

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 3352 of 2012**

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AHMEDABAD URBAN DEVELOPMENT AUTHORITY THROUGH

Versus

DINESHKUMAR B JANI

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Appearance:

MR HS MUNSHAW(495) for the Appellant(s) No. 1

MR VASANTS SHAH(810) for the Defendant(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 09/09/2026

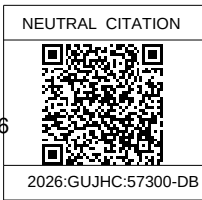
ORAL JUDGMENT

**(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. Heard Mr. H.S. Munshaw, learned advocate for the appellant. Mr. C.V. Darji, learned advocate appears on behalf of Mr. Vasant S. Shah, learned advocate for the respondent.

2. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996, has been filed to challenge the arbitral awards dated 03.11.2009 and 11.10.2009 on the ground that various factual aspects have not been looked into by the learned arbitrator.

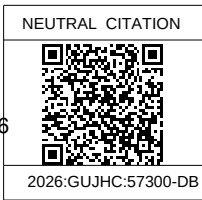
3. The submission is that the arbitral award is against the principles of law, inasmuch as, the claims have been awarded without any cogent evidence. Apart from these two submissions, no other grounds have been agitated to



challenge the correctness of the arbitral awards.

4. We may note from the judgment and order dated 12.06.2012 passed by the Civil Court in the proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 (in short as the "Act'1996") that the same issues were raised before the Court under Section 34 and the Court has returned its findings in paragraph '8' as under :-

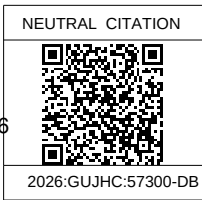
"8. Considering the arguments advanced by the learned Advocates for the parties and the documentary evidence produced on record, it appears that there is no dispute between the parties regarding Arbitral proceedings and appointment of Arbitrator. I have also perused the Arbitral Proceedings and also perused the Award passed by the learned Arbitrator. I have also peruse the Rejoinder filed by Kanubhai Hasmukhbhai shah vide Ex.14 and Affidavit-in-Rejoinder vide Ex.15 on behalf of the applicant. On perusing the Award and documentary evidence produced by the parties, it appears that the tender of opponent has been passed by the applicant for development and fencing of the open plots situated in T.P. Scheme No.1, 2, 3, 4 & 5 of Vejalpur. In this case the applicant has stated that the opponent has, demanded Rs.14,32,470-17 paise with interest and for that the opponent has produced statement before the learned Arbitrator which is false and got up, but the applicant failed to prove the same. The applicant has also stated that the opponent has not completed the work and so the applicant has published the tender in the year 2002-03 and as per the said tender the Vishnu trading Company has completed the said incomplete work but the applicant has not produced any documentary evidence to show that the opponent has not completed the work and the Vishnu Trading company has completed the work. Moreover the applicant has also not produced any documentary evidence to show that the applicant has not completed the work. On perusing the Arbitral proceedings it



appears that the Award passed by the learned Arbitrator s just and proper, legal and valid and the learned Arbitrator has considered all the aspects and has not committed any error in passing the Award and further order. The Award passed by the learned Arbitrator is not against the established principle of law. Therefore the Award passed by the learned Sole Arbitrator is not against the record, facts, evidence and oral as well as written submission. The applicant has stated that there was encroachment upon the final plot No.214 and 216 and hence the applicant has not done the work on the said plots but the applicant failed to prove that there was an encroachment upon the above final plots. In view of the above facts and circumstances of the case the learned Arbitrator has rightly passed the award dated 3/11/2009 and further order dated 26/11/2009 in Arbitration Petition No.6/2007 and there is no any illegality or perversity in the award passed by the learned Arbitrator and therefore this court is not required to interfere with the award and further order passed by learned Arbitrator as the applicant failed to prove its case and hence the present application of the applicant is required to be dismissed and hence I pass the following order.”

5. The reasoning given by the Court under Section 34 of the Act’ 1996 that on perusal of the award and documentary evidence produced by the parties, it was evident that the claimant had produced the statement of claims before the learned arbitrator, which was agitated to be false and got up, could not be proved by the applicant.

6. The assertion that the claimant had not completed the work and the work was completed by some other agency was also not proved by the applicant/appellant herein by producing any documentary evidence. There was an assertion with regard to the non-completion of work over two plots, namely, Final Plot Nos. 214 and 216 of development and

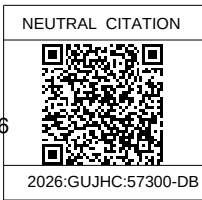


fencing which could not be proved by the applicant/appellant by producing any cogent evidence.

7. A bare perusal of the arbitral award indicates that the issue framed by the learned arbitrator as to whether the claimant proved that he completed the work as per agreement in time, it was noted that the entire case depends upon the documentary evidences filed by the parties, and they have chosen not to adduce any ocular evidence.

8. From the evidence on record, a finding of fact has been recorded in the impugned award that a letter dated 23.09.2002, Exhibit 4, clearly shows that the work was completed, but there was a possibility of delay on account of audit in the bill and, therefore, the claimant had asked for extension. There are other material documents on record, which have been referred to in the arbitral award to reach at a conclusion that the contention of respondent/appellant herein regarding non-completion of work by the claimant was nothing but an afterthought and that it was raised at a very belated stage.

9. A categorical finding has been recorded by the learned arbitrator after perusal of the material documents on record that there was no reason to believe that the work as per the agreement was done in time by the claimant, final bill though was sent by the claimant in time, but even after second reminder, it was overlooked by the appellant. In absence of the detailed measurement submitted by the appellant, there was no reason to disbelieve the final bill wherein all details have been given by the claimant.



10. The respondent/applicant herein has miserably failed to prove the contentions raised by it regarding non-completion of work of Item No.5, regarding the delay in work by the claimant, and since the appellant had not produced the measurement, etc., before tribunal and the relevant documents, an adverse inference was drawn against it.

11. The concurrent finding returned by the learned arbitrator and the Court under Section 34 of the Act' 1996, cannot be re-appreciated within the scope of Section 37 of the Act' 1996. It is well settled that mere error of fact or law cannot be taken as a ground to set aside the arbitral award.

12. Within the scope of Section 37 of the Act, 1996, the Court has no jurisdiction to look into the merits of the arbitral award. No good ground has been made out to interfere in the arbitral award and on the plea of mere illegality or non-consideration of alleged relevant documents, the correctness of the arbitral award cannot be assailed.

13. In view of the above, the present appeal is being dismissed being devoid of merits. No order as to costs.

(SUNITA AGARWAL, CJ)

(DIVYESH A. JOSHI,J)

BIJOY B. PILLAI