

Section 34(3) of the said Act provides that an application to set aside an arbitral award has to be made by the applicant within 90 days of receipt of the award. The court has the power to extend the time for a further period of 30 days if sufficient cause is shown to it, but not thereafter.

It is now settled law that any delay beyond 120 days from the date of receipt of the award is not condonable by the court. As the proviso to Section 34(3) prescribes a special period of limitation under Section 29 of the Limitation Act, 1963 [See **Union of India vs. Popular Construction Company, (2001) 8 SCC 470** also see **Simplex Infrastructure Limited vs. Union of India, (2019) 2 SCC 455**].

The award which was made on 21<sup>st</sup> June, 2014 directed the Railways to refund the freight collected from the respondent. This amount was nearly Rs.20 lakhs.

Ms. Chandreyi Alam, learned Advocate appearing for the appellant says that the appellants were not parties to the arbitration agreement but an award has been passed against them which was received by them on 21<sup>st</sup> June, 2014. She tried to contend that not being a party to the arbitral proceedings the time limit prescribed by the Arbitration and Conciliation Act, 1996 did not bind her client as it applied only to the parties. Therefore, the enormous delay in making the said application be condoned by this court.

We are unable to accept this contention. Let us take a look at Section 34 of the said Act. Section 34 (1) enacts as follows:-

*“34(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)....”*

The Section does not say that only a party to an arbitral proceeding can apply under it. Without mentioning any party or person it is most careful to stipulate that “recourse to a court” challenging an award may be made “only by an application” under Section 34(2) and (3). Section 34(3) specifies the above time limit to make the application which is three months from the date the applicant had received.

Whether a person is a party or not to the arbitral proceedings, if an arbitral award has been passed against him, it has to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 within the time prescribed by it.

The relevant dates are as follows:-

The award was made and published on 21<sup>st</sup> June, 2014. On that very day the respondent said they received the award. The appellant Railway's contention is that since they were not parties to the arbitration proceedings the award was not served upon them. However, on 10<sup>th</sup> September, 2014 the Railways filed an appeal under Section 37 of the said Act (Appeal No.10 of 2014) in Jharkhand High Court at Ranchi. On 30<sup>th</sup> January, 2015 this proceeding was dismissed by the court on the ground that an appeal under Section 37 did not lie from an arbitral award. The proper procedure was to challenge the award under Section 34 by an application. An application entitled Civil Miscellaneous Petition No.194 of 2015 was filed for vacation of this order which was withdrawn on 30<sup>th</sup> June, 2016.

The Only provision of law which could have saved the appellant was Section 14 of the Limitation Act.

Now, let us have a look at Section 14 of the Limitation Act which is in the following terms:-

***“14. Exclusion of time of proceeding bona fide in court without jurisdiction.- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”***

If a party with due diligence prosecutes a civil proceeding in good faith whether in a court of first instance or appeal but the court is unable to entertain the proceeding on the ground of jurisdiction or similar cause, the

time during which it was so prosecuted shall be excluded in calculating the period of limitation.

In **Simplex Infrastructure Limited vs. Union of India, (2019) 2 SCC 455**, the Supreme Court held that the special period of limitation prescribed by the proviso to sub-Section (3) of Section 34 of the said Act which could not be extended by the court as held in **Union of India vs. Popular Construction Company, (2001) 8 SCC 470** did not exclude the operation of Section 14 of the Limitation Act.

Let us for the sake of argument take the entire proceeding commencing from filing of the appeal in the Jharkhand High Court till the withdrawal of the application on 30<sup>th</sup> June, 2016 as a proceeding prosecuted in good faith with due diligence. The appeal under Section 37 was filed within 90 days of the publication of the award. Let this period between 10<sup>th</sup> September, 2014 and 30<sup>th</sup> June, 2016 be excluded in calculating the period of limitation. Now it was only on 16<sup>th</sup> March, 2017 that the Section 34 application was filed. It was more than eight months and a little less than nine months after withdrawal of the application. Hence even after exclusion of the time when the appeal was being prosecuted by the appellant, assuming it was being prosecuted in a court without jurisdiction with due diligence the Section 34 application was filed much, much after expiry of 120 days from the date of withdrawal of the miscellaneous application.

On 16<sup>th</sup> March, 2017 the Section 34 application was filed (Arbitration Appeal No.1 of 2017) in the court of the 1<sup>st</sup> Civil Judge (Senior Division) at Dhanbad. On 20<sup>th</sup> May, 2022 the case was transferred to the District Judge (III)/Presiding Officer Commercial Court, Dhanbad registered as Arbitration Case No.03 of 2022. Again on 31<sup>st</sup> August, 2022 this application was dismissed on the ground that the court had no jurisdiction. On 17<sup>th</sup> January, 2023 after over eight months the same case was filed before the commercial court at Asansol. On 14<sup>th</sup> March, 2023 an application for condonation of delay was filed in that court. On 24<sup>th</sup> August, 2023 the

impugned judgment and order was passed dismissing the Section 34 application on the ground of limitation.

Even if the entire period during which the appeal under Section 37 and the subsequent application under Section 34 which the railways had filed was excluded, the Section 34 application was filed much beyond 120 days.

In that view of the matter the delay in filing Section 34 application cannot be condoned. The learned judge, Commercial Court at Asansol rightly dismissed the application for condonation of delay.

We find no infirmity in the impugned judgment and order dated 24<sup>th</sup> August, 2023.

It is accordingly dismissed.

No order as to costs.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**I agree.**

**(BISWAROOP CHOWDHURY, J.)**

**(I. P. MUKERJI, J.)**