

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE**

**RP No. 134 of 2020**

*(M/S PRESTIGE FEEDMILLS LTD. THR. SHRI JITENDRA S. RATNAPARIKHI Vs K.N. RESOURCES)*

Shri Amit Agrawal, Senior Counsel with Shri Arjun Agrawal,  
Counsel for the review petitioner.

Shri Vivek Dalal, Counsel for the respondent.

**ORDER**

**(Passed on 23/08/2022)**

Heard on I.A. No.7436/2021, which is an application filed by the Respondent for dismissal of review petition on the ground that no review is maintainable under the provisions of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996').

2. This review petition has been filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure, 1908 for review of the judgement dated 16.12.2019 passed by this Court in Arbitration Appeal No.21 of 2019.

3. Shri Vivek Dalal, learned counsel for the respondent has taken strong exception to the maintainability of this review petition on the ground that no review lies against an order passed in an appeal under Section 37 of the Act of 1996. In support of his contention learned counsel has relied upon the Madhya Pradesh Arbitration Rules, 1997 and the attention of this Court has also been drawn to Rule 9 of the aforesaid Rules which provides for the applicability of certain provisions of CPC, and under the aforesaid

Rule neither Section 114 nor Order 47 are included. Thus, it is submitted that in the absence of any specific provision regarding the maintainability of the review petition, the same is not maintainable.

4. Regarding maintainability of review petition, counsel has also relied upon a decision in the case of **Madhav Structural Engineering Ltd., Mumbai Vs. Maharashtra State Road Development Corporation Ltd., Mumbai** reported as **[2013 (2) Mh. L.J. 372]**. Reliance is also placed on a decision rendered by the Supreme Court in the case of **Haridas Das Vs. Usha Rani Banik (Smt.) and others** reported as **(2006) 4 SCC 78**.

5. Shri Amit Agrawal, learned senior counsel appearing for the review petitioner, on the other hand, has opposed the prayer and it is submitted that the review petition is very much maintainable and so far as the decision rendered by the Bombay High Court in the case of **Madhav Structural Engineering Ltd.** (supra) is concerned, the same has already been distinguished by a Division Bench of Calcutta High Court in the case of **Accord Advertising Private Limited Vs. Airports Director, The Airports Authority of India in CAN 7354 of 2019 in R.V.W.171 of 2019**.

6. Shri Agrawal has also relied upon a decision rendered by the co-ordinate Bench of this Court in **Review Petition No.585 of 2019 (Smt. Pushpalata Jain Vs. M/s. Raj Enterprises & Ors.)** wherein in an application for review of an order passed by this Court in an application filed under Section 11(6) Act of 1996, was *suo-motu* taken in review by this Court has held that review petition is

maintainable, relying upon the decision rendered by the Supreme Court in the case of **Municipal Corporation of Greater Mumbai and another Vs. Pratibha Industries Ltd. and others** reported as **(2019) 3 SCC 203**. Attention of this Court has also been drawn to the fact that the aforesaid decision in the case of **Smt. Pushpalata Jain (supra)** was also challenged before the Supreme Court in **Special Leave Petition (C) No.4820 of 2021 ( Mohd. Anwar & Ors. Vs. Pushpalata Jain & Ors.)** and the Supreme Court has affirmed the findings recorded by this Court. Thus, it is submitted that the objections raised by the counsel for the respondent regarding maintainability of the review petition be rejected and the petition be heard finally on merits.

7. Heard, the counsel for the parties and perused the record.

8. So far as the first ground raised by the counsel for the respondent regarding the applicability of the Madhya Pradesh Arbitration Rules, 1997 is concerned, it is found that the aforesaid rules have been framed under Section 82 of the Act of 1996, which provides for power of High Court to make rules and states that the High Court may make rules consistent with this Act as to all proceedings before the Court under this Act, meaning thereby it is only an enabling provision empowering the High Court to make rules consistent with the Act in order to facilitate smooth functioning of court which may, at times find itself at a fix if any particular provision of CPC can be applied. Thus, merely if in the aforesaid Rules s.114 or Order 47 of CPC are not mentioned, it

would not imply that these provisions of C.P.C. which are substantive in nature are specifically barred. If such an interpretation is given to these rules, it would certainly lead to an anomalous situation. In such circumstances, the first contention raised by the counsel for the respondent is hereby rejected and it is held that the Madhya Pradesh Arbitration Rules, 1997 have no bearing on the issue that whether an application for review is maintainable in respect of an order passed in an appeal under s.37 of the Act of 1996.

