

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 511/2009

1. State Of Rajasthan Through Chief Engineer, National Highway, Public Works Department, Jacob Road, Hasanpura, Jaipur
2. Executive Engineer, Public Works Department, National Highway, Division - 4, Pwd Head Office, Nirman Bhawan, B-Block, Jacob Road, Jaipur

----Appellants

Versus

M/s. Godhara Construction Company, Registered Partnership Firm, 97, Hari Marg, Civil Lines, Jaipur Through Partner Shri Dharampal Godhara

----Respondent

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For Appellant(s)	:	Mr. Pankaj Chaudhary, Adv. for Mr. Rohit Choudhary, Dy. GC
For Respondent(s)	:	Mr. R.P. Garg, Adv.

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**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Judgment**

**Reportable:**

**05/05/2022**

Instant miscellaneous appeal has been preferred by the State of Rajasthan against the impugned judgment dated 30.08.2008 passed by the Court of Additional District and Sessions Judge (Fast Track) No.7, Jaipur City, Jaipur in Civil Misc. Case No.41/2008 (383/2007) (hereinafter referred to as 'the court below'), whereby objections filed by the appellant-State of Rajasthan under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') against the arbitral award dated 29.07.2000 has been rejected.

Brief facts leading to this appeal is that a work contract was given to the respondents for renewal work of pever and Hot Mix plant in 14 Km. Length in between Kms. 100 to 149 (in Kms. 101/0 to 104/0, 132/0 to 136/0, 141/0 to 146/0 to 149/0) on Agra Road, NH-11 for which Agreement No.26, year 1993-94 was executed between the parties. There was an arbitration clause in this Agreement to resolve the dispute. During the progress of the work, dispute arose between the parties. Then the respondents submitted application before the District Judge under Sections 10 and 11 of the Act of 1996, who appointed an arbitrator vide order dated 28.08.1998 to resolve the dispute. After hearing both sides, the Arbitrator passed an award of Rs. 4,33,161.79/- with interest @ 18% from 25.04.1997 till its actual payment vide award dated 29.07.2000. And the copy of this Award was forwarded to Chief Engineer, PWD (National Highway), Jaipur.

When the award was not satisfied, the respondents submitted an application before the Court of District Judge, Jaipur for passing a decree in terms of the award dated 29.07.2000. When the notices of this application were served upon the appellant-State, the appellant submitted objection on 22.02.2001 by filing reply of the aforesaid application in respect of the award dated 29.07.2000. Since there was delay in filing objections, hence an application under Section 5 of the Limitation Act was submitted for condoning the delay.

The learned Additional District Judge (Fast Track No.7) Jaipur rejected the objections vide impugned order dated 30.08.2008 by holding that the objections were not filed within the time of limitation prescribed under Section 34 (3) of the Act of 1996 and

also held that the objections cannot be decided on merits as the same were beyond limitation.

Learned counsel for the appellant submitted that copy of the award was not made available to the officer-in-charge of the appellant by the Arbitrator. Hence delay has occurred in filing the objections but the court below has committed an illegality in rejecting the objections by treating the same as time barred.

Per contra, counsel for the respondent submitted that the matter was contested by the appellant before the Arbitrator and the Arbitrator passed the award on 29.07.2000 after hearing both sides and copy of the award was forwarded to the Chief Engineer, PWD (National Highway), Jaipur. Counsel further submitted that the appellant was well aware about the passing of the award, as they have participated in the entire arbitral proceedings. And now the objections were submitted beyond the prescribed period of limitation contained under Section 34(3) of the Act of 1996, which were not maintainable in the light of the Judgment of Hon'ble Apex Court in the case of **Union of India Vs. Popular Construction Co. : 2001 (3) Arb. LR 345 (SC)**.

Heard and considered the argument of both sides.

Having noted the sequence, the only aspect which arises for consideration in this appeal is as to whether the objection petition filed under Section 34 of the Act of 1996 was within the period of limitation provided therein. If not, whether the delay is condonable by exercise of power under Section 5 of Limitation Act?

