



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL REVISION APPLICATION NO. 95 OF 2024

Bharat Shipping Agency,
proprietary concern of Shri
Prakash S/o Shyamsundar Khemkha,
Aged about 59 years, Occ.-Business,
Having its office at 5, Residency Road,
Sadar, Nagpur.

.... **APPLICANT**

// **VERSUS** //

Dayabhai S/o Panchabhai Patel,
Aged about 61 years, Occ.-Business,
Proprietor of M/s. Bhagwat Enterprises
having its office at Plot No.13,
Surya Nagar, Pardi Nagpur-440035.

.... **NON-APPLICANT**

Mr. P. P. Kothari, Advocate for the Applicant.
Mr. Amit Khare, Advocate for the Non-applicant.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 26.03.2025

DATE ON PRONOUNCING THE JUDGMENT : 05.05.2025

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the learned Counsel appearing for the parties.

2. Being aggrieved by the order passed by the District Judge-13, Nagpur in Arbitration Case No.21/2023, dated 24.06.2024, below Exhibit-10, thereby rejecting the application of the Applicant for dismissal of the proceedings.

3. The Applicant submitted that he filed an Arbitration proceedings before the Arbitrator for recovery of dues against the M/s. Bhagwat Enterprises, the proprietorship concern of Non-applicant. The proceedings were duly contested by the Non-applicant and after hearing the parties, the Arbitrator passed an Award dated 11.01.2022, thereby granting decree in favour of the Applicant.

4. Copy of Award was received by both the parties in the month of January 2022. On 24.03.2022, the Applicant had filed execution proceedings bearing R.D. No.505/2022, seeking execution of the Award. The Non-applicant filed a Writ Petition No. 2283/2022 before this Court, challenging the Award passed by the Arbitrator, which was dismissed by this Court on 09.02.2023. Therefore, the Non-applicant filed objection under Section 34 of the Arbitration and Conciliation Act, 1996 (for short the "Act of 1996"), before the learned District Judge bearing

Arbitration Case No.21/2023. The Applicant appeared before the District Judge and filed an application for dismissal of the proceedings mainly on the ground that same is not filed within 90 days as contemplated under Section 34(3) of the Act of 1996. Further ground was raised that Non-applicant has played fraud on Court as Non-applicant has made a statement on oath before the learned lower Court that the copy of Award was received on 15.02.2023 and the proceedings under Section 34 of the Act of 1996 are filed within the limitation, suppressing the earlier writ petition and receipt of copy of award. The learned lower Court passed the impugned order thereby rejected the application holding that the same is to be treated as application under Order VII Rule 11 of the Code of Civil Procedure (for short the “CPC”) and thus, the point of limitation cannot be decided at primary stage and that the same is required to be considered at the stage of final hearing. The aforesaid order is the subject matter of challenge in the present Civil Revision Application.

5. Learned Counsel for the Applicant contended that the earlier proceedings were in the name of M/s Bhagwat Enterprises, which is a proprietary concern of the Non-applicant. The Non-applicant though contested all earlier rounds of litigation in the

name of M/s Bhagwat Enterprises, intentionally filed the proceedings under Section 34 of the Act of 1996, in his personal name so as to avoid the issue of limitation. It is further important to point out that the learned lower Court did not even bother to consider the fact that the Non-applicant suppressed all these material facts about earlier round of litigation from this Court and had made a false statement that the certified copy of the Award is received in the month of March 2023.

6. It is further contended that the learned lower Court erred in treating the application for dismissal as under Order VII Rule 11 of the CPC, when the same was filed on the basis of Section 34(3) of the Act of 1996. Hence, the impugned order needs interference by this Court and also needs to be set aside.

7. Learned Counsel for the applicant relied on ***Bhartiya Rashtriya Rajmarg Pradhikaran Vs. Neeraj Sharma and Ors.***, reported in ***AIR 2024 Allahabad 221***.

8. Learned Counsel for the Non-applicant supported the order passed by the lower Court and contended that the learned lower Court has rightly taken into consideration that the

contention in the application required to be considered at the stage of final hearing and not at the preliminary stage and accordingly passed an appropriate order, which needs to be confirmed.

9. Learned Counsel for the Non-applicant relied on the following case laws :

- (i) *NTPC BHEL Power Projects Pvt. Ltd., Vs. Shree Electricals & Engineers (India) Pvt. Ltd.*, reported in *2025 SCC OnLine Bom 598*;
- (ii) *Incite Homecare Products Pvt. Ltd., Vs. R. K. Swamy Pvt. Ltd. Erstwhile RK Swamy BBDO Pvt. Ltd.* in *FAO 46/2025, CM APPL. No.11874/2025, decided on 27.02.2025*, High Court of Delhi;
- (iii) *Tek Singh Vs. Shashi Verma & Anr.*, reported in *(2019) 16 SCC 678*.

