

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**CO 3521 of 2023
Saltee Productions Private Limited
Vs.
Indus Towers Limited**

For the Petitioner : Mr. Rahul Karmakar,
Mr. Sourav Guchhaitadvocates

For the Opposite Party : Mr. Sakya Sen,
Mr. Sunil Kr. Gupta ... advocates

Reserved on : 08.04.2024

Judgment on : 17.05.2024

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the respondent no. 1 in Misc Arbitration case no. 10 of 2023 and is directed against the order no. 8 dated August 25, 2023 passed by the learned Judge, Commercial Court of Rajarhat.
2. By the impugned order, the application under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the opposite party no. 1 herein stood admitted after condonation of delay in filing the said application. The preliminary objection on the point of limitation was rejected.
3. The learned Arbitrator passed an Award on July 28, 2022. Subsequently, the respondents therein filed an application under Section 33 of the Arbitration and Conciliation Act, 1996 (for short "A&C Act") praying for correction of the Arbitral Award. The said application was allowed vide

order dated October 14, 2022. The certified copy of the Arbitral Award was corrected on December 14, 2022. The application under Section 34 of the A & C Act being Misc (Arb) Case 10 of 2023 (C.C.) was filed on February 16, 2023 by the opposite party no. 1 herein.

4. The opposite party no. 1 herein filed an application under Section 5 of the Limitation Act, praying for condonation of delay of 29 days in filing the application for setting aside the Arbitral Award.
5. By the impugned order the learned Judge of the Commercial Court condoned the delay subject to payment of cost.
6. Being aggrieved by the said order, the respondent no. 1 in the Misc (Arb) case filed this Civil Revision application.
7. Mr. Karmakar, learned advocate for the petitioner contended that the starting point of limitation for filing an application for setting aside arbitral award would be the date of disposal of the request for correction of the award and not the date when the certified copy of the Award was corrected. He further submitted that the date of receipt of the order passed by the learned Arbitrator on an application under Section 33 of the A & C Act cannot also be considered to be the starting point of limitation for filing an application for setting aside the Arbitral Award. In support of such contention he placed reliance upon Section 34(3) of the A & C Act and a decision of the Hon'ble Delhi High Court in **DM. Jawahar Merican vs. Engineer India Ltd.** reported at **AIR 2009 Delhi 41**. He also placed reliance upon a decision of the Hon'ble Supreme Court in **Ved Prakash Mithal and Sons vs. Union of India** reported at **2018 SCC Online SC 3181** in support of his aforesaid contention.
8. Mr. Sen, learned counsel representing the opposite party no. 1 raised an objection as to the maintainability of the Civil Revision application in view of Section 8 of the Commercial Courts Act 2015. In support of such contention, he placed reliance upon a decision of the Hon'ble Delhi High

Court in the case of **Ashok Kumar Puri and Another vs. S. Suncon Realtors Pvt. Ltd. and Another** reported at **2021 SCC Online Delhi 5220**. He also placed reliance upon a decision of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Ark Builders** reported at **(2011) 4 SCC 616** in support of his contention that the period of limitation can commence from the date on which the order of the Arbitrator was received by the party. Mr. Sen contended that the starting point of limitation for filing the application for setting aside the Arbitral Award would be the date of correction of the certified copy of the Award in view of the direction contained in the order dated 14th October, 2022. He contended that the date of correction of the certified copy of the Award was 14th December, 2022 and if the same is accepted to be the starting point, the Misc (Arb) case was well within the period of three months.

