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Item No. 03
26.08.2025
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**AO-COM 30 of 2025
With
CAN 1 of 2025**

**M/s. India Builders
-Vs.-
Union of India**

*Mr. Amales Ray, Sr. Adv.
Ms. Mousumi Bhowal,
Mr. Aman Gupta,*

...for the appellant.

*Mr. Manju Manot, Sr. Adv.
Mr. Srikumar Chakraborty,*

.... For the UOI.

Dictated by Arijit Banerjee, J:-

Affidavit of service filed by the appellants in court today
be kept with the records.

By consent of the parties, the appeal and the connected
application are taken up together for hearing.

This appeal is directed against an order dated July 10,
2025, whereby an application being Misc. Arbitration
(Commercial) No. 26 of 2024 filed by the present appellant
under Section 34 of the Arbitration and Conciliation Act, 1996
(in short the '1996 Act') was dismissed by the learned Judge,
Commercial Court, Siliguri. The two grounds on which the
application was dismissed are, firstly, that the impugned
award was not filed with the application and secondly, that the
Statement of Truth under Order 6 Rule 15A of the Code of Civil
Procedure (as amended by the Commercial Courts Act, 2015)
was also not filed. According to the learned Judge, non-filing
of the aforesaid documents made the application non-est in
the eye of law and accordingly the application was dismissed.

Being aggrieved, the applicant has come before us by way of this appeal.

We have heard the learned Counsel for the parties. Learned Senior Counsel for the respondent in her usual fairness submits that the point of non-filing of the signed copy of the award was not taken by the respondent but was a point which the learned Judge himself raised.

Section 34 of the 1996 Act reads as follows:-

“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 [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.

[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.]

(2-A) 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 re-appreciation 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.

(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.”

We do not see any mandatory requirement of filing the original award or a signed copy of the award along with an application for setting aside an arbitral award.

The learned Trial Court relied on certain judgments and in particular the judgment of a Full Bench of the Delhi High Court in the case of **Pragati Construction Consultants-vs.-Union of India & Anr.**, reported in **2025 SCC Online Delhi 636**. We have gone through that judgment. What that judgment holds is that filing of a copy of the impugned award is mandatory. It does not say that the copy has to be a signed copy or that the original award has to be filed. The relevant paragraphs of that judgment are reproduced hereunder:-

“66. We, therefore, have no hesitation in holding that filing of the copy of the impugned award, which is under challenge, is a bare minimum, rather, mandatory requirement for an application under Section 34 of the A&C Act. Further, non-filing of the same would make such an application “non-est” in the eyes of law, thereby, not stopping the period of limitation from running.

67. The reference in Pragati Construction Consultants v. Union of India is answered accordingly by holding that filing for the arbitral award under challenge, is an essential prerequisite for filing the application under Section 34 of the A&C Act, and in absence thereof, the filing of the said application will be treated as “non-est”.”

Other decisions of the Delhi High Court were also referred to by the learned Trial Judge. However, since we

have referred to the Full Bench decision of the Delhi High Court, it may not be necessary for us to discuss those decisions.

On the other hand, learned Senior Counsel for the appellant drew our attention to a judgment of the Karnataka High Court dated October 5, 2023 delivered by a learned Single Judge in **W.P No. 105457 of 2023**. At paragraph 15 of the judgment, it was observed as follows:-

“15. Upon careful examination of the provisions of Section 34, it becomes evident that while certain requirements have been made mandatory before filing an application, for setting aside the award, filing of a signed copy of the award is not one of them. At the same time, it is important to note that Section 34 also does not explicitly state that an application under Section 34 can be filed only on the basis of a signed copy of award. Thus, it can be inferred that Section 34 is silent on this aspect.”

Learned Senior Counsel further drew our attention to a Constitution Bench judgment of the Hon’ble Apex Court in the case of **Gayatri Balasamy-vs.-ISG Novasoft Technologies Limited**, reported in **(2025) 7 SCC 1**. Our attention was drawn to paragraph 185 of the reported judgment from where it appears that Dr. T.K. Viswanathan Committee which was set up for considering and proposing amendments to the Arbitration and Conciliation Act, 1996, recommended, *inter alia*, that a new sub-Section be inserted in Section 34 of the Act to provide that an application for setting aside an award under sub-Section (1) shall be accompanied by the original award and where the parties have not been given the original award, they may file a copy of the award signed by the Arbitrators. It appears that such

recommendation is under consideration and the same has not yet been incorporated in the statute.

In view of the aforesaid, we do not see that there is any mandatory requirement to file a signed copy of an arbitral award along with an application for setting aside such award under Section 34 of the 1996 Act. Even the Full Bench of the Delhi High Court says that 'a copy of the award' must accompany the setting aside application.

In so far as the non-filing of the 'statement of truth' under Order 6 Rule 15A of the CPC (as amended by the Commercial Courts Act) is concerned, the same is an irregularity which is curable. The applicant/appellant should comply with the aforesaid requirement.

In view of the aforesaid and since the application under Section 34 of the 1996 Act was not considered on merits by the learned Trial Judge, we set aside the order under appeal and remand back the matter to the learned Trial Judge for deciding the application on merits upon hearing both the parties and upon filing of statement of truths by the appellant/applicant. The statement of truth should be filed within two weeks from date and the learned Trial Court can, thereafter, hear out the application.

We clarify that we have not touched the merits of the case. The learned Trial Court shall decide the application in accordance with law.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)