# Nathani Steels Ltd. Vs Associated Constructions

**Court:** Supreme Court of India

**Date of Decision:** March 27, 1995

**Citation:** (1996) 1 LW 355 : (1995) 6 SCALE 337 : (1995) 4 SCC 208 Supp : (1995) 5 SCR 59 Supp

**Hon'ble Judges:** A. M. Ahmadii, C.J; Sujata V. Manohar, J; K. S. Paripoornan, J

**Bench:** Full Bench

**Final Decision:** Disposed Of

## Judgement

@JUDGMENTTAG-ORDER

1. SPECIAL leave granted.

2. The facts giving rise to this appeal reveal that on 5/9/1989 respondent submitted a tender for the construction of sheds in the appellant''s factory

which came to be accepted and a contract came to be executed. Under the terms of the contract executed on 22/9/1989 the work had to be

completed by 5/6/1990. The work was in fact. not completed on or before the due date. The contract contained the Arbitration clause. It appears

that the dispute which arose on account of the non-completion of the contract came to be settled by and between the parties and the settlement

was reduced to writing as found in the document dated 28/12/1990 (Exh. ''F'' at p. 236. By this document the disputes and differences were

amicably settled by and between the parties in the presence of the Architect on the terms and conditions set out in clauses 1 to 8 thereof. There is

no dispute that the parties had, under the arrangement, arrived at a settlement in respect of disputes and differences arising under the contract then

existing between the parties. This document bears the signatures of the respective parties. There is also a reference in regard to discussion that had

ensued prior in point of time before the parties came to a final amicable settlement of the, disputes and differences. According to the respondent,

although he voluntarily entered into the said settlement, he later realised that there was a calculation mistake in regard to the amount in question on

his part and thereupon invoked the Arbitration clause. The appellant, however, contended that in view of the disputes and differences in connection

with the contract having been finally and amicably settled by and between the parties, it was not open to the respondent to unilaterally brush aside

the settlement and invoke the Arbitration clause as if the dispute survives without having the settlement set aside on the ground of mistake as

permissible by law. It was, therefore, contended on behalf of the appellant that it was not open to invoke the Arbitration clause nor was. the

Arbitrator entitled to enter upon the arbitration.

3. The appellant has invited our attention to two decisions of this court. The first dated 1/10/1993 in P.K. Ramaiah and Co. v. Chairman &

Managing Director, National Thermal Power Corpn and second, dated 4/2/1994 in State of Maharashtra v. Nav Bharat Builders". In the first

mentioned case the parties had resolved their disputes and differences by a settlement pursuant whereto the payment was agreed and accepted in

full and final settlement of the contract. Thereafter, brushing aside that settlement the Arbitration clause was sought to be invoked and this court

held that under the said clause certain matters mentioned therein could be settled through Arbitration but once those were settled amicably by and

between the parties and there was full and final payment as per the settlement, there existed no arbitrable dispute whatsoever and, therefore, it was

not open to invoke the Arbitration clause. In the second mentioned case the respondent-contractor acknowledged the receipt of the amount paid

to him and stated that there was unconditional withdrawal of his claim in the suit in respect of the labour escalation. There was, thus, full and final

settlement of the claim and it was contended that no arbitrable dispute survived in relation thereto. Other claims, if any, and which were not settled

by and between the parties could be raised and it would be open to consider whether the arbitrable dispute arose under the contract necessitating

reference to arbitration. Dealing with this question also this court after referring to the decision in P.K. Ramaiah case concluded that in relation to

the claim under the head "labour escalation" there did not remain any arbitrable dispute which could be referred to arbitration. It would thus be

seen that once there is a full and final settlement in respect of any particular dispute or difference in relation to a matter covered under the

Arbitration clause in the contract and that dispute or difference is finally settled by and between the parties, such a dispute or difference does not

remain to be an arbitrable dispute and the Arbitration clause cannot be invoked even though for certain other matters, the contract may be in

subsistence. Learned counsel for the respondent, however, placed great emphasis on an earlier decision of this court in Damodar Valley Corpn. v.

K.K. Kar and in particular to the observations made in paras 11 to 13 of the judgment. It may, at the outset, be pointed out that a similar argument

was advanced based on the observations made in this decision, in Ramaiah case also (vide para 7 but the same was rejected holding that on the

facts since the , respondent did not give any receipt accepting the settlement of the claim, the payment made by the other side was only unilateral

and hence the dispute subsisted and the Arbitration clause in the contract could be invoked. Therefore, that decision can be distinguished on facts.

Even otherwise we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that

dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper

proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke

the Arbitration clause. If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to

one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In

the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as per the

settlement, it was not open to the respondent unilaterally to treat the settlement as non est and proceed to invoke the Arbitration clause. We are,

therefore, of the opinion that the High Court was wrong in the view that it took.

4. IN the result, we allow this appeal, set aside the impugned order of the High court and hold that it was not open to the respondent to invoke the

Arbitration clause in relation to the dispute/difference settled under the terms of the settlement with no order as to costs.