a). The Arbitral Tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the Arbitral Tribunal be asked to consider the application filed by the claimant dated 20-1-2012 praying for recall of the order dated 12-12-2011 and to grant extension for filing the statement of claim.”

25.1. In **Sai Babu** (supra), the Arbitral proceedings were terminated by the Arbitrator referring to Section 32 (2) (c) of the Act. However, on an application filed to recall the order, the learned Arbitrator passed order recalling the order of termination of arbitral proceedings. Revision filed against the said order was dismissed by the High Court. The Hon'ble Supreme Court reversed the decision of the High Court and allowed the appeal. It is held that no recall would lie in cases covered by Section 32 (3) of the Act.

25.2. In **MS Vag Educational Services** (supra) on the representation made on behalf of claimant, the Arbitral proceedings were terminated as withdrawn by order dated 21.9.2019. Claimant moved an application



seeking to recall the said order. By order dated 18.1.2020 learned Arbitrator allowed the application. The Delhi High Court held as under:

“15. By operation of Section 32(3), the mandate of the learned sole arbitrator terminated on 21-9-2019. Once the mandate of an arbitrator terminates, the arbitrator is rendered functus officio. He has no jurisdiction, thereafter, to entertain any application or pass any orders in the proceedings. The limited orders which an arbitrator, whose mandate stands terminated, may pass, are restricted to orders under Section 33 of the 1996 Act, which, as already noted, does not apply in the present case. ”

25.3. In **Lalitkumar V Sanghavi** (supra), the Presiding Arbitrator informed the appellants that the Arbitration proceedings stood terminated on the ground that the matter was pending since June 2003 and though meeting was called in between June, 2004 and 11.4.2007, the claimant took no interest in the matter. It was further observed that though direction was issued, fee was not paid. While so, Arbitration Application was filed under Section 11 of the Act to appoint an Arbitrator. This application was dismissed by the High Court as not maintainable. The Hon'ble Supreme Court held,

“12. On the facts of the present case, the applicability of clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29-10-2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-section (2), clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal also comes to an end.....”

26. The Arbitral Tribunal grossly erred in ordering continuation of arbitral proceedings as the arbitral proceedings stood terminated by virtue of Order No.9, dated 10.09.2022 of the Arbitral Tribunal. On

such termination, Arbitral Tribunal rendered *functus officio* and has no jurisdiction to continue arbitral proceedings.

27. The Civil Revision Petition is allowed accordingly. No order as to costs. Pending miscellaneous applications if any shall stand closed.

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**P.NAVEEN RAO, J**

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**NAGESH BHEEMAPAKA,J**

Date: 21.04.2023  
TVK/KKM

**HON'BLE SRI JUSTICE P.NAVEEN RAO**  
**&**  
**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**CIVIL REVISION PETITION No.865 OF 2023**

**Date: 21.04.2023**

Tvk/kkm