IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3074 of 2025
Durgapur Freight Terminal Pvt. Ltd.
VS.
Titagarh Logistics Infrastructure Pvt. Ltd. & Ors.

For the Petitioner	: Mr. Sakya Sen Mr. Rishad Medora Mr. Ramendu Agarwal	….. advocates
For the Opposite Party no. 1	: Mr. Rajarshi Dutta Mr. Soumyadeb Singha Mr. Hiranyak Ganguly Ms. S. Chatterjee	…… advocates
For the Opposite Party no. 2	: Mr. Ayan Dutta Mr. Abhishek Jain	…… advocates
Reserved on	: 10.09.2025	
Judgment on	: 05.12.2025	

<u>Hiranmay Bhattacharyya, J.:-</u>

1. The application under Article 227 of the Constitution of India is at the instance of the 1st respondent in an arbitration proceeding and is directed against an order being No. 24 dated July 17, 2025 passed by the learned Judge, Commercial Court at Alipore in Misc. Arb. (Com) No. 52 of 2022.

2. By the order impugned, the application under Section 14 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") stood rejected.

3. Facts giving rise to the instant civil revision application in a nutshell are as follows-

Disputes and differences arose out the agreement dated January 1, 2017 between the parties. Such disputes were referred to arbitration and the parties nominated their arbitrators. The arbitrators nominated by the respective parties appointed the Presiding Arbitrator thereby constituting the Arbitral Tribunal.

4. The first sitting of the Arbitral Tribunal was held on July 26, 2020. Statement of Claim was filed by the Opposite Party No. 1 on August 17, 2020. Statement of Defence with Counter Claim was filed by the petitioner on December 5, 2020. Rejoinder was filed by the Opposite Party no. 1 on January 17, 2021. About 19 sittings were held by the Tribunal from January 17, 2021 to February 10, 2022. On February 10, 2022 both the parties advanced their arguments and the hearing was concluded and the matter was reserved for orders. On November 9, 2022, petitioner filed an application under Section 14 of the 1996 Act before the learned Judge of the Commercial Court at Alipore praying for a declaration that the mandate of the Arbitral Tribunal has terminated. Arbitral Tribunal published the Award on November 17, 2022. Petitioner filed an application under Section 34 of the 1996 Act before the learned Judge Commercial Court at Alipore, which is pending.

5. The application under Section 14 of the 1996 Act stood dismissed by the impugned order. Being aggrieved, the Award debtor approached this Court.

6. Mr. Sen learned Senior Advocate for the petitioner submits that the mandate of the Arbitral Tribunal expired on January 16, 2022 if the one year period is computed from the date of filing the rejoinder. He contended that the Arbitral Tribunal became functus officio in terms of Section 29A(4) as no application was filed by the parties before the Court seeking extension of time under Section 29A(1) and 29A(3)(v) of the 1996 Act. He contended that the petitioner filed an application under Section 14 and after period of 8 days from the date of communication of the factum of filing the said application, the Arbitral Tribunal made and published the award on November 17, 2022. Mr. Sen contended that the benefit conferred by the

order dated 10th January, 2022 passed by the Hon'ble Supreme Court thereby extending the period of limitation under various statutes, would not enure to the benefit of the petitioner as the parties waived such benefit by participating in the proceedings before the Arbitral Tribunal. In support of the aforesaid contention, Mr. Sen placed reliance upon the decision of the Hon'ble Delhi High Court in the case of ***Brainlink International, INC & Anr. vs. HT Media Limited & Anr.*** which was affirmed by the Hon'ble Supreme Court by an order dated March 14, 2022 passed in petition for ***Special Leave to Appeal (c) Nos. 3579/2022***. For the same proposition, Mr. Sen placed reliance upon the decision of the Hon'ble Delhi High Court in the case of ***Love Chauhan vs. Ajay Kumar Kathuria [CM(M) 848/2021***].

