

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Appeal from Order No. 419 of 2023

Union of India ... Appellant

Vs.

Pritam Singh Bisht and Another ... Respondents

And

Appeal from Order No. 420 of 2023

Union of India ... Appellant

Vs.

Surendra Dutt and others ... Respondents

And

Appeal from Order No. 421 of 2023

Union of India ... Appellant

Vs.

Puran Singh Bisht and others ... Respondents

And

Appeal from Order No. 422 of 2023

Union of India ... Appellant

Vs.

Ramdayal and others ... Respondents

And

Appeal from Order No. 423 of 2023

Union of India ... Appellant

Vs.

Umed Singh Bisht and Another ... Respondents

And

Appeal from Order No. 424 of 2023

Union of India ... Appellant

Vs.

Ramesh Chandra and others ... Respondents

And

Appeal from Order No. 425 of 2023

Union of India ... Appellant

Vs.

Rajpal Singh and others ... Respondents

And

Appeal from Order No. 427 of 2023

Union of India ... Appellant

Vs.

Bhagwan Singh and others ... Respondents

And

Appeal from Order No. 428 of 2023

Union of India ... Appellant

Vs.

Shiv Singh Rawat and Another ... Respondents

And

Appeal from Order No. 429 of 2023

Union of India ... Appellant

Vs.

Meherbaan Singh and Another ... Respondents

And

Appeal from Order No. 432 of 2023

Union of India ... Appellant

Vs.

Jitender Singh and Others ... Respondents

And

Appeal from Order No. 438 of 2023

Union of India ... Appellant

Vs.

Somvari Lal and Others

... Respondents

Advocate: Mr. V.K. Kaparuwan, Advocate, for the appellant.
 Mr. P.S. Bisht, Brief Holder, for the State.
 Mr. Karthik Jayashankar, Advocate, for the private respondents.

Hon'ble Sharad Kumar Sharma, J.

These bunch of 12 Appeals from Orders, as it has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996, arise out of the impugned order dated 18.07.2023, as passed in respective Miscellaneous Cases being the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, whereby the proceedings have been dismissed on the ground that the impugned award dated 29.08.2019, as rendered in the respective Arbitration Cases, there has been a belated challenge given to the same, which under law could not be belatedly challenged in accordance with the provisions contained under sub Section (3) of Section 34 of the Arbitration and Conciliation Act, 1996. Consequently, the respective impugned orders have been passed on 18.07.2023, the details of which are given hereunder by way of schedule.

Sl. No.	AO No.	Arbitration Case No.	Date of award	Miscellaneous Case No.	Date of impugned award
1	419/2023	121 of 2018	29.08.2019	15 of 2021	18.07.2023
2	420/2023	142 of 2018	29.08.2019	26 of 2021	18.07.2023
3	421/2023	43 of 2018	29.08.2019	118 of 2021	18.07.2023
4	422/2023	136 of 2018	29.08.2019	117 of 2021	18.07.2023
5	423/2023	42 of 2018	29.08.2019	20 of 2021	18.07.2023
6	424/2023	141 of 2018	29.08.2019	36 of 2021	18.07.2023
7	425/2023	120 of 2018	29.08.2019	22 of 2021	18.07.2023
8	427/2023	139 of 2018	29.08.2019	32 of 2021	18.07.2023
9	428/2023	28 of 2018	29.08.2019	39 of 2023	18.07.2023
10	429/2023	38 of 2018	29.08.2019	31 of 2021	18.07.2023
11	432/2023	41 of 2018	29.08.2019	18 of 2021	18.07.2023
12	438/2023	134 of 2018	29.08.2019	119 of 2021	18.07.2023

2. To deal with factually, the aforementioned Appeals from Orders emanate from the respective Arbitration Cases as referred to hereinabove, wherein the challenge was given by the appellant to the order which has been passed in the respective Miscellaneous Cases (referred above), which was emanating from an award dated 29.08.2019. The Court of District Judge, Uttarkashi, by the impugned judgment under challenge i.e. 18.07.2023 has dismissed the Miscellaneous Cases on the ground that the proceedings were barred by the provisions contained under sub Section (3) of Section 34 of the Arbitration and Conciliation Act cannot be entertained as the limitation period for its challenge was not extendable, as the Limitation Act will not apply over the proceedings under Section 34 of the Arbitration and Conciliation Act.