9. Mr. Sen contended that the application under Section 5 of the Limitation Act was filed by way of abundant caution in case the date of communication of the order disposing of the request under Section 33 is treated to be the starting point of limitation. He submitted that since the order dated 14th October, 2022 was communicated on 17th October, 2022, there was a delay of about 29 days which the Court has the power to condone in terms of the proviso to Section 34(3).
10. In reply, Mr. Karmakar learned learned advocate placed reliance upon a co-ordinate bench decision in **C.O. No. 759 of 2021** in the case of **Deepak Polymers Pvt. Ltd. vs. Anchor Investments Pvt. Ltd.** delivered on 24.06.2021 in support of his contention that the civil revision application is maintainable. For the same proposition, he placed reliance upon the decision of the Hon'ble Division Bench in **FMAT 360 of 2022 (M/s. Odisha Slurry Pipeline Infrastructure Ltd. & Anr. vs. IDBI Bank Ltd. & ors.)** delivered on 09.12.2022.
11. Heard the learned advocates for the parties and perused the materials placed.

12. An application under Section 34 of the A & C Act has been filed before the Commercial Court for setting aside the Arbitral Award dated July 28, 2022 giving rise to a Misc (Arb) case. By the impugned order, the said application was admitted after rejecting the preliminary objection on the point of limitation. The impugned order is an interlocutory order passed by the learned Judge of the Commercial Court.
13. The co-ordinate bench in **Deepak Polymers** (supra) held that the provisions of Section 8 of the Commercial Courts Act, 2015 cannot operate as an absolute bar to exercise of the power under Article 227 of the Constitution of India. The co-ordinate bench held thus-

“35. As regards the jurisdiction of this Court under Article 227 of the Constitution, the provisions of Section 8 of the Commercial Courts Act, 2015, despite its initial non-obstante clause, cannot operate as an absolute bar to the exercise of the power of juridical review by High Courts, which is conferred by the Constitution of India under Article 227 thereof, since the 2015 Act is a subordinate legislation under the Constitution, the latter being the grundnorm of the Indian legal system.”

“39. No question of the bar to revisions against interlocutory orders passed by Commercial Courts Act arises in the present case in view of the patent jurisdictional error committed by the trial court in passing the impugned orders. In consonance with the observations in Surya Dev Rai vs. Ram Chander Rai & Ors. [(2003)6 SCC 675] cited by the plaintiff/opposite party, compelling the defendants to contest litigations before a court palpably lacking inherent jurisdiction would invite interference under Article 227 of the Constitution by way of a “stitch in time” which would save nine.”

14. In **Ashok Kumar Puri** (Supra), the Hon’ble Single Judge noted the observations of the Hon’ble Division Bench of Delhi High Court in the case of **Black Diamond Track Parts (P) Ltd. vs. Black Diamond Motors (P) Ltd.** reported at **2021 SCC Online Delhi 3946** on the scope of Section 8 of the Commercial Courts Act, 2015. In paragraph 30 of Black Diamond Track Parts (P) Ltd. case it was held that the jurisdiction under Article 227 of the Constitution of India cannot be said to be completely barred. It was, however, clarified that jurisdiction under Article 227 is to be exercised very sparingly. It was further observed that the discretion is left with the Judge

to decide whether in the facts and circumstances of the case, the application under Article 227 should be entertained or not.

15. The Hon'ble Single Judge in **Ashok Kumar Puri** (supra), on the facts of that case refused to exercise his jurisdiction in favour of the party approaching the Court under Article 227 of the Constitution of India.
16. The issue that fell for consideration in **M/s Odisha Slurry Pipeline Infrastructure Ltd.** (supra) relates to institution of a suit involving commercial disputes covering the specified value without exhausting the pre-litigation mediation contemplated under Section 12A of the Commercial Courts Act, 2015 whether or not involving urgent interim reliefs. The issue being completely different, the said decision does not have any manner of application to the case on hand.
17. In the case on hand, the petitioner has challenged the order admitting the application under Section 34 of the A & C Act on the ground of limitation. The question would be whether the petitioner herein can be compelled to contest a proceeding before a Court of law, which, according to it, is barred by limitation. The issue of limitation goes to the root of the jurisdiction of the Court. This Court is, therefore, inclined to exercise discretion in favour of the petitioner and decide the civil revision application on merit. The issue of maintainability of this application is thus answered in the affirmative and in favour of the petitioner.
18. After deciding the issue of maintainability, this Court shall now decide an interesting issue which has cropped up in this application which runs thus –

Whether the time taken by the learned Arbitrator to communicate the decision on the request made under Section 33 of the A&C Act should be excluded while computing the period of limitation for an application to set aside an award?

19. Recourse against an Arbitral Award has been provided under Section 34 of the A&C Act. Sub-section (1) of Section 34 states that recourse to a Court against an arbitral award may be made only by an application for setting aside the award in accordance with Sub-section (2) and Sub-section (3). The grounds on which an arbitral award may be set aside has been stipulated in sub-section (2). Sub-section (3) provides the period of limitation for filing an application for setting aside an arbitral award.

20. In order to decide the aforesaid issue it would be beneficial to refer to sub-section (3) for which the same is extracted hereinafter.

“(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.”

21. Sub-section (3) provides a period of three months from the date of receipt of the arbitral award for filing an application to set aside such award. However, if a request is made under Section 33, the application for setting aside the arbitral award shall be filed within a period of three months from the date on which such request has been disposed of by the arbitral tribunal.

22. To the mind of this Court, if a request is made under Section 33, the starting point of limitation for setting aside an arbitral award in such case would be the date of disposal of such request and not from the first date of receipt of the arbitral award.

23. Section 33 of the A & C Act, provides for correction and interpretation of the award and for passing an additional award. Sub-section (1) specifies the time limit within which a request for correction of clerical or typographical or any other errors of similar nature occurring in the award

and for the tribunal to give an interpretation of a specific point or part of the award. Sub-section (3) empowers arbitral tribunal to correct errors *suo motu*. Sub-section (6) gives power to the arbitral tribunal to extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional award under sub-section (2) or sub-section (5).

24. The provisions of Section 31 of the A & C Act have been made applicable to Section 33 by virtue of sub-section (7) of Section 33.
25. Section 31 of the A & C Act deals with form and contents of arbitral award. Sub-section (5) of Section 31 states that after the arbitral award is made, a signed copy shall be delivered to each party.
26. In a case where the Arbitral tribunal considers a request under Section 33 of the A & C Act, for correction of the award to be justified, the tribunal shall make the correction. Therefore, an aggrieved party has to pray for setting aside the corrected award and not the original award. Unless and until an aggrieved party is made aware of the decision on the request made under Section 33, no effective decision to apply for setting aside the arbitral award can be taken by such party.
27. In ***Ved Prakash Mithal*** (supra), the arbitral award was delivered on 30.10.2015 and received by the respondent on 07.11.2015 and the request under Section 33 was dismissed on 14.12.2015. The issue that fell for consideration before the Hon'ble Single Judge of the Delhi High Court was that when there was no correction made to the arbitral award, whether the period of limitation shall start from the first date or from the date of disposal of the request. The Hon'ble Single Judge of Delhi High Court held that as the Section 33 application was disposed of on 14.12.2015, the period mentioned in Section 34(3) would start running only from that date. Before the Hon'ble Supreme Court, a judgment of the Hon'ble Single Judge of the Bombay High Court in ***Amit Suryakant Linavat vs. Kotak Securities, Mumbai*** reported in **2010 (6) ML.L.J. 764**, was relied upon

wherein it was held that when an application under Section 33 of the Act was rejected, the period of limitation cannot commence afresh.