7. Per contra, Mr. Datta, learned advocate for the opposite party no. 1 contended that the mandate of the Arbitral Tribunal stood extended for a period of one year from 1st March 2022 in terms of the order dated January 10, 2022 passed by the Hon'ble Supreme Court in Suo Moto matter. In support of such contention he placed reliance upon the decision of the Hon'ble Division Bench in **M/s. Koley Construction vs. Tarun Kanty Chowdhury** reported at **AIR 2025 Cal 130**. He further contended that challenge to the award on the ground that the mandate of the Arbitral Tribunal stood expired should be urged in an application under Section 34 of the 1996 Act. He submitted that in view of the statutory remedy available under Section 34 of the 1996 Act, the instant application under Article 227 of the Constitution of India is not maintainable. He contended that since the petitioner has filed an application under Section 34 of the 1996 Act, this Court should not entertain this application under Article 227 of the Constitution of India. In support of such contention, Mr. Dutta placed reliance upon the decisions of the Hon'ble Supreme Court in ***Deep Industries Limited vs. Oil and Natural Gas Corporation Limited And Another*** reported at ***(2020) 15 SCC 706***; ***Bhaven Construction vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.*** reported at ***(2022) 1 SCC 75*** and ***Serosoft Solutions Pvt. Ltd. vs. Dexter Capital Advisors Pvt. Ltd.*** reported at ***2025 SCC Online SC 22***. He further

contended that the petitioner having participated in the reference beyond the mandate, the petitioner waived his right to raise an objection to challenge the mandate of the Arbitral Tribunal. In support of such contention, Mr. Datta placed reliance upon the decisions in the case of ***Balak Ram & Ors. vs. NHAI*** reported at ***2023 SCC Online HP 944*** and ***Ayyasamy vs. A. Shanmugavel (died) & Ors.*** reported at ***2024 SCC Online Mad 4338***.

8. Heard the learned advocates for the parties and perused the materials placed.

9. Section 34 of the 1996 Act provides a remedy to an aggrieved party to approach the Court for setting aside an arbitral award on the grounds specified therein. It is well settled that availability of an alternative remedy cannot be an absolute bar in entertaining an application under Article 227 of the Constitution of India under certain exceptional circumstances.

10. In the case on hand, the petitioner filed an application under Section 14 of the 1996 Act contending that the mandate of the Arbitral Tribunal stood terminated. Such an objection touches upon the jurisdiction of the Arbitral Tribunal to pass an award or even to proceed any further. That apart, the application under Section 14 of 1996 Act was filed prior to the Award being published. For such reason, this Court exercises its discretion and this application under Article 227 of the Constitution of India is entertained and this Court shall decide the application on merit.

11. In ***Deep Industries*** (supra), the order passed under Section 17 of the 1996 Act was upheld in an appeal filed under Section 37 of the 1996 Act. The order passed under Section 37 of the said Act was challenged under Article 227 of the Constitution of India. On such facts the Hon'ble Supreme Court observed that though petitions can be filed under Article 227 of the Constitution of India against judgment allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory

policy so that interference is restricted to orders that are passed which are patently lacking jurisdiction.

12. ***Bhaven Construction*** (supra) is distinguishable on facts as it was held therein that the respondent no. 1 therein failed to show exceptional circumstances or bad faith for invoking the remedy under Article 227 of the Constitution of India.

13. In ***Serosoft Solutions*** (supra) the application filed before the Arbitral Tribunal seeking extension of time for cross examination of a witness was rejected by the Tribunal which was challenged under Article 227 of the Constitution of India. High Court directed the Tribunal to grant a further opportunity to cross examine. On such facts the Hon'ble Supreme Court held that the Arbitral Tribunal afforded full opportunity to cross-examine and no further extension of time was warranted and allowed the appeal upon holding that the High Court was not justified in interfering under Article 227 of the Constitution.

14. Thus, it is well settled that application under Article 227 can be entertained if the issue of jurisdiction is raised.

15. Section 14(1) of the 1996 Act contemplates termination of the mandate of the arbitrator if he becomes dejure or defacto unable to perform his functions or for other reasons fails to act without undue delay and if he withdraws from his office or the parties agree to the termination of his mandate.