3. Briefly stated facts are that in pursuance to certain contractual obligations between the parties and owing to a dispute having arisen between the parties, the matter was referred to the Arbitrator for adjudicating upon the dispute as referred to it as per the terms of the contract, for resolving the dispute through Arbitrator and consequently, an award was rendered on 29.08.2019, which happens to be almost similar in all the cases which are listed today, emanating from the respective Miscellaneous Cases referred to hereinabove in the tabulation.

4. Consequent to the aforesaid award, the proceedings under Section 34 was drawn by the appellant before the learned District Judge, Uttarkashi, by way of the aforesaid cases and the same has been dismissed by the impugned judgment under challenge on the ground that since the award has been put to challenge at a belated stage and the

period of limitation, as prescribed therein under sub Section (3) of Section 34 of the Arbitration and Conciliation Act of 1996, is not extendable because the provisions of Limitation Act is not applicable, the proceedings under Section 34 were accordingly dismissed, hence, the instant Appeal from Order, under Section 37 of the Arbitration and Conciliation Act as respectively involved in each of the Arbitration Case Nos. 121 of 2018, 142 of 2018, 43 of 2018, 136 of 2018, 42 of 2018, 141 of 2018, 126 of 2018, 139 of 2018, 28 of 2018, 38 of 2018, 41 of 2018 and 134 of 2018 as respectively involved in each of the Appeals from Orders, which are listed today for hearing at admission stage as fresh.

5. The solitary question, as already precisely referred to above was as to whether the Courts exercising their powers under Section 34 of the Arbitration and Conciliation Act, where challenge is given to the arbitral award rendered by the Arbitrator, as per the provisions contained under the Arbitration and Conciliation Act of 1996, the Court exercising powers under Section 34, whether it could extend the time period as prescribed therein for giving challenge to the impugned award.

6. The legislature is quite clear in its intent under sub Section 3 of Section 34, has provided as under:-

“34 Application for setting aside arbitral award. —

(1) 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).

2.....

2-A.

(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 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 period thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

7. The embargo, which has been created by law is that any arbitral award could be put to challenge under Section 34 of the Arbitration and Conciliation Act before the Courts provided therein subject to the riders attached to the 1st proviso to sub Section (3) of Section 34, which provides that an application for setting aside an award by invoking the provisions contained under Section 34 can be made within 3 months before the competent Court, but not after the three months have lapsed on the date on which the party making the application has received the arbitral award. By the proviso to sub Section (3) to Section 34, the period can be further extended only for 30 days and not thereafter, that is upper limit of period for challenging the award, which would not be extendable, has been provided by law.

8. The proviso contained to sub Section (3) of Section 34 provides that if the Court is satisfied that the appellant was for whatever valid reason was prevented for at least sufficient satisfactory reasons from approaching the Court, the further upper limit for extension of time as prescribed under Section 34(3) has been provided by the proviso to the extent of 30 days only and not beyond that. For the reason

being that the proviso in itself creates a bar that after extension of the further three months period as provided under proviso to sub Section (3) of Section 34, the period of approaching the Court under Section 34 could be extended for thirty days only under the proviso to Section 34(3), **“but not thereafter”**.

9. The legislature, by the use of words ‘not thereafter’, itself provides an absolute cut off, that it was made clear that be it for whatsoever reason the sufficient cause it may have, but if the aforesaid period as provided under the proviso has lapsed, the same would not be extendable beyond 30 days as provided therein and the said principle has been laid down by the Hon’ble Apex Court in the judgment as reported in **2008 (7) SCC 169, Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others**, that since the provisions of the Limitation Act would not be applicable and the Arbitration and Conciliation Act of 1996, itself since being a self-contained Special Act, the period prescribed for approaching the Court under Section 34 would lapse as soon as the extension granted by the proviso has been exhausted. Relevant paras 43, 44 and 57 are extracted hereunder:-

“43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or

application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.

44. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a tribunal or quasi-judicial authority. Consequently Sections 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided.

57. The decision in *Popular Construction* [(2001) 8 SCC 470] is also of no assistance. That decision makes it clear that the AC Act, 1996 being a special law, and Section 34 thereof prescribing a period of limitation different from that prescribed under the Limitation Act and providing a ceiling on the period by which the period of limitation could be extended, the corresponding provisions in the Limitation Act prescribing the period of limitation for filing an application for setting aside an award [Article 119(b) of the Schedule to the Limitation Act] and for extending the period of limitation for sufficient cause (Section 5 of the Limitation Act), were inapplicable. It did not relate to applicability of Section 14(2) of the Limitation Act. Nor did this Court consider the applicability of Section 14(2). Therefore, the decision in *Popular Construction* [(2001) 8 SCC 470] will not apply. *Fairgrowth* [(2004) 11 SCC 472] merely reiterates the principle in *Popular Construction* [(2001) 8 SCC 470] in regard to the exclusion of Section 5 of the Limitation Act, as is evident from the following observations: (SCC p. 482, para 17)

“17. ... the general rule as far as special and local Acts are concerned is that the specified provisions including Section 5 of the Limitation Act will apply provided the special or local Act provides a period of limitation different from that prescribed under the Limitation Act. There is an additional requirement viz. that the special/local Act does not expressly exclude the application of the Limitation Act.”

Therefore, it has to be held that Section 14(2) of the Limitation Act, 1963 is applicable to proceedings under Section 34(1) of the AC Act.”

10. The similar view has been taken by catena of judgments by the Hon'ble Apex Court viz as reported in **2022 (4) SCC 162, Mahindra & Mahindra Financial Services Ltd. Vs. Maheshbhai Tinabhai Rathod**, wherein the Hon'ble Apex Court in its para 9, particularly as per the interpretation given in para 9.1, 9.2 and 9.3 as extracted hereunder, which was based upon the earlier judgments of the Hon'ble Apex Court as reported in **2001 (8) SCC 470, Union of India Vs. Popular Construction Company**, the

Hon'ble Apex Court has laid down that since the period of limitation and the extent of intervention by the Courts of law cannot be made beyond the period as it has been prescribed under the proviso to sub Section (3) of Section 34 of the Arbitration and Conciliation Act. The relevant paras Nos. 9.1 to 9.3 are extracted hereunder:-

“9.1. Further, in State of H.P. v. Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] it was noted and held as hereunder : (SCC pp. 211-12, paras 2 & 5)

“2. A petition under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Act” for short) was filed by the appellant on 11-3-2008, 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.”

9.2. The same view was taken by this Court in P. Radha Bai v. P. Ashok Kumar [P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] wherein this Court held as follows : (SCC pp. 457-58, para 33)

“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. The phrase “but not thereafter” would be rendered redundant and otiose. 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. v. Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] , Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd. [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] and Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel [Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC (Civ) 141]].”

9.3. The observations of this 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 the 1996 Act was taken note of by a Bench of three Hon'ble Judges of this Court with approval, in Chintels (India) Ltd. v. Bhayana Builders (P) Ltd. [Chintels (India) Ltd. v. Bhayana Builders (P) Ltd., (2021) 4 SCC 602]”

11. In nutshell, the Hon'ble Apex Court, in the matters of Mahindra and Mahindra Financial Services Ltd. (*supra*) had absolutely come to the conclusion that since the embargo of the proviso to sub Section (3) of Section 34 of the Arbitration and Conciliation Act itself prescribes an upper period of limitation for challenging the award which is a self contained provision and absolute it has provided specific cut of which is not extendable and the provisions of Limitation Act has not been made applicable, the Hon'ble Apex Court has provided that the period, as provided under the proviso to sub Section (3) of Section 34 of the Arbitration and Conciliation Act for challenging an award rendered under the provisions contained under the Act of 1996, the same cannot be extended beyond the period prescribed therein by attracting Limitation Act, which has been excluded from its applicability.