9. So far as the decision rendered by the Bombay High Court in the case of **Madhav Structural Engineering Ltd., Mumbai** (**supra**) is concerned, it is true that the aforesaid decision has already been distinguished by the Division Bench of Calcutta High Court in the case of *Accord Advertising Private Limited (supra)*, however, with due respect to the Division Bench of Calcutta High Court, this Court is of the considered opinion that the distinction made by the Division Bench of the Calcutta High Court that the case of **Madhav Structural Engineering Ltd., Mumbai** (**supra**) relates to a statutory power conferred upon a Tribunal, does not appear correct. This Court is of the view that in the case of **Madhav Structural Engineering Ltd., Mumbai** (**supra**) it was not an issue that whether the Tribunal has the power to review its own order or not, the issue was that whether an order passed in an appeal filed under Section 37 of the Act of 1996 can be reviewed by the High Court or not.

10. Be that as it may, this Court is of the considered opinion that a review petition against an order passed by the High Court under Section 37 of the Act of 1996 would surely be maintainable as has been held by the Supreme Court in the case of **Mohd. Anwar & Ors. (supra)** which has arisen out of an order passed by the coordinate bench of the this court in the case of **Pushpatala Jain (supra)** . The relevant paras of the same [**Mohd. Anwar & Ors. (supra)**] read as under:-

“12. It is difficult to accept the contention of the petitioners that High Court could not have reviewed the order dated 27th August, 2018 passed under Section 11(6) of the Arbitration and Conciliation Act. As held by this Court in **Jain Studios Limited through its President v. Shin Satellite Public Company Limited** reported in (2006) 5 SCC 501, an order under Section 11(6) of the Act is reviewable.

13. In **Municipal Corporation of Greater Mumbai and Anr. V. Pratibha Industries Limited and Others** reported in (2019) 3 SCC 203 this Court reiterated that the High court is a court of record and the High Court had power to review an order under Section 11 by invoking its inherent power.

14. The Single Bench of the High Court has exercised its power of review after the learned Arbitrator drew its attention to the omission to material orders of a Bench of larger strength, which were binding on the Single Bench. The High Court has rightly reviewed and rectified its order dated 27th August, 2018 to prevent grave injustice to the Respondents herein, as otherwise the Respondents would effectively have been rendered remedy-less, their suit against the Petitioners having been dismissed on the ground of existence of an arbitration agreement.”

(emphasis supplied)

11. So far as the order passed by the co-ordinate bench of this Court in the case of **Smt. Pushpatala Jain (supra)** is concerned, while relying upon a decision rendered by the Supreme Court in the case of **Municipal Corporation of Greater Mumbai and another (supra)**, it has been held by this Court as under:-

“[6] The Supreme Court in the matter of **Municipal Corporation of Greater Mumbai and another Vs. Pratibha Industries Ltd and others (2019) 3 SCC 203** has also reiterated that the High court is a court of record and power to review such an Order u/S.11 can be exercised invoking the inherent power. Considering Article 215 of the Constitution, it has been held by the Supreme Court in the above judgment that:-

“10- Insofar as the High Courts jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:-

“215- High Courts to be courts of record.--  
Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments.”

[7] Having regard to the aforesaid, the preliminary objection that Order u/S.11 of the Act cannot be reviewed is found to be devoid of any merit which is accordingly rejected.”

(emphasis supplied)

12. It is true that in the aforesaid decision, review of the order passed u/s.11 of The Act of 1996 was under consideration, but in the considered opinion of this court, the same analogy can also be applied to an order passed in an appeal u/s.37 of the Act of 1996,

for the reason that Article 215 of the Constitution would be applicable to the High Court notwithstanding if the order is passed by the High Court u/s.11 of the Act of 1996, or u/s.37 of the same.

**13.** Resultantly, the objections raised by the counsel for the respondent regarding maintainability of the review petition are **hereby rejected** and it is held that the review petition in respect of an order passed u/s.37 of the Act of 1996 is maintainable.

**14.** Let the matter be listed for hearing on merits in the week commencing 26.09.2022.

**(Subodh Abhyankar)**  
**Judge**

**Pankaj**