

IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.5 of 2024

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The New India Assurance Company Limited, 6th and 7th Floor, BSFC Building Frazer Road, Patna-1, through Surya Prakash, aged about 38 years, son of Satya Prakash, Assistant Manager / Authorized Signatory / Duly Constituted Attorney, New India Assurance Company Limited, Regional Office-6th and 7th Floor, BSFC Building, Frazer Road, Patna-1.

... .. Appellant/s

Versus

1. Apollo Trauma Centre, Represented through Dr. Rajat Kumar, Male, Aged about 55 years, Son of Late Dr. Padam Deo Narayan Singh, Resident of- G-96, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, Town and District- Patna, Bihar.
2. Vidal Health Insurance TPA Pvt. Ltd., Shop No.- 9, Grand Shere Apartment, Exhibition Road Crossing, Patna- 800 001 having registered office at Tower 2, 1st Floor, SJR I PARK, Plot No. 13, 14, 15, EPIP Area, Whitefield, Bangalore-560 066.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Durgesh Kumar Singh, Advocate Ms. Anjana Sinha, Advocate Mr. Abhijeet Kumar Singh, Advocate
For the Respondent No.1:		Mr.Bipin Bihari, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE PRAVEEN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-02-2026

Heard learned counsel for the appellant and learned counsel for the respondent no.1 as also perused the records. This Court has been informed that respondent no.2 is not a necessary party and no notice need be served upon respondent no.2.

2. The present appeal has been preferred for setting aside the order dated 22.03.2024 passed by the learned District Judge,



Patna in Miscellaneous (Arbitration) Case No.115 of 2022. By the impugned order, the learned court has been pleased to dismiss the miscellaneous case on the ground of its being barred by limitation.

3. It appears on perusal of the records that being aggrieved by and dissatisfied with the arbitral award dated 25.04.2022, the present appellant presented a Miscellaneous (Arbitration) Case under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') for setting aside of the award. The Miscellaneous (Arbitration) Case was presented/filed on 30.08.2022. The Sheristadar of the court placed a report saying that there is a delay of 37 days in filing of the miscellaneous case.

4. It further appears that at the time of hearing of the miscellaneous case, no one appeared on behalf of the appellant. The learned District Judge, Patna heard learned counsel for the respondents, perused the records and having noticed that there is a delay of 37 days in filing of the case which is more than the maximum period which may be condoned by the court in terms of sub-section (3) of Section 34 of the Act of 1996, decided to dismiss the miscellaneous case as being barred by limitation.

5. In appeal before us, learned counsel for the appellant has contended that the learned District Judge has erred in appreciating the true import of the scheme of the Statute i.e. the



Act of 1996. Referring to Section 31 of the Act of 1996, learned counsel submits that sub-section (5) of Section 31 mandates that after the arbitral award is made, a signed copy shall be delivered to each party.

6. It is submitted that the period of limitation prescribed under Section 34 for filing an application for setting aside of the award is three months. Sub-section (3) provides that 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. Thus, a conjoint reading of sub-section (5) of Section 31 and sub-section (3) of Section 34 would make it clear that the reckoning point for computation of the period of limitation is the date on which the party making the application had received the arbitral award.

7. It is further submitted that under proviso to sub-section (3) of Section 34, the court is empowered to condone a delay after the stipulated period of three months but the maximum period which may be condoned by the court shall not exceed beyond a period of thirty days.

8. In the aforementioned background, learned counsel submits that in the case of **Union of India Vs. Tecco Trichy Engineers & Contractors (2005) 4 SCC 239** and in the case of



Benarsi Krishna Committee & Others VS. Karmyogi Shelters Pvt. Ltd. (2012) 9 SCC 496, the Hon'ble Supreme Court has considered the meaning of the word 'delivery of a signed copy of the Arbitral Award on the party'. Learned counsel has relied upon the opinion of the Hon'ble Supreme Court as recorded in paragraph '15' of the judgment in the case of **Benarsi Krishna Committee** (supra). It is submitted that on perusal of the impugned award, it would appear that in this case the learned arbitral tribunal after signing of the arbitral award recorded that a copy of the signed award is delivered to the claimant and respondents by registered post as also on e-mail of the advocates of both parties. It is submitted by filing a supplementary affidavit before this Court that the registered post by which the signed award was sent to the respondent-appellant was received in the office of the respondent only on 01.06.2022. In that view of the matter, it is submitted that the reckoning period for the limitation would start from 01.06.2022 and not from the date of signing of the award.

