

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.123 of 2024**

Chandeshwar Kumar, Son of Late Hirday Narayan Singh, Resident of Village-
Dakhingaon, P.S.- Wajirganj, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Gaya.
2. The Competent Authority-cum-District Land Acquisition Officer, Gaya
having Office at Gaya Collectorate Building, Gaya.
3. The Deputy General Manager (Tech.), Project Implementation Unite NH82,
BSRDCL Office at Saroj Complex 2nd Floor Bodh Gaya by pass Road,
Kendui, P.S.- Magadh Medical College, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr. Ajay Kumar Singh, Advocate
For the Respondent No.3:	Mr. P.K. Shahi, Advocate General Mr. Manish Dhari Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 01-08-2024

Heard Mr. Ajay Kumar Singh learned counsel for the
petitioner as well as Mr. P.K. Shahi, learned Advocate General
for respondent 2nd set/respondent no.3.

2. The instant petition has been filed by the
defendant/petitioner under Article 227 of the Constitution of
India for quashing the order dated 21.12.2023 passed by the
learned District Judge, Gaya in Civil Miscellaneous
(Arbitration) Case No. 139 of 2023 whereby and whereunder
the learned District Judge, Gaya admitted the said miscellaneous
case.

3. Learned counsel for the petitioner submits that in



Civil Misc. (Arbitration) Case No. 139 of 2023, the arbitral award, passed by the Arbitrator-cum-Commissioner, Magadh Division, Gaya on 16.07.2022 in Arbitration Case No. 216 of 2021, directing the competent authority to amend the compensation award, is under challenge. Learned counsel further submits that the award was sent to the petitioner as well as the respondent 2nd set/respondent no.3 vide Letter No. 3165/legal dated 03.08.2022 through registered post. The petitioner received the copy of award within a week and it is presumed that by that time the respondent 2nd set/respondent no.3 must also have received the award. Learned counsel further submits that it is the clear mandate of the law that the miscellaneous case under Section 34 (3) of the Arbitration and Conciliation Act, 1996 (in short 'the Arbitration Act') challenging the award can be filed within three months from the date on which party making the application had received the award. Further proviso to Section 34 of the Arbitration Act makes it clear that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within said period of three months, the court may entertain the application within a further period of 30 days but not thereafter. Learned counsel further submits that from the composite



reading of the provision, it is clear that an arbitral award can be challenged within a maximum period of 120 days from the date of receipt of the award. Learned counsel further submits that even by its own admission, the respondent 2nd set/respondent no.3 received the award on 10.05.2023. So the award could have been challenged till 10.09.2023. However, miscellaneous case has been filed on 30.10.2023, i.e., beyond the limitation period. The petitioner, coming to know about filing of the miscellaneous case, entered appearance and took objection about the miscellaneous case being not maintainable as barred by limitation. The Hon'ble Supreme Court in the case of ***Mahendra and Mahendra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod & Ors.***, reported in **(2022) 4 SCC 162** has held that in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, Section 5 of the Limitation Act has got no application. Learned District Judge, vide the impugned order dated 21.12.2023, admitted the miscellaneous case without considering the issue of limitation and surprisingly when it has been reported by Saristedar that the said miscellaneous case was barred by limitation. Learned counsel further submits that the learned District Judge, Gaya has committed patent illegality as the law mandates that even



though a party might not raise the issue of limitation, the court is bound to consider the same. In the light of specific provision of Section 34(3) and proviso to Section 34 of the Arbitration and Conciliation Act, 1996, the learned District Judge could not have proceeded with the matter ignoring the fact that the filing of the miscellaneous case was barred by law of limitation and thus he has committed patent illegality.

4. Mr. P.K. Shahi, learned Advocate General appearing on behalf of respondent 2nd set/respondent no.3 very fairly submits that he would not dispute the proposition of law in this regard as the provision of Section 34(3) read with proviso of the Arbitration Act is very much clear. However, a similar issue came before the Hon'ble Supreme Court in SLP (C) No. 28469 of 2023 which has been preferred against the final judgment and order dated 26.09.2023 passed in First Appeal No. 155 of 2019, by a Co-ordinate Bench of this Court dismissing the appeal, acting open a similar provision under Section 74 of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 5 of the Limitation Act for condonation of delay on the ground of non-applicability of Section 5 of the Limitation Act. The said provision is similar to Section 34(3) of the



Arbitration Act, 1996 and the Hon'ble Supreme Court has issued notice in the said matter and stayed the impugned order of the High Court. The learned Advocate General further submits that he has no dispute or quarrel with the fact that the miscellaneous case has been filed beyond the period of limitation. But if any decision comes in SLP (C) No. 28469 of 2023, the same may have bearing on the present case as well. Thus, the learned Advocate General submits that the matter may be kept pending till the issue is settled in SLP (C) No. 28469 of 2023.

5. I have given my thoughtful consideration to the rival submission of the parties. Issue before this Court is confined only to the fact that whether a miscellaneous case challenging an arbitral award can be filed beyond the period of limitation. Section 34 of the Arbitration Act reads 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) An arbitral award may be set aside by the Court only if—

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the



time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

²*[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—*

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]



³[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(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 further period of 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.

¹[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]”

6. The bare perusal of the provision shows that



challenge to the arbitral award cannot be beyond 120 days. A three Judges Bench of the Hon'ble Supreme Court in the case of ***Mahendra and Mahendra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod & Ors.***, reported in **(2022) 4 SCC 162** held that where the limitation is prescribed, the extent to which it can be condoned is circumscribed and it has been held by the Hon'ble Supreme Court that Section 5 of the Limitation Act is not applicable to condone the delay beyond the period prescribed under Section 34(3) of the Arbitration Act, 1996. The Hon'ble Supreme Court relied upon its earlier decision in the case of ***Union of India Vs. Popular Construction Company*** reported in **(2001) 8 SCC 470**, paragraph nos. 12, 14 and 16 of this judgment read as under:-

“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. 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

‘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 Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court’.”

7. Thus, there is an authoritative pronouncement of a three Judge Bench of the Hon’ble Supreme Court on the point



that the time period prescribed to challenge the award under Section 34 of the Arbitration Act is absolute and could not be extended in any case and there is no application of Section 5 of the Limitation Act for condonation of delay in such cases. For this reason the comparison and analogy with a case under Section 74 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is unwarranted and not relevant since the issue stands settled with regard to challenge to arbitral award after limitation period.

8. Further, Section 3 of the Limitation Act provides as under:-

“3. Bar of Limitation-

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,--

(a) a suit is instituted,--

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and



shall be deemed to have been instituted--
(i) in the case of a set off, on the same date as
the suit in which the set off is pleaded;
(ii) in the case of a counter claim, on the date
on which the counter claim is made in court;
(c) an application by notice of motion in a
High Court is made when the application is
presented to the proper officer of that court.”

9. In view of the specific bar created by Section 3 of the Limitation Act, the appeal/application preferred after expiry of the period of limitation is liable to be dismissed. Section 3 of the Limitation Act is peremptory in nature and has to be given effect to even though no objection has been taken.

10. In the light of discussion made hereinabove, I do not think the order dated 21.12.2023 passed by the learned District Judge, Gaya in Civil Misc. (Arbitration) Case No. 139 of 2023 is sustainable as the said order has been passed against the specific provision of law and, hence, the same is set aside.

11. Accordingly, the present civil miscellaneous petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
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