12. Almost an identical view has been taken by the Hon'ble Apex Court in yet another judgment as reported in **2010 (12) SCC 210, State of Himachal Pradesh and Another Vs. Himachal Techno Engineers and others**, which was dealing with almost a similar situation and particularly, as per the observations made in para 5 of the said judgment, it has concluded that ultimately in regards to the provisions contained under the Act itself, since the provisions of Section 5 of the Limitation Act has not been made applicable over the provisions contained under the Special Act of 1996 and particularly, when it is read in the context of the provisions contained under Section 34 of the Arbitration and Conciliation Act, the period of limitation cannot be extended beyond the period provided under the proviso to Section 34(3) of the Arbitration and Conciliation Act. Para 5 and 6 of the said judgment are extracted hereunder:-

“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.

6. This leads us to the question whether the petition was filed beyond three months plus thirty days. There is no dispute that if the petition had been filed within a period of three months plus thirty days, the delay has to be condoned as sufficient cause was shown by the appellant for condonation of the delay. But the High Court has accepted the contention of the respondent that the period of three months plus thirty days expired on 10-3-2008 and, therefore, the petition filed on 11-3-2008 was barred. Therefore, the following questions arise for our consideration:

- (i) What is the date of commencement of limitation?
- (ii) Whether the period of three months can be counted as 90 days?
- (iii) Whether only three months plus twenty-eight days had expired when the petition was filed as contended by the appellant, or whether petition was filed beyond three months plus thirty days, as contended by the respondent?"

13. In yet another judgment, as reported in **2021 (4) SCC 602, Chintels (India) Ltd. Vs. Bhayana Builders (P) Ltd.**, the Hon'ble Apex Court was almost dealing with the matter with regard to the competence of condonation of delay and the doctrines and the maxims with regard to the dismissal of the proceedings and its maintainability beyond the prescribed period and its ultimate availing of remedy under Section 37 of the Arbitration and Conciliation Act.

14. The Hon'ble Apex Court in the said judgment, though at various places has dealt with regards to legislative intent of Section 34 of the Arbitration and Conciliation Act and the limitations prescribed therein for putting a challenge the award beyond the prescribed period as provided therein but ultimately the conclusion has been drawn in para 11 of the said judgment, prescribing therein that once the statute has prescribed the upper limit under the proviso to sub Section 3 of Section 34 of the Arbitration and Conciliation Act, the same cannot be extended beyond the period prescribed therein. Para 11 of the said judgment is extracted hereunder:-

"11. A reading of Section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2-A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days,

this Court having made it clear that Section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned — see *State of H.P. v. Himachal Techno Engineers* [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] at para 5.”

15. Apart from it, this Court is of the view, that if the provision of the Arbitration and Conciliation Act of 1996 is taken into consideration, as per the various international conventions which necessitated legislating a law dealing with the field of arbitration, the purpose of the same was to provide an expeditious disposal of the disputes between the parties, which were emanating from a contractual obligations. The objective was to eradicate the long drawn litigation between the parties and that is why the provisions under Section 34 was incorporated with specific legislative intention to curtail the long drawn proceedings, and to decide the matter as expeditiously as possible and it is with that intention the proviso to sub Section (3) of Section 34 of the Arbitration and Conciliation Act was incorporated under the Act of 1996.

16. Since the Arbitration and Conciliation Act of 1996 is a self contained special Act, it has not attracted the provisions contained under the Limitation Act, the period of limitation as prescribed for putting a challenge to the award under the proviso to sub Section (3) of Section 34 of the Arbitration and Conciliation Act, that cannot be extended in the light of the judgments as referred to hereinabove, the impugned judgment under challenge of dismissing of the proceedings since being barred by limitation and since having been preferred beyond the period prescribed under the proviso to sub Section (3) of Section 34 of the Arbitration and Conciliation Act, after having heard the learned counsel for

the parties and going through the records of the impugned judgment dated 18.07.2023, it doesn't suffer from any apparent judicial error, which could call for any interference for exercising my powers under Section 37 of the Arbitration and Conciliation Act.

17. Thus, the Appeals from Orders lack merit; the same are, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

28.11.2023

Mahinder/