

**IN THE HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Debangsu Basak**

**And**

**The Hon'ble Justice Md. Shabbar Rashidi**

**FMAT (ARBAWARD) 3 of 2022**

**Chief Engineer, Siliguri Zone, MES & Anr.**

**Vs.**

**M/S Agarwal & Co**

For the appellants :Mr. Sudipto Kumar Mazumdar, Ld. DSGI (through VC)

Mr. Ajoy Kumar Singhania, Advocate

For the Respondent: Mr. Nabankur Paul, Advocate

Ms. Sutapa Sen Paul, Advocate

Mr. Bodhisatya Ghosh, Advocate

Heard & Judgment on: November 21, 2025

**DEBANGSU BASAK, J.:-**

1. Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against Order No.17 dated November 10, 2021 passed in Misc Judicial (Arbitration) Case No.17 of 2019.

2. By the impugned order, learned District Judge, Darjeeling dismissed the application under Section 34 of the Act of 1996 filed by the appellants on the ground of limitation.
3. Learned Deputy Solicitor General of India appearing for the appellants submits that, the appellants suffered an award dated March 29, 2019. Copy of such award was received by the appellants on April 5, 2019. Appellants applied under Section 33 of the Act of 1996 before the Arbitrator on April 22, 2019. Application under Section 33 of the Act of 1996 was dismissed on May 15, 2019. Application under Section 34 of the Act of 1996 was filed on August 14, 2019.
4. Learned Deputy Solicitor General of India appearing for the appellants submits that, the appellants suffered an award on various heads. He refers to the various claims of the respondent. He submits that, in respect of the claims that were allowed, interest was awarded. He also points out that, in respect of claim no.9, the appellants considered the interest of 11% awarded to be a typographical error and, therefore, applied for correction of the same by the application under Section 33 of the Act of 1996 on April 22, 2019.
5. Learned Deputy Solicitor General of India appearing for the appellants submits that, in the event, the date of rejection of the application under Section 33 of the Act of 1996, that is, May 15, 2019 is taken as the date of the award, then, the application under Section 34 of the Act of 1996 was well within time.

6. Learned Advocate appearing for the respondent submits that, the award was dated March 29, 2019. He points out that several claims of the respondent were allowed by the award. In respect of the claims that were allowed interest at the rate of 11% was awarded. According to him, there is no typographical error in the award to be corrected.
7. Learned Advocate appearing for the respondent draws the attention of the Court to the application under Section 33 of the Act of 1996 and submits that, such application is misconceived. He submits that, there was no error apparent on the face of the award exists requiring a correction. Interest rate of 11% was awarded in respect of other claims also. Therefore, it cannot be said that, there was typographical error in awarding 11% interest rate for claim no.9 which was sought to be corrected.
8. Learned Advocate appearing for the respondent relies upon **2007 10 SCC 742 (State of Arunachal Pradesh vs. M/s Damani Construction)** for the proposition that, when application under Section 33 of the Act of 1996 is misconceived, the same does not extend the time of the making and publishing of the award and consequently the time for challenging such award.
9. Learned Advocate appearing for the respondent submits that, the appellants did not take the point of extension of time of making and publishing the award in their application under Section 34 of the Act of

1996 by reason of rejection of the application under Section 33 of the Act of 1996.

10. We find from the records that, the Arbitrator published an award dated March 29, 2019 which was received by the appellants on April 5, 2019. Several claims of the respondent were allowed by the award dated March 29, 2019. In respect of the claims that were allowed, the Arbitrator proceeded to award interest. Interest awarded was largely 11% across the board. Appellants applied under Section 33 of the Act of 1996 on April 22, 2019 for correction of the rate of interest in respect of claim no.9 only. Application under Section 33 of the Act of 1996 was filed within the period of time permitted to file an application under Section 34 of the Act of 1996. In so applying, appellants contended that, the rate of interest was higher than the prevalent rate of interest on the date of the award and that State Bank of India, which provides the highest fixed deposit rates of interest was 6.8% and, therefore, the future rate of interest should be worked out at 8.80% since the Arbitrator sought to award future interest at the rate of 2% higher than the prevalent rate of interest on the date of the award.
11. Essentially, therefore, the appellants were contending that since the Arbitrator granted interest at the rate of 2% higher than the prevalent rate of interest, as and by way of future interest, therefore, taking into account the prevalent fixed deposit rate of interest, that is, 6.80%, the rate of interest should be 8.80 % and not 11%.

12. Arbitrator considered the application under Section 33 of the Act of 1996 and rejected the same on May 15, 2019 holding that the correction sought for, did not fall within the parameters under Section 33 of the Act of 1996.
13. In the event, the Arbitrator was pleased to accept the contention of the appellants as advanced by the application dated April 22, 2019 and corrected the award, then, date of filing of the challenge to such award would stand extended from the date of the decision on the application under Section 33 of the Act 1996. However, since, the application under Section 33 of the Act of 1996 was rejected, cannot it be said that, the rejection order did not extend the time for the purpose of challenging the award, in terms of Section 34 of the Act of 1996.
14. In ***Damini Construction*** (*supra*), Hon'ble Supreme Court considered a situation where, essentially, under the garb of an application under Section 33 of the Act of 1996, review of the award was sought for. In the facts of that case, it was contended that, the award published was an interim award and not an final award. Hon'ble Supreme Court held that the first award could not be classified as an interim award and that, Arbitrator did not possess jurisdiction of review under Section 33 of the Act of 1996.
15. Factual matrix in the present case is different, as noted above.
16. The application for correction made under Section 33 of the Act of 1996 on April 22, 2019 cannot be said to be without any basis.

17. Arbitrator, no doubt, took a view which is contrary to the application. Arbitrator significantly did not hold that, the application under Section 33 of the Act of 1996 to be misconceived. It, however, held, that the reliefs sought for did not fall within the parameters under Section 33 of the Act of 1996. View of the Arbitrator that, the reliefs sought for in the application for correction, did not fall within the parameters under Section 33 of the Act of 1996 is debatable.
18. In the facts and circumstances of the present case, we are not in a position to return a conclusive finding that the application under Section 33 of the Act of 1996 was misconceived or filed *mala fide*. The view expressed in the application may or may not be accepted by the Arbitrator.
19. In our view, the date of disposal of the application under Section 33 of the Act of 1996 which such application cannot be termed as misconceived, will be treated as the date of the award, thereby permitting the parties to the award to move an application under Section 34 of the Act of 1996 taking the date of the decision under Section 33 of the Act of 1996 as the date of the award.
20. In such circumstances, the decision of the impugned order under Section 34 of the Act of 1996 being erroneous, is set aside.
21. Learned District Judge is requested to hear and decide the application under Section 34 of the Act of 1996 afresh on merits without being

prejudiced by any of the observations made by us in this judgment and order.

22. **FMAT (ARBAWARD) 3 of 2022** is **disposed of** without any order as to costs.

**(Debangsu Basak, J.)**

23. I agree.

**(Md. Shabbar Rashidi, J.)**

(AD)