

Delhi High Court Clarifies Remedy Against Rejection of Recall Application in Arbitral Proceedings : U.P. Infraestate Pvt. Ltd. v. Rivaj Infratech Private Limited & Anr.

Background

The judgment in U.P. Infraestate Pvt. Ltd. v. Rivaj Infratech Private Limited & Anr.¹ was delivered by the Delhi High Court ("**Court**") in an appeal preferred by U.P. Infraestate Pvt. Ltd. through its Liquidator ("**Appellant**") against Rivaj Infratech Private Limited and another ("**Respondents**"). The question before the Court was whether a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Act**") is maintainable against an order of an arbitrator refusing to recall an earlier order terminating the arbitral proceedings, or whether such a challenge lies exclusively under Section 14(2) of the Act.

After dispute arose between the parties, Sole Arbitrator was appointed to adjudicate the same. During the course of the arbitral proceedings, the Appellant, who was the claimant before the Sole Arbitrator, failed to file its statement of claim within the time granted by the Sole Arbitrator. On account of this non-cooperation and failure on the part of the Appellant, the Sole Arbitrator vide order dated 01 November 2019 terminated the arbitral proceedings under Section 25 of the Act. The order dated 01 November 2019 was never challenged by the Appellant before any forum.

Instead of challenging the termination order, the Appellant chose to file a recall application before the Sole Arbitrator seeking recall of the order dated 01 November 2019. The Sole Arbitrator dismissed the said recall application vide order dated 14 January 2023. Aggrieved by the dismissal of the recall application, the Appellant filed a petition under Section 34 of the Act before the Single Judge of the Court bearing OMP (COMM) 154/2023, which later got dismissed vide order dated 26 April 2023 ("**Impugned Order**"). The Appellant preferred an appeal under Section 37 of the Act before the Court against the order dated 26 April 2023.

The Respondents submitted that the petition under Section 34 was not maintainable as the remedy against a dismissed recall application was under Section 14(2) of the Act, as laid down by the Supreme Court in the judgment in *Harshbir Singh Pannu v. Jaswinder*

¹ U.P. Infraestate Pvt. Ltd. v. Rivaj Infratech Private Limited & Anr, 2026 SCC OnLine Del 2219

*Singh*²(“**Harshbir Singh**”). It was argued that since Section 37 of the Act does not provide for an appeal against an order under Section 14, the present appeal was not maintainable either. Relying on *Ram Kishan Fauji v. State of Haryana*³(“**Ram Kishan**”), the Respondents submitted that the Impugned Order facially purports to have been passed under Section 34 of the Act, it should be treated as one passed under Section 14 of the Act.

The Appellant argued that since the petition was filed under Section 34 of the Act and the Impugned Order was passed thereunder, neither could be treated as proceedings under Section 14 of the Act. The Appellant contended that the judgment in *Harshbir Singh* ought not to apply, placing reliance on the doctrine of prospective overruling.

The Appellant submitted that the order dated 14 January 2023 dismissing the recall application should itself be treated as an order terminating the arbitral proceedings under Section 25 of the Act, so as to bring it within the ambit of Section 34 of the Act.

Analysis

The Court rejected the Respondents’ submission that the Impugned Order should be treated as having been passed under Section 14 of the Act rather than under Section 34 of the Act. The Court held that since the petition was filed under Section 34 of the Act and the Single Judge adjudicated the matter in that capacity, and as there was nothing in the Impugned Order to indicate the exercise of jurisdiction under Section 14 of the Act, it was not possible to construe the Impugned Order as one passed under Section 14 of the Act. The Court distinguished the judgment in *Ram Kishan* on the ground that in it the Supreme Court was concerned with whether the jurisdiction exercised under Article 226 of the Constitution was civil or criminal in nature and the question of treating an order passed under one provision as one passed under another did not arise before it at all. The Court held that the judgment in *Ram Kishan* could not support the Respondents’ submission. The appeal was accordingly maintainable under Section 37 of the Act, which provides for an appeal against an order under Section 34 of the Act.

On the maintainability of the Section 34 petition, the Court held that the matter stood conclusively settled by the judgment in *Harshbir Singh*, which held that where a recall application is dismissed by the arbitrator, the remedy for the aggrieved party is to approach the

² *Harshbir Singh Pannu v. Jaswinder Singh*, 2025 SCC OnLine SC 2905

³ *Ram Kishan Fauji v. State of Haryana*, (2017) 5 SCC 533

court under Section 14(2) of the Act, and the court would then examine whether the mandate of the arbitrator stood legally terminated. Since the petition bearing OMP (COMM) 154/2023 was filed under Section 34 of the Act, the Court held it to be not maintainable.

Rejecting the Appellant's contention that the order dated 14 January 2023 dismissing the recall application fell within the ambit of Section 34 of the Act, the Court held that arbitral proceedings can only be terminated once and the only order of termination in the present case was the order dated 01 November 2019, which was never challenged by the Appellant. The dismissal of the recall application was an order refusing to recall the earlier termination order and could not be treated as a fresh termination order under Section 25 of the Act, since proceedings that had already been terminated cannot be terminated a second time.

On the argument of prospective overruling, the Court placed reliance on the judgment of *DRI v. Raj Kumar Arora*⁴ passed by the Supreme Court and held that a judgment passed by the Supreme Court declares the law as it always stood and operates retrospectively, unless the Supreme Court itself expressly directs otherwise. Since the judgment in Harshbir Singh was not made prospective, it applied retrospectively and rendered the petition under Section 34 of the Act not maintainable. The Court rejected the contention that retrospective application of the judgment divested the Appellant of a vested right, holding that no such right had ever vested in the Appellant since neither the Act nor any prior declaration of law conferred a right to challenge a dismissed recall application under Section 34.

The Court held the petition to be not maintainable, quashed and set aside the Impugned Order and disposed of the appeal without going into the merits, with liberty granted to the Appellant to take appropriate steps under Section 14(2) of the Act.

Conclusion

The judgment in *U.P. Infraestate Pvt. Ltd. v. Rivaj Infratech Private Limited & Anr* resolves the remedial question for claimants who face a terminated arbitration and have not challenged the termination order itself. Section 14(2) of the Act is the only route available and Section 34 does not apply. The scope of that remedy is also different and the court examines whether the arbitrator's mandate was legally terminated, not the merits of the underlying dispute. The

⁴ *DRI v. Raj Kumar Arora* (2026) 2 SCC 401

Court's refusal to give Harshbir Singh prospective effect means that petitions already filed under Section 34 in similar circumstances face the same result.