28. The Hon'ble Supreme Court in **Ved Prakash Mithal** (supra), observed that the judgment of the Bombay High Court does not reflect the correct position of law. The Hon'ble Supreme Court after noting that Section 34(3) specifically speaks of the date on which a request under Section 33 has been disposed of by the Arbitral Tribunal, held that a "disposal" of the application can be either by allowing it or by dismissing it.
29. In **DM Jawahar Merican** (supra), the award was announced on 18.01.2005. The original award was not communicated since it had to bear the prescribed stamp duty. The application under Section 33 of the A & C Act was rejected on 20.02.2005 and the stamped award was received on 13.04.2005. The Hon'ble Delhi High Court held that 18.01.2005 was the starting point of limitation for filing an application for setting aside the Arbitral Award.
30. The decision of the Hon'ble Single Bench of the Delhi High Court in **DM. Jawahar Merican** (supra) is contrary to the decision of the Hon'ble Supreme Court in **Ved Prakash Mithal** (supra). Therefore, the said decision in **DM. Jawahar Merican** (supra) is not binding upon this Court.
31. From the aforesaid discussion, this Court holds that the starting point of limitation for setting aside an arbitral award, in case of a request under Section 33, is the date of disposal of such request.
32. The larger issue would be whether the time taken by the Arbitrator to communicate the decision on such request as well as the time taken to correct such award shall be excluded from calculating the period of limitation for setting aside an arbitral award.
33. The Limitation Act, 1963 has been made applicable to arbitrations as it applies to proceedings in court by virtue of Section 43 of the A & C Act.

34. In Section 34(3) of the A & C Act, there is a prescribed period of limitation. The proviso empowers the Court to entertain an application after such prescribed period upon sufficient cause being shown but an outer limit for exercising such power has also been fixed.
35. The A & C Act being a special law, in view of Section 29(2) of the Limitation Act, the special period of limitation prescribed under Section 34(3) for making an application for setting aside the arbitral award and for condonation of delay as per the proviso thereto as prescribed under the special law shall prevail.
36. This Court is conscious of the settled proposition of law that the words “but not thereafter” used in proviso to Section 34(3) prohibits the applicability of Section 5 of the Limitation Act.
37. The question would be whether the provisions of Section 12 of the Limitation Act shall apply to the arbitration proceedings. Provision of Section 12 of the Limitation Act stands attracted to proceedings under the A & C Act in view of Section 29(2) of the Limitation Act. There is also no provision in the A & C Act excluding the applicability of Section 12 of the Limitation Act. Section 12 of the Limitation Act deals with computation of period of limitation. The applicability of Section 12 of the Limitation Act for calculation of the period of limitation in an application for setting aside the arbitral award has been well recognised. (See ***State of Himachal Pradesh & Another vs. Himachal Techno Engineers and another*** reported at ***(2010) 12 SCC 210.***)
38. Section 12(4) of the Limitation Act states that in computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.
39. The expression “time requisite for obtaining a copy” used in Section 12(4) of the Limitation Act cannot have a restrictive application only to cases when a party has to apply for obtaining copies upon payment of requisite

costs. In cases, where the statutes prescribe that copies of the award shall be delivered to the parties, the time taken from the passing of the award till the copy of such award is delivered to the parties shall fall within the expression “time requisite for obtaining a copy” of the award.

40. Now coming back to the facts of this case, this Court finds that the request under Section 33 of the A & C Act was made for correction of the Arbitral Award dated July 28, 2022. The learned Judge of the Commercial Court recorded that it is an admitted fact that the order in connection with Section 33 application was passed on October 14, 2022 by the learned Arbitrator of his own but not in the presence of the parties and the parties came to know only on October 17, 2022 on receipt of the order by speed post.
41. At this stage, it would be relevant to take note of the concluding portion of the order of the Sole Arbitrator dated 14th October, 2022 which is extracted hereinafter.

“The records are corrected accordingly. Parties are granted liberty to get the certified copies supplied to them corrected by the Tribunal through the office of the Tribunal within a period of one month from the date of the order. This order be circulated amongst the parties by the clerk of the Tribunal by speed post.”
(emphasis supplied)

42. This Court finds that the learned Arbitrator granted liberty to the parties to get the certified copies supplied to them corrected by the Tribunal within a period of one month from the date of the order. The order was directed to be circulated amongst the parties through speed post.
43. Mr. Sen would contend that for reasons beyond the control of the opposite party no. 1, the certified copy of the Award could not be corrected before December 14, 2023 and the period of limitation shall start only from December 15, 2023.
44. Mr. Karmakar vehemently disputed such contention by submitting that there was intentional delay in getting the Award corrected. He submitted that limitation shall start from the date of disposal of the request and not

from any subsequent date. Mr. Karmakar would contend that the finding of the learned Judge of the Commercial Court that the date of receipt of the order by speed post shall be the starting point of limitation is contrary to the statutory mandate under Section 34(3).