9. Contesting the submissions of learned counsel for the appellant, learned counsel for the respondent no.1 has placed before this Court the statements made in the application under sub-section (3) of Section 34 of the Act of 1996 read with Section 5 of



the Limitation Act on behalf of the appellant. Attention of this Court has been drawn towards paragraph '3' of the application wherein it is stated that the award after preparation was made over to the counsel by the office of the arbitrator and the same after perusal and with opinion was made over to Patna office and the Patna office after due deliberation and application of mind referred the matter to the head office which is the ultimate controlling office of such cases. It is the contention of learned counsel for the respondent no.1 that there is an admission on the part of the learned counsel for the respondent-appellant that the award was made available to learned counsel for the respondents and then the learned counsel had perused the same and sent it with his opinion to the Patna office of the appellant-company.

10. Learned counsel for the respondent no.1 further submits that there is an admission on the part of the appellant in paragraph '14' of the application seeking condonation of delay that there is a delay in filing of the appeal and the appellant would be put to irreparable loss if the delay is not condoned. Learned counsel has also relied upon a judgment of the Hon'ble Delhi High Court in the case of **Ministry of Youth Affairs and Sports, Department of Ports, Government of India Vs. Ernst and Young Pvt. Ltd. (Now known as Ernst and Young LLP) and**



Another reported in **2023:DHC:6055** wherein a learned Single Judge of the Hon'ble High Court has held that even receipt of photocopy of a signed award from an arbitral tribunal is to be taken as receipt of arbitral award in terms of Section 31(5) of Arbitration Act. It is pointed out that there is no requirement in Section 34 of the Arbitration Act for filing ink signed copy of the award. The said judgment of the Hon'ble Delhi High Court has relied upon its earlier judgment in the case of **Continental Telepower Industries Ltd. Vs. Union of India and Others** reported in **2009 SCC OnLine Del 1859**.

11. Learned counsel has further pointed out paragraph '47' of the judgment of the Hon'ble Delhi High Court wherein it has been held that the delivery of a copy of the award through e-mail is to be taken as a valid service in terms of sub-section (5) of Section 31 of the Arbitration Act. On these grounds, learned counsel for the respondent no.1 submits that the impugned order passed by the learned District Judge needs no interference and the appeal is liable to the dismissed.

Consideration

12. Having heard learned counsel for the parties and on perusal of the records as also the judicial pronouncements placed before this Court, this Court finds that there is an admitted position



firstly that the impugned award was signed on 25.04.2022. It is also an admitted position that the learned Arbitrator directed its office to make available the signed copy of the award to the claimant and the respondent through registered post and to their respective lawyers through e-mails. Secondly, it is admitted that so far as the e-mails are concerned, the arbitral tribunal did not send the signed copy of the award through e-mails to the parties. There is no dispute that so far as the registered post is concerned, the same was received by respondent no.1 on 01.06.2022. In fact the copy of the affidavit in this regard filed by the appellant has been earlier served on the learned counsel for the respondent no.1 but there is no contest on this issue.

The real contest is on the submission that once the copy of the award was sent to the learned advocate for the appellant on his e-mail and the same was perused by the learned advocate for the respondent and he further sent the said copy with his opinion to the appellant, the compliance with sub-section (5) of Section 31 of the Act of 1996 is to be taken as complete.

13. This Court has, therefore, been called upon to take a view as to whether the delivery of the signed copy of the award through e-mails of the advocate of the appellant is to be taken as compliance with the mandate of sub-section (5) of Section 31 of



the Act of 1996. Before we advert to the said question, it would be relevant to reproduce Section 31 and Section 34(3) of the Act of 1996 hereunder for a ready reference:-

31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it



deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

¹[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]

²[(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.]

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

x x x x x

(2) x x x x x

(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.”

1. Substituted by Act 3 of 2016, S. 16, for Cl. (b) (w.r.e.f. 23-10-2015).
2. Substituted by Act 3 of 2016, S. 16, for sub-S. (8) (w.r.e.f. 23-10-2015).



14. On a bare perusal of the aforementioned provisions, it would appear that they are in consonance with each other as both the provisions talk of receipt of a copy of the signed copy of the award by the party.