10. Heard learned Counsel for the parties. Perused the impugned order and considered the citations relied on by both the parties.

11. It appears that there was an arbitration proceeding before the Micro, Small Enterprise Facilitation Council, Nagpur

against the Non-applicant and said was finally decided by the learned Arbitrator vide Award dated 11.02.2022. On the same day, copy of Award was received by both the parties. The Applicant filed an execution proceedings bearing R. D. No.505/2022 on 24.03.2022, seeking execution of the award. The Non-applicant filed a Writ Petition No.2283/2022 before this Court, it was dismissed on 09.02.2023. The Non-applicant filed an application under Section 34 of the Act of 1996 before the learned District Judge vide Arbitration Case No.21/2023 on 27.02.2023. The present Applicant has appeared in the matter before the learned District Judge and filed an Application for dismissal of the said Application filed under Section 34 of the Act of 1996. It appears that main ground is that same is not filed within three months or extended limitation of one month in view of Section 34(3) of the Act of 1996 and second ground was that the Non-applicant played absolute fraud to the Court though award was passed on 11.02.2022 and copy of award was received on the same day, the application under Section 34 of the Act of 1996 is filed on 27.02.2023. The Non-applicant intentionally suppressed the said fact. He was challenged the said award in Writ Petition No.2283/2022, which came to be dismissed. Not only this,

he made a statement that he received a copy of award on 15.02.2023, which can be seen from the application itself in para 11. In the whole application, there is no mentioned that he had received copy of award on 11.01.2022. It appears that there is acknowledgment on behalf of Bhagwat Enterprises as well as Bharat Shipping Agency. He has not disclosed the filing of writ petition and dismissal of the same. So also, while filing the application, instead of mentioning Bhagwat Enterprises as mentioned in the Arbitration Award, he has filed the application in his personal name as Mr. Dayabhai Panchabhai Patel, Proprietor of M/s Bhagwat Enterprises. It is contention of the Applicant that these are deliberate attempts so as to, in computer system his name should not be matched with the Bhagwat Enterprises.

12. On perusal of the impugned order, it appears that learned District Judge-13, Nagpur mislead itself by observing that the application is to be treated as application for rejection of plaint vide Order VII Rule 11(d) of the CPC. However, he failed to appreciate that the application is filed for dismissal of the arbitration proceedings on the ground that it is barred by limitation in view of Section 34(3) of the Act of 1996 as well as there is material suppression of the facts and thereby fraud played

by the applicant on the Court. Without any reason, the learned District Judge recorded that the Act itself provide for resorting the Civil Court, then petition under Section 34 of the Act is not fall in exemption under Section 19 of the said Act and treating the application under Order VII Rule 11(d) of the CPC and proceeded further on relying the judgment of ***Dahiben Vs. Arvindbhai Kalyanji Bhanushali (Gajra) dead through LRs. & Others***, reported in ***2020(7) SCC 366***, learned Court held that the only contents of application needs to be looked into that he has averred in the petition that he has received the certified copy of impugned order/award passed by the non-applicant No.2 on 15.02.2023 and accordingly the said application/appeal for setting aside of award is filed well within limitation. He has produced the certified copy of award with a list Exhibit-4. The learned District Judge on that ground not even looked into the documents filed by present Applicant/non-applicant No.1, treating the application under Order VII Rule 11(d) of the CPC.

13. In my considered opinion, the said order is patently erroneous and the Court passed the same by misleading itself treating the application under Order VII Rule 11(d) of the CPC. On perusal of application, there is no whisper of any provision of

Order VII Rule 11(d) of the CPC. On the contrary, the application is filed for dismissal of application filed under Section 34 of the Act of 1996. It is pleaded that application under Section 34 of the Act of 1996 can be filed only within 90 days and it can be extended by the Court only up to 30 days on sufficient cause being shown. It is specific contention that copy of award is received on the passing of the award itself i.e. on 11.01.2022. There are signatures in taken of receipt of award. Not only this, he has filed proceedings before this Court and obtained interim stay in the month of March 2022. Thus, he was having sufficient knowledge of passing of award and also the copy of award.

14. There is limitation of 90 days for filing application under Section 34 of the Act of 1996. By way of proviso, the Court is empower to extend the period of three months for further period of 30 days, if he satisfied that applicant was prevented by sufficient cause from making the application. However, for a period of 30 days, only the Court can exercised its discretion but not thereafter. It also appears that the application under Section 34 was opposed by the Applicant herein on the ground that as per Section 19 of the Micro Small and Medium Enterprises Development Act, 2006, no application for setting aside award

can be entertained by any Court unless the applicant has deposited 75% of the amount as per terms of award. The applicant has not deposited any amount along with interest and, therefore, application under Section 34 of the Act of 1996 is liable to be dismissed as not maintainable.