To appreciate the matter in its correct perspective it is necessary at the threshold to take note of Section 34(3) of Act of 1996 providing for the period of limitation, which is as hereunder:-

"Section 34(3):- An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

The scope available for condonation of delay being self-contained in the proviso to [Section 34\(3\)](#) and [Section 5](#) of Limitation Act not being applicable has been taken note by the Hon'ble Supreme Court in case of Popular Construction Co. (supra) where in it has been held as hereunder:-

"12. As far as the language of [Section 34](#) of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of [Section 29\(2\)](#) of the [Limitation Act](#), and would therefore bar the application of [Section 5](#) of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under [Section 34](#) to challenge an award is absolute and unextendible by court under [Section 5](#) of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process" This objective has found expression in [Section 5](#) of the Act which prescribes the extent of judicial intervention in no uncertain terms:

"5. Extent of judicial intervention.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

16. Furthermore, [Section 34\(1\)](#) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in [Section 34](#), sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of [Section 34\(1\)](#), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under [Section 34](#) is emphasised by the provisions of [Section 36](#) which provide that

"where the time for making an application to set aside the arbitral award under [Section 34](#) has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the [Arbitration Act, 1940](#). Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" ([Section 17](#)). Now the consequence of the time expiring under [Section 34](#) of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in [Section 34](#), the scheme of the 1996 Act would resolve the issue in favour of

curtailment of the court's powers by the exclusion of the operation of [Section 5](#) of the Limitation Act.

Further, in [State of Himachal Pradesh & Anr. vs. Himachal Techno Engineers & Anr.](#) (2010) 12 SCC 210 it was held as hereunder:-

"2. A petition under [Section 34](#) of the Arbitration and Conciliation Act, 1996 ("the Act", for short) was filed by the appellant on 11-03-2008, challenging the arbitral award. The petition was accompanied by an application under sub-section (3) of [Section 34](#) of the Act, for condonation of delay of 28 days in filing the petition. The respondent resisted the application contending that the petition under [Section 34](#) was filed beyond the period of 3 months plus 30 days and therefore, was liable to be rejected.

5. Having regard to the proviso to [Section 34\(3\)](#) of the Act, the provisions of [Section 5](#) of the Limitation Act, 1963 will not apply in regard to petitions under [Section 34](#) of the Act. While [Section 5](#) of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of [Section 34](#) of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days, but not thereafter". Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned."

The similar view was taken by the Hon'ble Apex Court in **P. Radha Bai Vs. P. Ashok Kumar** (2019) 13 SCC 445 wherein it was held as follows-

"33.2. The proviso to [Section 34](#) (3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates, "but not thereafter". The use of the phrase "but not thereafter" shows that the 120 days' period is the outer boundary for challenging an award. If [Section 17](#)

were to be applied, the outer boundary for challenging an award could go beyond 120 days. This Court has consistently taken this view that the words "but not thereafter" in the proviso of [Section 34](#) (3) of the [Arbitration Act](#) are of a mandatory nature, and couched in negative terms, which leaves no room for doubt. [[State of H.P. vs. Himachal Techno Engineers](#) (2010) 12 SCC 210], [Assam Urban Water Water Supply & Sewerage Board vs. Subash Projects & Mktg. Ltd.](#) (2012) 2 SCC 624 and [Anil Kumar Jinabhai Patel vs. Pravinchandra Jinabhai Patel](#) (2018) 15 SCC 178]"

The observations of the Hon'ble Supreme Court in different decisions relating to non-applicability of [Section 5](#) of the Limitation Act in condoning the delay and extending the limitation prescribed under [Section 34](#) (3) of Act of 1996 was taken note of by a bench of three Judges of Hon'ble Apex Court with approval, in [Chintels India Limited vs. Bhayana Builders Private Limited](#) (2021) 4 SCC 602.