15. In the case of **Tecco Trichy Engineers & Contractors** (supra), the application for setting aside of the award was filed along with an application seeking condonation of delay of 27 days. The same was contested on the ground that the delay was of 34 days and this having been filed beyond 30 days it could not be condoned by the court. While dealing with the said issue, the Hon'ble Supreme Court had occasion to delve into the provisions of sub-section (5) of Section 31 and the proviso to sub-section (3) of Section 34 of the Act of 1996. What has been held by the Hon'ble Supreme Court in paragraph '8' of its judgment are being reproduced hereunder for a ready reference:-

“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.”

16. It is evident that in the said case, the Hon’ble Supreme Court having noticed that the signed copy of the award was received by the General Manager of the Railways and not by the Chief Engineer who had signed the agreement on behalf of the Union of India as a respondent, took a view that service of arbitral award on the general manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19.03.2001 would be the starting point of limitation to challenge the award in the court.

17. In the case of **Benarsi Krishna Committee & Others** (supra), the Hon’ble Supreme Court has once again considered both the provisions of the Act of 1996 and has also taken into consideration the definition of the word “party” as occurring in Section 2(h) of the Act of 1996. In this regard, the discussions



made and the opinion rendered by the Hon'ble Supreme Court in paragraph '15' and '16' of its judgment are required to be quoted hereunder for a ready reference and we do so accordingly.

“15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression “party” as defined in Section 2(1)(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision² of the Division Bench of the Delhi High Court impugned in these proceedings. The expression “party” has been amply dealt with in *Tecco Trichy Engineers case*⁴ and also in *ARK Builders (P) Ltd. case*⁸, referred to hereinabove. It is one thing for an advocate to act and plead on behalf of a party in a proceeding and it is another for an advocate to act as the party himself. The expression “party”, as defined in Section 2(1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or advocate empowered to act on the basis of a vakalatnama. In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the arbitral award on the party himself and not on his advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act.

16. The view taken in *Pushpa Devi Bhagat case*⁹ is in relation to the authority given to an advocate to act on behalf

2. *Karmyogi Shelters (P) Ltd. v. Benarsi Krishna Committee*, AIR 2010 Del 156

4. *Union of India v. Tecco Trichy Engineers & Contractors*, (2005) 4 SCC 239

8. *State of Maharashtra v. ARK Builders (P) Ltd.*, (2011) 4 SCC 616 : (2011) 2 SCC (Civ) 413

9. *Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566



of a party to a proceeding in the proceedings itself, which cannot stand satisfied where a provision such as Section 31(5) of the 1996 Act is concerned. The said provision clearly indicates that a signed copy of the award has to be delivered to the party. Accordingly, when a copy of the signed award is not delivered to the party himself, it would not amount to compliance with the provisions of Section 31(5) of the Act. The other decision cited by Mr Ranjit Kumar in *Nilkantha Sidramappa Ningashetti case*⁶ was rendered under the provisions of the Arbitration Act, 1940, which did not have a provision similar to the provisions of Section 31(5) of the 1996 Act. The said decision would, therefore, not be applicable to the facts of this case also.”

18. In the aforementioned views expressed by the Hon’ble Supreme Court, we would have no hesitation in recording that mere receipt of a signed copy of the impugned award on the e-mails of the learned advocate of the respondent-appellant and then the forwarding of the said e-mail with his opinion by the advocate to his client cannot be taken to have satisfied the mandate of sub-section (5) of Section 31 of the Act of 1996. We cannot stretch the meaning of the provision or substitute our own opinion in place of the wisdom of the legislatures as contained in sub-section (5) of Section 31 of the Act of 1996.

19. So far as the judgment cited on behalf of the

6. *Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti*, AIR 1962 SC 666 : (1962) 2 SCR 551



respondent no.1 in the case of **Government of Maharashtra Vs. Borse Brothers Engineers & Contractors Private Ltd.** reported in **(2021) 6 SCC 460** is concerned, we find that the issues canvassed in the said judgment are not calling for consideration in the present case.

20. In result, we find that the impugned order dated 22.03.2024 passed by the learned District Judge, Patna dismissing the Misc. (Arbitration) Case No.115 of 2022 on the ground of limitation is liable to be set aside. We, accordingly, set aside the impugned order. The reckoning date for the period of limitation in this case would be the date on which the copy of the arbitral award was received by the appellant through registered post. Hence, the Miscellaneous (Arbitration) Case is within time. The learned District Judge, Patna shall now hear the main case on its own merit.

21. This appeal is allowed.

22. Let a copy of the judgment along with the records be sent back to the court of learned District Judge, Patna.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

arvind/-

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CAV DATE	
Uploading Date	05.02.2026
Transmission Date	

