



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

939 ARBITRATION APPEAL NO. 32 OF 2020

NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT IMPL. UNIT,
JALGAON T/H PROJECT DIRECTOR C.M. SINHA

VERSUS

RAMCHANDRA SAYAJI MAHAJAN AND OTHER

...

Advocate for Appellant : Mr. D. P. Madkar h/f Mr. Manorkar Deepak S.

...

**WITH CIVIL APPLICATION NO. 725 OF 2020
IN ARBA/32/2020**

....

CORAM : ARUN R. PEDNEKER, J.

Dated : March 13, 2024

PER COURT :-

1. Mr. D. P. Madkar holding for Mr. D. S. Manorkar, learned counsel appears and assails the impugned order.

2. By the present arbitration appeal, the petitioner is challenging the impugned order dated 27.08.2019, passed by the Principal District Judge, Jalgaon, rejecting the application filed under section 34(3) of the Arbitration and Conciliation Act, 1996 read with section 151 of the Code of Civil Procedure, for condonation of delay caused for filing the application for setting aside the arbitral award dated 15.01.2019, passed by the learned Arbitrator and Collector, Jalgaon in case no.137 of 2017.

3. For the purpose of delay, it is the case of the applicant that the learned arbitrator passed an award on 15.01.2019 and that the applicant received a certified copy of the award on 17.01.2019. The application under section 34(3) of the Arbitration Act was filed on

03.06.2019. The limitation period prescribed for filing an application for setting aside the arbitration award is 3 months from the receipt of the arbitral award and, further, if sufficient cause is shown the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter. In the instant case, the three months period and further 30 days expired on 17.05.2019 and the application under section 34(3) of the Arbitration Act is filed on 03.06.2019.

4. It is a settled law that the an application for setting aside an award may be made within three months of the receipt of the arbitral award and, further, the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter and the same has also been held by the Hon'ble Supreme Court in the case of Assam Urban Water Supply and ***Sewerage Board Vs. Subash Projects and Marketing Limited, (2012) 2 SCC 624***, at paragraphs no.6 to 8, wherein it has observed as under:

"6. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may

entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter. 7. In Union of India Vs. Popular Construction Co., (2001) 8 SCC 470, this Court has held that an application for setting aside an award filed beyond the period mentioned in Section 34(3) would not be an application "in accordance with sub-section (3) as required under Section 34(1) of the 1996 Act" and Section 5 of the 1963 Act has no application to such application. In para 12 of the Report, it was held in Popular Construction Co. thus: (SCC pp. 474-75)

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."

8. Recently, in State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518, a two-Judge Bench of this Court speaking through one of us (R. M. Lodha, J.) emphasised the mandatory nature of the limit to

the extension of the period provided in the proviso to Section 34(3) and held that an application for setting aside an arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub- section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter.”

5. The learned Advocate for the appellant submits that the present appeal is squarely covered by the order passed by this Court dated 16/01/2024 in Arbitration Appeal No.66 of 2020. Copy of the same is placed on record.

6. In view of settled position of the law, that the application for setting aside an arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter, the impugned order cannot be faulted with.

7. The Arbitration Appeal accordingly stands dismissed.

8. In view of the dismissal of the Arbitration Appeal, the pending civil application also stands disposed of.

(ARUN R. PEDNEKER, J.)