

11.09.2025
Item No.02
Court No.37.
S. De
266311

F.M.A.T. (ARBAWARD) 16 of 2025
With
I.A. No. CAN/1/2024
I.A. No. CAN/2/2024

Manish Vrajlal Mavani.
Vs
M/s. Kotak Mahindra Bank Limited.

Mr. Ataur Rahman,
Mr. A. Chakraborty, ...for the appellant.

Mr. Shhilon Sengupta,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee,
Ms. Sharmistha Das, ...for the respondent.

Dictated by Om Narayan Ray, J.

In re : I.A. No. CAN/1/2024

1. This is an application under Section 5 of the Limitation Act praying for condonation of delay of 54 days in preferring the instant appeal.
2. We have been taken through the application and we find that sufficient grounds have been made justifying the appellant's belated approach to Court. Being satisfied that the grounds mentioned in paragraph 9 of the petition are sufficient, we condone the delay of 54 days in preferring the appeal by allowing the application for condonation of delay.
3. I.A. No. CAN 1 of 2024 stands disposed of as above.

**In re : F.M.A.T. (ARBAWARD) 16 of 2025 &
I.A. No. CAN/2/2024**

4. By consent of the parties, the appeal and the connected application are taken up together for hearing.
5. This appeal is directed against an order dated March 18, 2024, passed by the learned Judge, 11th Bench, City Civil Court at Calcutta in Misc. Case No.2464 of 2013.
6. The appellant before us had approached the City Civil Court by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996, laying challenge to an award passed by the sole arbitrator on November 11, 2013.
7. Mr. Chakraborty, learned advocate appearing for the petitioner submits that keeping in view the narrow scope of Section 34 of the Arbitration and Conciliation Act, 1996, the only point which he feels is arguable in this case is that the arbitrator had been unilaterally appointed by the financier, that is the respondent herein, and that being so, the award passed by such arbitrator would be a nullity in view of the provisions of Section 12(5) of the Arbitration and Conciliation Act, 1996. He submits that although Section 12(5) was inserted in the statute book by way of an amendment later on,

yet in view of the judgment of the Hon'ble Supreme Court in the case of ***Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.*** reported in ***AIR 2020 SC 59*** whereby the Hon'ble Supreme Court declared that defect in the appointment of an arbitrator by an ineligible person (that is the respondent herein) who is one of the parties to the arbitration agreement, would still visit the arbitral proceeding and would render the award a nullity.

8. He also submits that the arbitrator who decided the reference was biased and therefore incompetent in terms of the relevant provisions of the seventh schedule referred to in Section 12 of the Arbitration and Conciliation Act, 1996.
9. Heard learned advocates for the respective parties and considered the material on record.
10. The Arbitration and Conciliation (Amendment) Act of 2016 reveals that subsection 5 was inserted in Section 12 of the Arbitration and Conciliation Act, 1996 with retrospective effect from October 23, 2015.
11. The other provisions of Section 12 were substituted by the same Amendment Act of 2016 with effect from October 23, 2015.
12. It is, thus, evident that the provisions of Section 12(5) which refer to the Seventh

Schedule were not there in the statute at the time when the award, which was impugned before the City Civil Court (i.e. the Section 34 Court), was passed by the sole arbitrator (i.e. on November 11, 2013). In such view of the matter, the argument of Mr. Chakraborty, though attractive, does not hold ground.

13. **Perkins Eastman Architects DPC**

(supra), is a case where the contract itself was entered into on May 22, 2017 and an arbitrator was appointed in terms thereof in the year 2019. The case is evidently not applicable to the facts of the present case. We further note that this point was neither raised before the arbitrator nor the Section 34 Court.

14. We are conscious that bias is a good ground to challenge awards rendered in the pre-amendment arbitral regime but there has to be material before the Court to reach such conclusion.

15. The point of bias which is now urged before us was not even taken either before Section 34 Court or before the arbitrator. The only point urged before the Section 34 Court was that the arbitrator did not adjust certain payments that had allegedly been made by the

appellant. Such contention has been turned down on the basis of evidence on record.

16. In view of the above, we do not find any infirmity in the order impugned dated March 18, 2024.

17. F.M.A.T. (ARBAWARD) 16 of 2025 is dismissed. I.A. No. CAN 2 of 2024 stands disposed of accordingly.

18. There shall be no order as to costs.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)