16. If there is no dispute as to the eventualities as mentioned hereinbefore, the mandate of the arbitrator is terminated on statutory prescription.

17. However, if there is a dispute with regard to any of the grounds referred to in Clause (a) of subsection (1) of Section 14, a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate. In such cases, the grounds for termination of the mandate are to be established and proved.

18. Mr. Sen was right in arguing that expiry of the prescribed period for making the award would render the Arbitral Tribunal "dejure" unable to continue with the proceedings and has the effect of termination of the mandate of the Arbitral Tribunal within the meaning of Section 14 of the 1996 Act.

19. Now this Court has to decide whether the prescribed period for making the award stood expired as on the date of filing the application under Section 14 of the 1996 Act or publishing the award by the Arbitral Tribunal.

20. For the purpose of deciding the aforesaid issue it would be profitable to recapitulate the provisions of Section 29A of the 1996 Act for which the same is extracted hereinafter-

> ***"29A. Time limit for arbitral award.—(****1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.*
>
> *Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.*
> *(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*
> *(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*
> *(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:*
> *Provided that while extending the period under this sub-section, if the court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.*
> *(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the court.*
> *(6) While extending the period referred to in sub-section (4), it shall be open to the court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.*

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.
(8) It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.
(9) An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

21. Section 29A(1) states that the award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under Section 23(4).

22. Subsection (3) of Section 29A lays down that the parties may, by consent extend the period specified in subsection (1) for making award for a further period not exceeding six months.

23. The Court has the power and jurisdiction to extend the period for passing award upon filing of an application by any of the parties and being sufficient cause being shown subject to the terms and conditions as may be fixed by the Court.

24. The first sitting of the Arbitral Tribunal was held on July 26, 2020. The pleadings were completed on January 17, 2021 with the filing of rejoinder by the opposite party no. 1. The statutory period of 12 month as stipulated under Section 29A(1) for making the award, which commenced from January 17, 2021 expired on January 16, 2022. Parties can extend the period of passing the award by another six months by mutual consent as per Section 29A(3).

25. The Hon'ble Madras High Court in **Ayyasamy** (supra) observed that when Section 29A of the 1996 Act is construed to be a procedural one and discretion is given to the parties to extend the period for a further period of 6 months, the Court can arrive at a conclusion that by not raising any objection before passing of the award, the party has not only given their

implied consent but also waived their right to raise any objection with regard to non-passing of the award within a period of 12 months.

26. In **Balak Ram** (supra) it was held that consent of the parties envisaged under Section 29A(3) of the Act for extending the arbitral period need not necessarily be either express or in writing. There can be deemed consent or implied consent of the parties, which can be gathered from their acts or conduct. Their acquiescence in proceeding with the arbitration case beyond 12 months without raising any objection to the continuation of proceeding does amount to consent.

27. Since the parties participated in the hearing before the Arbitral Tribunal without any objection even after January 16, 2022, this Court holds that the period for passing the award stood extended by a period of six months from January 16, 2022 by mutual consent till July 16, 2022.

28. However, prior to the expiry of the aforesaid period and even before the first twelve months period, the Hon'ble Supreme Court after taking note that the nation was affected by COVID pandemic in ***Re: Cognizance for Extension of Limitation*** passed an order dated 10.01.2022 declaring that the period between 15.03.2020 and 28.02.2022 shall be excluded in computing periods of limitation under Section 23(4) and 29(A) of the 1996 Act. The relevant portion of the said order is extracted hereinafter-

> *"5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:*
> *5.1. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021 it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
> *5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.*
> *5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of*

90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.
5.4. It is further clarified that <u>the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996</u>, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

(emphasis supplied)

29. In the case on hand, the hearing before the Arbitral Tribunal was concluded on February 10, 2022 and the Award was published on November 17, 2022.