15. It also appears that in the execution proceedings filed by the present Applicant that Non-applicant has appeared on 30.06.2022 and appearing regularly. As such, in spite of knowledge, he has not challenged the award within limitation. The learned District Judge failed to consider all these aspects and without there being any mention of Order VII Rule 11(d) of the CPC in the application, under the said provision, refused to look into the material relied on by the present Applicant while filing application for dismissal.

16. Learned Counsel for the Applicant relied on ***Bhartiya Rashtriya Rajmarg Pradhikaran*** (supra), wherein the Hon'ble Apex Court relied on the judgment of ***Union of India Vs. Tecco Trichy Engineers***, reported in ***(2005) 4 SCC 239***, wherein the Hon'ble Apex Court propounded the importance of the

requirement to deliver a signed copy of the arbitral award on parties, relevant paragraph of the said judgment reads as under :

“8. The delivery of an arbitral award under sub-Section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.”

It is also held in the said judgment that :

“The doctrine of estoppel is vital in maintaining procedural fairness and integrity within the arbitration process. Estoppel prevents a party from taking inconsistent positions that would harm the opposing party or undermine the

legal process's credibility. In arbitration, this doctrine ensures that a party cannot claim ignorance or non-receipt of an award after having acted upon it. Estoppel operates to uphold fairness by ensuring that parties cannot benefit from their own wrongdoing or negligence. If a party, aware of the award, delays raising objections or seeks to take advantage of procedural nuances to avoid compliance, estoppel can prevent such tactics. This doctrine aligns with the fundamental principles of justice and equity, ensuring that parties engage with the arbitration process honestly and transparently."

17. Learned Counsel for the Non-applicant relied on ***NTPC BHEL Power Projects Pvt. Ltd.*** (supra), however, I am of the considered view that facts involved in the said matter and before this Court are different, as there was a petition filed before filing of application under Section 34 of the Act of 1996, the petitioner withdrawn the petition and filed application under Section 34 of the Act of 1996 and, therefore, claiming condonation of delay as per Section 14 of the Limitation Act. In the present matter, on the first place, the Applicant has not disclosed that he has already received copy of award and on the basis of the same filed a writ petition, which came to be dismissed. This suppression of fact is very material in the present matter. He has changed the date of receipt of award, specifically on the basis of said award when he

filed the writ petition which came to be dismissed. As per facts involved in the present citation are not applicable in the present set of facts.

18. Learned Counsel for the Non-applicant also placed reliance on *Incite Homecare Products Pvt. Ltd.* (supra), in this matter also the learned Delhi High Court relying on the judgment of Hon'ble Supreme Court in *Kirpal Singh Vs. Government of India, Civil Appeal Nos.12849-12856/2024*, held that,

“the relief can also be claimed under Section 14 of the Limitation Act, 1963, despite an appeal/application/objection being barred by virtue of Section 34(3) of the Act of 1996”.

In this matter also the petitioner withdrawn the appeal/objection filed before the High Court and filed before the District Court. In such circumstances, it is held that Section 14 of the Limitation Act can be invoked even objection barred by virtue of Section 34(3) of the Act of 1996.

19. Learned Counsel for the Non-applicant also placed reliance on *Tek Singh* (supra) in support of his contention that revisional jurisdiction under Section 115 of the CPC is to be exercised to correct jurisdictional error only. The Hon'ble Apex

Court observed that, “1999 Amendment to CPC added a proviso to Section 115, which shows that after 1999, revision petitions filed under Section 115 of the CPC are not maintainable against the interlocutory orders”. There is no dispute over this provision, however, proviso by way of amendment inserted, which reads as under :

“The High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.”

The application for dismissal if would have been allowed, the proceeding would have been closed. As such, the revision is maintainable.

20. Considering the facts, the impugned order is patently erroneous and passed without considering any documents and misleading itself treating the application as under Order VII Rule 11(d) of the CPC. As Such, the impugned order passed by the learned District Judge is illegal, unsustainable and liable to be set aside. Hence, I pass the following order :

- (i) The Civil Revision Application stands **allowed**.
- (ii) The impugned order dated 24.06.2024, passed by the learned District Judge-13, Nagpur, below Exhibit-10 in Arbitration Case No.21/2023 is hereby quashed and set aside.
- (iii) The Application Exhibit-10 is allowed and the Arbitration Case No.21/2023 is hereby dismissed.

The Civil Revision Application stands disposed of in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak