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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 139/2025**

**GENERAL MANAGER NORTHERN
RAILWAY**

.....Appellant

Through: Mr. Om Prakash, Mr. Nitish
Pande, Ms. Swati Mishra, Mr.
Sarthak Udaipuria & Mr.
Amish Kumar, Ads.

versus

MOHD. AHSON

.....Respondent

Through: Mr. Avinash Trivedi & Mr.
Rahul Aggarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

19.05.2025

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1. This hearing is being conducted through hybrid mode.

CM APPL. 30533/2025 (EXMP.)

2. Allowed, subject to all just exceptions.

3. Application stands disposed of.

FAO 139/2025 & CM APPL. 30532/2025 (STAY)

4. The appellant is preferring this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ['A&C Act'] thereby assailing impugned judgment and order dated 15.02.2025 passed by the learned District Judge-01, New Delhi District, Patiala House Courts, Delhi ['learned Trial Court'], whereby the objection petition under Section 34 of the A&C Act filed by the appellant in respect of impugned award dated 14.03.2017 was dismissed.

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5. Learned counsel for the respondent/claimant is present on advance notice.

6. In short, the objections filed under Section 34 of the A&C Act were dismissed by the learned Trial Court primarily on the ground that the same were barred by limitation in terms of Section 34(3) of the A.C. Act¹. Learned Counsel for the appellant alluding to the true copy of the case status as shown on the official website of the New Delhi District Courts, Delhi (Annexure A-3), it was pointed out that the objections were filed on 28.07.2017 but the same were registered on 02.08.2017. It was urged that the learned Trial Court committed a palpable error in holding that the objections were filed on 02.08.2017 and if the date of filing is to be reckoned from 28.07.2017, the objections under Section 34 of the A&C Act would still be within the extended period of one month, thereby giving the liberty to the appellant to seek condonation of delay.

7. First things first, it would be apposite to reproduce the reasons that prevailed in the mind of the learned Trial Court in deciding the objections filed under Section 34 of the A&C Act, which read as under:-

“10. In the case at hand, it is not in dispute that the award was passed on 14.03.2017 and was duly received by the petitioner on **30.03.2017**. The three months period would accordingly, end on **29.06.2017**. it is also not in dispute that the instant petition was filed on **02.08.2017**.

If we take the period of thirty days to commence from 30th of June

¹ **34. Application for setting aside arbitral award.**— (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.



2017, the Court can for sufficient reasons to be explained by the petitioner, further extend the limitation period till **29.07.2017** and not thereafter. It would be pertinent to observe here that the official Delhi High Court calendar for the year 2017 would reveal that there is summer vacation in the month of June till 30th of June. However, the registry/office in the District Courts are functioning even during the month of June and there is no bar in filing the petitions. Even if, the benefit under Section 4 of the Limitation Act is extended to the petitioner, the period of thirty days would commence from 1st of July 2017 when the Courts resumed functioning after the summer break. Taking 1st of July 2017 as the relevant date for reckoning the limitation period, the period shall be further extended for another thirty days upto **31st of July 2017**, 30th July 2017 being Sunday, and not thereafter.

11. In my considered opinion, the statutory time limit prescribed under Section 34(3) of the Act is sacrosanct and cannot be breached by the petitioner or by the Court. I am supported in my opinion by the observations of the Hon'ble Apex Court in the matter of ***State of Himachal Pradesh and others vs Himachal Techno Engineers and others (2010 INSC) 429 (Civil appeal no. 5998/2010 DOD 26.07.2010)*** wherein it has been observed here as under:-

"..4. Section 34 of the Act relates to applications for setting aside arbitral awards. Sub-section (3) of Section 34 prescribes the period of limitation for such applications. It reads thus: "(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." Having regard to the proviso to section 34(3) of the Act, the provisions of section 5 of the Limitation Act, 1963 will not apply in regard to petitions under section 34 of the Act. While section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days but not thereafter." Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days.

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provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned.” (emphasis supplied).

Further, an application under Section 34 of the Arbitration Act has to be made in ‘in accordance with’ Section 34(2) read with Section 34(3) of the Arbitration Act. Accordingly, an application filed beyond the period prescribed in Section 34(3), would not qualify as an application ‘in accordance with’ Section 34(3). The Hon’ble Supreme Court has in ***Simplex Infrastructure Limited v. Union of India 2019(2) SCC 455*** observed that the intention of the Legislature is evinced by the fact that an extension of thirty (30) days after the expiry of three (3) months for filing such an application has been suffixed by the terminology ‘but not thereafter’ in the proviso to Section 34(3). Accordingly, it was, *inter-alia*, held that Section 5 of the Limitation Act, 1963 will not apply to an application challenging an award under Section 34 of the Arbitration Act and that the benefit under Section 14 of the Limitation Act, 1963 can be extended only to the extent of the time period prescribed under Section 34 (3) of the Arbitration Act.

12. Evidently, the instant case came to be filed on 02.08.2017, which is way beyond the prescribed statutory time limit. At the cost of repetition, it is reiterated that the prescribed statutory 34 time limit i.e. three months plus thirty days is sacrosanct and cannot be breached. The case at hand is hopelessly time barred and deserves to be dismissed.”

8. While undoubtedly, there is force in the plea raised by the learned counsel for the appellant that the date of filing as 02.08.2017 has been wrongly reckoned by the learned Trial Court, however, what is also evident is that no application for condonation of delay had been submitted on behalf of the appellant for entertaining the objections. In other words, no application was moved under Section 34 (3) of the A&C Act and even otherwise, no sufficient cause was advanced for making the application beyond the prescribed period of three months. No explanation was given by the appellant to show that there were circumstances beyond the control of the appellant in filing the appeal beyond the initial period of three months.

9. There is no gainsaying that merely because an extended period

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of one month is provided for entertaining an application under Section 34 of the A&C Act if sufficient cause is shown, does not mean that condonation of delay would be automatically presumed or granted. It was incumbent on the appellant to show that there were sufficient and justifiable grounds for filing the objections belatedly.

10. Lastly, the plea that the matter should have been decided by the Commercial Court is also not tenable in view of the Notification No.106/DHC/Orgl/2019 dated 30.01.2019 issued by the High Court of Delhi, as per which the suits or applications filed prior to 03.05.2018 have to be tried by the Civil Courts.

11. Resultantly, the present appeal is dismissed. The pending application is also disposed of.

DHARMESH SHARMA, J.

MAY 19, 2025/sp/Es