

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.O. 4004 of 2024

Steel Authority of India Limited
Vs
H. R. Construction Private Limited

For the Petitioner/SAIL : Mr. Supriya Dubey,
Mr. Rudraman Bhattacharyya,
Mr. Akash Munshi.

For the Opposite Party : Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Debraj Sahu,
Mr. Shreyaan Bhattacharyya,
Ms. Sweta Mukherjee.

Hearing concluded on : 14.05.2025

Judgment on : 22.05.2025

Shampa Dutt (Paul), J.:

1. The present civil revision has been preferred against an order dated 15th September, 2024 passed by the learned Sole Arbitrator, in Arbitration Case No. 2 of 2022 between H.R. Construction Pvt. Ltd. vs. Steel Authority of India Limited.
2. Vide the order under revision, the learned Arbitrator by an interim award allowed a prayer for amendment of claim made by the claimant with cost of Rs.50,000/- which admittedly the petitioner herein/opposite party

has already accepted from the claimant and the learned Arbitrator granted liberty to the petitioner/opposite party to file additional written statement of defence and also to cross-examine the claimant's witness.

3. The petitioner/opposite party has preferred this revision being aggrieved that :-

(i) *The amendment was made at a very belated stage which will result in rehearing of the arbitration case thus further delaying the completion of the proceedings.*

(ii) *That the amendment permitted has resulted in changing the nature and character of the claims made initially.*

(iii) *There has been non-compliance of Section 23(3) of the Arbitration & Conciliation Act, 1996.*

4. Thus, the prayer for setting aside of the said order.

5. The petitioner herein has relied upon Para 8 in the judgment of the Supreme Court in **Serosoft Solutions Pvt. Ltd. vs. Dexter Capital Advisors Pvt. Ltd. reported in 2025 SCC OnLine SC 22, decided on January 3, 2025.** Para 8 of the said judgment reads as follows:-

“8. After two days, i.e. on 03.10.2024, respondent/claimant moved an Interlocutory Application before the Tribunal seeking extension of time for cross-examination of RW-1. Tribunal heard the parties on the said application and by its order dated 09.10.2024 noted that arbitral proceedings were time bound and in fact the extended mandate was also to expire soon. The Tribunal also noted that despite exhausting twice the allotted time for cross-examination of RW-1, the respondent/claimant's approach reflected lack of preparedness and a non-serious attitude. With this view of the matter the Tribunal rejected the application and directed that final arguments should

conclude by November 2024, so that there is sufficient time for preparation and making of the award. Respondent/claimant challenged the above referred order of the Arbitral Tribunal by filing a petition under Article 227 of the Constitution and sought a direction to the Tribunal for providing further opportunity to cross-examine RW-1. By the order impugned before us the High Court noted that judicial interference in such type of matter was least warranted, but came to the conclusion that in view of the exceptional circumstances there can be a direction to the Tribunal to grant further opportunity to the respondent/claimant to cross-examine RW-1 on the date and time fixed by the Tribunal. Questioning the above referred order the appellant/respondent is before us.”

6. The opposite party/claimants by filing a short note, relies upon the following judgments:-

(a) Serosoft Solutions Pvt. Ltd. (supra), Para 12 to 16 and lays stress on Para 14 which is as follows:-

“14. *In any event of the matter when the Arbitral Tribunal by its order dated 09.10.2024 held - ‘that far and no further’, to the respondent/claimant's endeavour to cross-examine RW-1, the High Court should have restrained itself from interfering. In order to justify its interference and extension of time, the High Court has referred to and relied on a judgment of the same Court¹. Certain conditions for exercising jurisdiction under Articles 226/227 are mentioned in the judgment. Conditions (v) and (vi) of the said judgment could have provided sufficient guidance for the High Court to consider whether interference is warranted or not. The relevant portion of the said order is as under:—*

“(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

(b) SBP & Co. vs. Patel Engineering Ltd. & Anr., (2005) 8 SCC 618. Para 45.

7. Section 23(3) of the Arbitration and Conciliation Act lays down:-

"Section 23. Statements of claim and defence:

.....

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it."

8. On careful consideration/comparison of the statement of claims in the claim petition and the nature of amendment prayed for, it appears that:-

- (i) There has been a prayer for an enhancement of the initial claim (claim no. 1) which it appears has been moderately enhanced by adding certain amount which was due to the claimant subsequent to filing of the claim petition. The said amendment is related to the initial claim and thus has not changed the nature and character of the claim.
- (ii) Amendment in respect of claim no. 9 and 10 is clearly related to the initial claim. By way of amendment, the claim has only been specified in detail, and as such, will in no way change the nature

and character of the claim or prejudice the opposite party/petitioner herein.

(iii) The additional amendment as prayed for and allowed relates to the discharge of bank guarantee, pleading and prayer in respect of which is already in the initial statement of claim.

(iv) Regarding the amendment relating to interest on claims till date of payment is part of claim no. 12 in the claim petition.

9. So the only contention of the petitioner which remains to be looked into is the factor of delay. Delay in making the prayer for amendment. It is stated that the application has been made at the stage of argument, even though the claimant's case is that the amendment sought was necessary to be brought on record after the written statement/evidence was on record and such delay in making application for amendment leads to delay in the proceedings being completed/concluded thus causing prejudice to the opposite party.

10. An arbitration proceeding is a quasi-judicial proceeding. Though in such proceedings the provisions of Civil Procedure Code is applicable, the same is not always mandatory. Under Order 6 Rule 17 CPC, any amendment, once trial has commenced becomes difficult unless certain criterias are met, whereas Section 23 (3) of the Arbitration and Conciliation Act, 1996 provides that amendment or supplementing a claim or defence can be done during the course of the arbitral proceedings and that includes the stage of argument, the provision not being as stringent as the one under Order 6 Rule 17 CPC.

11. The amendment permitted in this case is in accordance with law as the same will not change the nature and character of the claim application and is necessary for proper adjudication, thus not causing prejudice to the petitioner/opposite party.
12. The arbitral tribunal permitted the amendment, though at a belated stage, but a cost has been imposed on the claimant and admittedly the same has been paid by the claimant and accepted by the opposite party/petitioner, which was a condition precedent for allowing the amendment to be effective.
13. Thus, as there appears to be no irregularity in the amendment being allowed, the order under challenge does not call for interference.
14. **C.O. 4004 of 2024 stands dismissed.**
15. **Arbitral Tribunal to resume proceeding.**
16. There will be no order as to costs.
17. All connected applications, if any, stand disposed of.
18. Interim order, if any, stands vacated.
19. Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)