The Hon'ble Apex Court in the case of **Simplex Infrastructure Limited Vs. Union of India**, reported in **(2019) 2 SCC 455** has held as under:-

"11. Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period for any appeal or application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in [Union of India v Popular Construction Company](#) 7, where it held as follows:

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act,

and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result....

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendable by court under Section 5 of the Limitation Act... "

18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

20. The respondent has relied on the decision of this Court in Union of India v Tecco Trichy Engineers & Contractors 9, where this Court had to decide the effective date from which the limitation within the meaning of subsection (3) of Section 34 of the Act shall be calculated. The Chief Project Manager on behalf of the Southern Railway had entered into a contract with a contractor for construction of a railway bridge. Disputes between the parties were referred to arbitration and an award was delivered in the office of the General Manager, Southern Railway. The Chief Engineer preferred an application against the award under Section 34 of the 1996 Act before the High Court. The learned Single Judge and the Division Bench of the High Court rejected the application holding it as barred by limitation. This Court reversed the order of the High Court



and condoned the application for delay. This Court observed that in huge organisations like the Railways having different divisional heads and various departments within the division, the copy of the award had to be received by the person who had knowledge of the proceedings and who would be the best person to understand and appreciate the award and grounds for challenge. This Court found that all arbitral proceedings for the Railways were being represented by the Chief Engineer and the General Manager had simply referred the matter for arbitration as required under the contract. While condoning the delay of three months and 27 days, this Court found that the service of the arbitral award on the General Manager could not be taken to be sufficient notice to constitute the starting point of limitation for the purpose of Section 34(3) of the 1996 Act. The decision in this case has no applicability to the facts of the present case as there is no dispute with respect to the party who received the arbitral award. It is an admitted position that on 27 October 2014, the arbitrator made an award in favour of the appellant and on 31 October 2014, the Union of India received a copy of the award. One of the reasons stated by the respondent for delay in filing an application under Section 34 of the 1996 Act was that the departmental office was located at Port Blair, Andaman and it was a time consuming process for obtaining permission from the circle office at Chennai. Administrative difficulties would not be a valid reason to condone a delay above and beyond the statutory prescribed period under Section 34 of the 1996 Act.”

It is not in dispute that the arbitral award was passed on 29.07.2000 and the objections were filed by the appellant-State of Rajasthan under Section 34 of the Act of 1996 on 21.11.2000. It is an admitted position of law that the application for setting aside the arbitral award can be filed within a period of three months and it is not in dispute that the objection came to be filed before the court concerned on 21.11.2000, thus the same was presented after the expiry of the limitation period.

The application for setting aside the arbitral award may not be made after three months after having elapsed from the date on which the party making that application had received the arbitral award.

The proviso to Section 34(3) of the Act of 1996 empowers the Court if it is satisfied that the applicant was prevented by sufficient cause from making application within the said period of three months to further extend the period and filing of the application for setting aside the arbitral award by 30 days but not thereafter.

From bare perusal of the statutory provisions, it is clear that the provision of Section 5 of the Indian Limitation Act does not apply to the proceedings contained under Section 34 of the Act of 1996.

In the present case, there is no dispute that the award was passed by the arbitral Tribunal on 29.07.2000 and in spite of contesting and participating in the arbitral proceedings before the Arbitrator, the objections were not submitted under Section 34(3) of the Act of 1996 within time.

The Court below has taken all these facts into consideration and rejected the objections raised by the appellant-State of Rajasthan by treating the same as beyond limitation.

In view of the discussions made above, this Court of the opinion that the application under Section 34(3) of the Act of 1996 filed by the appellant for setting aside the arbitral award dated 29.07.2000 was beyond the mandatory period of limitation permitted under the Act of 1996. Hence, the same could not have been entertained by taking the recourse of the provisions of the Limitation Act.

As a consequence thereof, there is no force in this appeal and the same is dismissed.

Stay application and all pending application, if any, also stands dismissed.

**(ANOOP KUMAR DHAND),J**

PRAVESH/8

RAJASTHAN HIGH COURT



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