

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**M.R. SHAH; B.V. NAGARATHNA; JJ.]**

CIVIL APPEAL NOS. OF 2022 (@ SLP (C) Nos. 1805-1806/2022) FEBRUARY 18, 2022

**DR. A. PARTHASARATHY & ORS. VERSUS E SPRINGS AVENUES PVT. LTD & ORS.**

**Arbitration and Conciliation Act, 1996 - Section 37 - The High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator -The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37. (Para 3)**

(Arising out of impugned final judgment and order dated 08-11-2021 in COMAP No. 44/2021 and in COMAP No. 58/2021 passed by the High Court of Karnataka at Bengaluru)

*For Petitioner(s) Mr. Ritin Rai, Sr Adv Mr. Chitranshul A. Sinha, Adv Mr. Jaskaran Singh Bhatia, Adv Ms. Namrata Mohapatra, Adv M/S. Dua Associates, AOR*

*For Respondent(s) Mr. Vikas Mahendra, Adv. Ms. Pritha Srikumar Iyer, AOR Mr. Kaustav Saha, Adv.*

**ORDER**

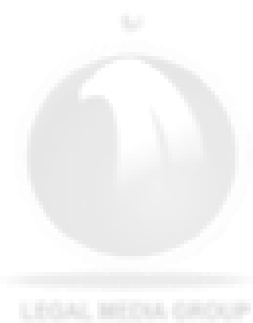
We have heard Shri Ritin Rai, learned Senior Advocate appearing on behalf of the appellants and Shri Vikas Mahendra, learned counsel appearing on behalf of respondent no.1, who is on caveat and accepts notice on its behalf.

Leave granted.

By the impugned judgment and order passed by the High Court in exercise of power under Section 37 of the Arbitration and Conciliation Act, 1996, the High Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the Arbitrator for fresh decision. As per the law laid down by this Court in the case of [\*\*Kinnari Mullick and Anr. Vs. Ghanshyam Das Damani \(2018\) 11 SCC 328\*\*](#) and [\*\*I-Pay Clearing Services Pvt. Ltd. Vs. ICICI Bank Ltd. \(2022\) SCC OnLine SC 4\*\*](#), the same is wholly impermissible. Only two options are available to the Court considering the appeal under Section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator.

In that view of the matter, the impugned judgment and order passed by the High Court is unsustainable and deserves to be quashed and set aside. However, as the High Court has not considered the appeals on merits on the grounds whichever may be available to the original appellant(s), the matter is to be remanded to the High Court to consider the appeals in accordance with law and on its own merits on other issues, if any.

In view of the above and for the reasons stated hereinabove, the present appeals succeed. The impugned judgment and order passed by the High Court quashing and setting aside the award passed by the Arbitrator and remanding the matter to the Arbitrator is hereby quashed and set aside. The matter is remanded to the High Court to re-consider the appeals in accordance with law and on its own merits on other issues, if any, and to consider legality and validity of the award passed by the Arbitrator, of course, within limited jurisdiction available under Section 37 of the Arbitration Act. The present appeals are allowed to the aforesaid extent.



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