

**IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE**

Present:

**The Hon'ble Justice Shekhar B. Saraf**

***AP/845/2022***  
***ESHA AGARWAL AND ANR.***  
**VS**  
***RAM NIRANJAN RUIA***

For the Petitioners:

Mr. Chayan Gupta, Adv.  
Mr. Rittick Choudhury, Adv.

For the Respondent:

Mr. Rupak Ghosh, Adv.  
Mr. Ayan Dutta, Adv.  
Mr. Vishwarup Acharyya, Adv.

**Last heard on: January 09, 2023**

**Judgment on: January 17, 2023**

**Shekhar B. Saraf, J.:**

1. This application has been filed by Esha Agrawal and Sweta Rungta (hereinafter referred to as the 'petitioners') under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'), praying for setting aside of an award passed by Sri Rudradeb

Chaudhuri, Sole Arbitrator, on July 7, 2022 in favour of Ram Niranjan Ruia (hereinafter referred to as the 'respondent').

2. The petitioners have also prayed for condonation of a delay of forty-two days in filing this application beyond the statutorily mandated period of three months as provided under Section 34(3) of the Act.

### **Facts**

3. The factual matrix of the present case has been mapped out below:
  - a. The petitioners were approached by Pradeep Kumar Ruia, who offered to sell them **Premises No. 50, Vivekananda Road, Kolkata – 700006** (hereinafter referred to as the 'suit premises'). After visiting the said premises and inspecting the same, the petitioners accepted to purchase it.
  - b. The petitioners consented to enter into an agreement for sale with the respondent to purchase the suit premises. The said agreement was executed on December 29, 2020. The petitioners also paid a sum of INR 10,00,000/- (ten lakhs only) to the respondent in furtherance of the advance assured to be paid at the time of the execution of the said contract.

- c. Upon receiving certain documents related to the suit premises from the respondent, the petitioners discovered that the respondent had purchased the suit premises from Rameswar Prasad Agarwalla Trust. In light of the same, the petitioners asked the respondent for documentary evidence showing that the trustees of Rameswar Prasad Agarwalla Trust had the right to dispose of the suit premises which was earlier a trust property.
- d. Meanwhile, in pursuance of the agreement for sale, the possession of certain portions of the suit premises was handed over by the respondent to the petitioners. As a result, further payment for a total of INR 29,81,250/- (Twenty-Nine Lakhs Eighty-One Thousand Two Hundred Fifty Only) was made by the petitioners to the respondent.
- e. The respondent provided a copy of the Assessment Roll of the record maintained by the Kolkata Municipal Corporation dated July 1, 1979, in respect of the suit premises to the petitioners. In addition, they also provided receipts for tax payment on the suit premises for the period of the Third Quarter, FY 2019 – 2020, which recorded the respondent as the owners of the suit premises.

- f. Not satisfied with the same, the petitioners issued a legal notice to the respondent on November 8, 2021, in pursuance of their demand for documents to establish that the trustees of the Rameswar Prasad Agarwalla Trust from which the respondent had purchased the said suit promises and had the right to dispose of the said premises which earlier was a trust property. As a result of the alleged failure on the part of the respondent to provide such documents, another legal notice dated November 29, 2021, for demand of the refund of INR 39,81,250/- (Thirty-Nine Lakhs Eighty-One Thousand Two Hundred Fifty Only) paid by the petitioners to the respondent was issued by the petitioners.
- g. On account of the failure on the part of the respondent to make payment of the abovementioned refund amount, the petitioners, vide their letter dated December 12, 2021, invoked arbitration and addressed a letter to the Sole Arbitrator named in the arbitration clause, Shri Rudradeb Chaudhuri, Advocate of High Court at Calcutta.
- h. The Sole Arbitrator published an award on July 7, 2022, directing the petitioners to make payment of the balance consideration of INR 2,75,00,000/- (Two Crores Seventy-Five Lakhs Only). The sole arbitrator also directed the petitioners to execute a registered deed of conveyance. In addition to this,

- i. the arbitrator also directed that failure on the part of the petitioners to pay the balance consideration before execution of the deed of conveyance would lead to the forfeiture of the entire earnest money deposited by the petitioners. The arbitrator also issued several other directions in relation to possession, costs of the arbitration, respondent's share of remuneration and post-award interest.
- j. Aggrieved with the abovementioned arbitral award, the present application, AP 854 of 2022, was filed by the petitioners on December 19, 2022. The said filing was done forty-two days beyond the statutorily mandated period of limitation of three months under Section 34(3) of the Arbitration and Conciliation Act 1996.

### **Submissions**

- 4. Mr. Chayan Gupta, counsel appearing on behalf of the petitioners, has made the following submissions:
  - a. The counsel submitted that the sole arbitrator had erred in appreciating the fact that the respondent failed to provide the deed of trust in respect of the suit premises and also was unable to submit any order passed by a competent court of law which allowed for the sale of the said premises. The

counsel submitted that the arbitrator should have considered that as per Section 34 of the India Trust Act, 1882 the trustees must obtain prior permission from the Court for selling any trust property.

- b. The counsel submitted that after the award was published by the sole arbitrator and received by the petitioners on July 7, 2022, petitioners had changed their erstwhile advocates and engaged their present advocates. He further submitted that afterwards, petitioner no. 1 suffered from an accident that resulted in knee problems and made her unwell for some time. He further stated that it was only in the first week of December 2022 that petitioner no. 1 handed over the documents pertaining to the case and could instruct her lawyers to take steps to challenge the award. In consideration of the same, he prayed that the delay of forty-two days in filing the present application was unintentional and should therefore be condoned.

### **Observations & Analysis**

5. I have heard the counsel appearing on behalf of the parties and perused the materials on record.

6. The question of limitation takes centre stage in the present application and needs to be adjudicated upon first and foremost. With respect to limitation for filing a challenge to an arbitral award, Section 34(3) of the Arbitration and Conciliation Act, 1996 provides that an application under the section cannot be made after ‘three months have elapsed from the date on which the party making that application had received the arbitral award’. The courts can condone the delay within a further period of thirty days, provided sufficient cause is present, but not ‘thereafter’. I believe the term ‘thereafter’ used in the section does not need any further interpretation. A plain reading of the said section and the proviso makes it as clear as the sky on a summer morning that courts cannot condone a delay beyond the extendable period of thirty days provided in the section.
7. It is necessary at this point to make reference to the recent decision of the apex court in ***Mahindra and Mahindra Financial Services Limited -v- Maheshbhai Tinabhai Rathod And Others*** reported in ***(2022) 4 SCC 162*** wherein the restricted scope of the courts’ power to condone the delay in case of an application under Section 34 was reiterated by the Supreme Court. Relevant portions have been extracted below –

9. *The scope available for condonation of delay being self-contained in the proviso to Section 34(3) and Section 5 of the Limitation Act not being applicable has been taken note by this Court in its earlier decisions, which we may note. In Union of India v. Popular Construction Co. [Union of India v. Popular Construction Co., (2001) 8 SCC 470] 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” [ Para 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996.] . 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*

*‘36. Enforcement.—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 Civil Procedure Code, 1908 (5 of 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.’*

8. While I express my sympathy towards the petitioner, my judicial hands are curtailed by the law, as mentioned above. There is no

runway of merit for the present application to land on. The present application has been filed forty-two days after the prescribed period of limitation under the Act, and given that the court has the power to condone a delay of only up to thirty days, the present application fails and is bound to be sacrificed at the altar of limitation.

9. In view of the law as mentioned above, AP 845/2022 is dismissed. There shall be no order as to costs.
10. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

**(Shekhar B. Saraf, J.)**