

Right to adduce evidence in the stage of challenging of an Arbitration award is available only in exceptional cases

S Ravi Shankar¹

In a recent Judgment dated 23rd September 2019, Supreme Court of India in the case of **Canara Nidhi Limited Vs M.Shashikala and others (2019) SCC Online SC1244** set aside the Judgment of High Court of Karnataka which allowed the parties to adduce addition evidence and cross examine new witnesses, holding that in normal circumstances the grounds of S.34 shall be confined to the pleadings and evidences filed before the Arbitrator and only in exceptional cases such a permission can be granted and the present case is not an exceptional one. This judgment has taken into consideration the 2019 Amendment Act, that replaced the words “furnishes proof that” by “establishes on the basis of the record of the Arbitration tribunal that” in S.34(2)(a) of the Arbitration and Conciliation Act,1996. This issue came up in various cases because of the words “furnishes proof that” in the said Section and the 2019 amendment has brought in clarity and now the law is well settled. The present judgment follows the earlier Judgment of the Supreme Court of India in the matter of **Emkay Global Financial Services²** case. In the said **Emkay** judgment, Supreme Court of India held that “*We clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the court by way of affidavits filed by both the parties. Cross-Examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both the parties*”. From the above it can be understood that as per the legal frame work a challenge to an arbitration award cannot be treated like a Civil appeal and the challenge should be confined only to the grounds mentioned in S.34 of the Act.

In the present case of **Canara Nidhi Limited** the parties while assailing the award the petitioners filed an application under Section 151 CPC before the District Judge seeking to permit to adduce evidence, which was dismissed by the District Judge on the ground that there was no necessity of adducing fresh evidence in the application filed under Section 34 of the Act. Aggrieved parties filed Writ Petitions under Section 226 and 227 of the Constitution of India in the High Court and the High Court direct the District Judge to “recast the issues” and allow parties to adduce new evidence. Hence, the matter came up to Supreme Court of India. Supreme Court of India, held that S.34 application is a summary proceedings and High Court Directions will amount to retrial on the issues that came to be concluded before the arbitrator which is not permissible in law. It further held that the adducing of additional witness can be allowed only in exceptional cases and in normal circumstances, the judge handling S.34 application should confine to the records that were made available before the Arbitrator.

¹ The author is an Arbitration lawyer and Senior Partner of Law Senate law firm
www.lawsenate.com

² **Emkay Global Financial Services Limited Vs Girdhar Sondhi (2018) 9 SCC 49**