45. The Hon'ble Supreme Court in ***Ark Builders Pvt. Ltd.*** (supra) after noting the observations of the Hon'ble Supreme Court in ***Union of India vs. Tecco Trichy Engineers & Contractors*** reported at ***(2005) 4 SCC 239*** held that if the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.
46. The said decision, however, did not deal with a situation contemplated under Section 33 of the A & C Act.
47. This Court is not inclined to enter into the factual dispute as to whether the opposite party no. 1 herein was diligent in getting the order corrected by the learned Tribunal. In the facts of the case on hand, it is also not necessary for this Court to decide the effect of fixing the time frame by the Arbitral Tribunal for getting the Award corrected by the Arbitral Tribunal on the period of limitation prescribed under Section 34(3). This Court has to only consider whether the time taken by the Arbitral Tribunal to deliver the signed copy of the order passed on Section 33 application can be excluded or not.
48. On a conjoint reading of Section 33 and 31(5) of the A & C Act, this Court holds that the Arbitral Tribunal is obliged to deliver a signed copy of the order disposing of the request under Section 33 of the said Act to the parties. When the arbitral award is corrected, the original award stands

modified and this Court has already held that the application for setting aside has to be of the corrected award.

49. This Court, therefore, holds that the starting point of limitation for setting aside an award in a case where a request under Section 33 of the A & C Act is made is the date of disposal of such request and the time spent from the date of disposal of such request till the signed copy of the order is delivered to the party shall necessarily stand excluded while calculating the period of limitation under Section 34(3). Any contrary interpretation would result in curtailment of the period of limitation prescribed by the statute by the time spent from the date of disposal till the date of delivery of the signed copy of the order on the Section 33 application; however, insignificant the period might be, thereby frustrating the object behind fixation of the period of limitation.
50. Mr. Karmakar would contend that the expression “date of disposal of the request under Section 33” used in Section 34(3) of the A & C Act has to be given a literal interpretation. The object behind Section 34 of the A & C Act is to enable an aggrieved party to pray for setting aside the Arbitral Award. To the mind of this Court, the provisions of Section 34(3) require purposive interpretation so that the object behind such provision is achieved. The Hon’ble Supreme Court in ***Shailesh Dhairyawan vs. Mohan Balkrishna Lulla*** reported at **(2016) 3 SCC 619** held that purposive interpretation should be made if it brings about an end which is at variance with the purpose of statute. The Hon’ble Supreme Court held thus-

“33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the “golden rule”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced.”

51. The observation that the time spent in delivering the signed copy of the order disposing of a request under Section 33 of the A & C Act should be

excluded while computation of the period of limitation for setting aside an arbitral award was made by this Court hereinbefore, keeping in mind the doctrine of purposive interpretation.

52. This Court, is, therefore, of the considered view that upon exclusion of the time taken by the arbitral tribunal to deliver the signed copy of the order passed on a request made under Section 33, the period of three months as prescribed under Section 34(3) would expire on January 17, 2023. This Court finds the ultimate conclusion of the learned judge of the Commercial Court to be correct and the reasons assigned by this Court hereinbefore are only to support such ultimate conclusion.
53. The learned judge further held that the delay of 29 days has been sufficiently explained and the same was condoned subject to payment of cost. This Court is not inclined to interfere with such exercise of discretion by the learned trial judge under Article 227 of the Constitution of India.
54. For all the reasons as aforesaid, the civil revision application stands dismissed. There shall be, however, no order as to costs. In the event the cost as directed by the impugned order is not yet paid, the same shall be paid in the manner as directed within two weeks from the date of receipt of the server copy.
55. Urgent photostat certified copies, if applied for, be supplied to the parties upon the compliance of all formalities.

(Hiranmay Bhattacharyya, J.)