30. Since the entire proceedings starting from the first sitting of the Arbitral Tribunal till the conclusion of hearing took place between 15.03.2020 and February 28, 2022 and the entire period between March 15, 2020 and February 28, 2022 are to be excluded while computing the period of limitation under Section 29(A), this Court holds that the time to publish the Award stood extended for a period of twelve months from March 1, 2022 as per the order dated 10.01.2022 passed by the Hon'ble Supreme Court in **Re: Cognizance for Extension of** Limitation.

31. The Hon'ble Division Bench in **Koley Construction** (supra) after noting the order passed by the Hon'ble Supreme Court in **Re: Cognizance for Extensive of Limitation** held that the period of one year would commence from 28th February, 2022 and the time for making the award under Section 29A(1) would stand extended till 1st March, 2023.

32. For all the reasons as aforesaid, this Court holds that the prescribed period for passing the award did not expire as on the date of filing of the application under Section 14 of the 1996 Act as well as on the date of publishing the award by the Arbitral Tribunal. Thus, the Arbitral Tribunal could not be said to have become dejure unable to perform his functions.

33. The issue is accordingly answered in the negative and against the petitioner.

34. To the mind of this Court, the learned Judge of the Commercial Court at Alipore was right in rejecting the application under Section 14 of the 1996 Act.

35. In ***Love Chauhan*** (supra), the suit was directed to proceed ex parte and on an application filed under Order IX Rule 7 of the Code of Civil Procedure, the ex parte order was set aside subject to payment of cost and the defendant therein was directed to file written statement within a week's time. The defendant therein was granted time period to file written statement in a Commercial Suit beyond the maximum period of 120 days provided under Order VIII Rule 1 of the Code but even then the written statement was not filed within the extended time and the written statement was filed after a period of two months. The Hon'ble Delhi High Court recorded a finding that the defendant had been cavalier throughout in conducting the said litigation by committing repeated and blatant lapses. On such a factual background, it was held that once a benefit was granted by a Commercial Court, the order passed in **Re: Cognizance for Extension of Limitation** (supra), would not enure in favour of extension of the time period and the Court cannot permit or encourage the practice of litigants not adhering to time lines fixed by the Court/statute, more particularly in the commercial suits.

36. In ***HT Media Limited*** (supra), the written statement was filed nearly 441 days after an ad interim order of injunction was passed and that the defendant appeared on various dates in Court through their counsel prior to the filing of the written statement. The written statement was filed only after the plaintiffs had filed their application under Order XIII A of the Code of Civil Procedure seeking summary judgment in their favour. On such facts it was held that the orders of the Supreme Court in **Re: Cognizance for Extension of Limitation** (supra) would not be applicable.

37. The Hon'ble Supreme Court in Special Leave to Appeal (c) No.(s) 3579 of 2022 approved the aforesaid view taken by the Hon'ble Delhi High Court.

38. In ***Love Chauhan*** (supra) and ***HT Media Limited*** (supra) the benefit of the order extending the period of limitation in **Re: Cognizance for Extension of Limitation** (supra) was not extended to the defendants who sought for condonation of delay in filing the written statement in Commercial Suit taking note of the conduct of the litigants.

39. In the case on hand, the parties participated in the proceedings and the hearing was concluded well within the time period which stood extended by the conduct of the parties under Section 29A(3) of 1996 Act by mutual consent. Thus, it cannot be said that the litigants' approach was cavalier throughout the proceedings. After the conclusion of hearing it was only left for the Arbitral Tribunal to publish the Final Award. The statutory time limit for passing the award as stipulated under Section 29(A) of the 1996 Act stood extended by virtue of the order passed by the Hon'ble Supreme Court in **Re: Cognizance for Extension of Limitation** (supra) as already observed by this Court. The decision in the case of ***Love Chauhan*** (supra) and ***HT Media Limited*** (supra) being distinguishable on facts cannot come to the aid of the petitioner.

40. The learned Judge of the Commercial Court correctly applied the order of the Hon'ble Supreme Court in **Re: Cognizance for Extension of Limitation** to the case on hand and was right in holding that the grounds for invoking Section 14 of the 1996 Act was not proved. The Impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

41. Accordingly CO 3074 of 2025 stands dismissed. There shall be, however, no order as to costs.

42. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)