

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL APPELLATE DIVISION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AO-COM 61 of 2025

with

IA No.: CAN 3 of 2026

State of West Bengal

Vs.

M/s. Saha Construction & Co.

For the Appellant : Mr. Arindam Mandal, Advocate

For the Respondent : Mr. Rabindra Kumar Jaiswal, Advocate
Ms. Debolina Bhar, Advocate

Hearing & Judgment on : **April 16, 2026**

DEBANGSU BASAK, J.:-

1. Paper book filed in Court be taken on record.
2. Appeal is directed against the Order No.17 dated August 14, 2025 passed in Misc. Arbitration (Commercial) Case No.24 of 2024.
3. By the impugned order, the learned Trial Judge was pleased to find that, the petition under Section 34 of the Arbitration & Conciliation Act, 1996 filed by the appellant was not within the time period prescribed. Therefore, the learned Trial Judge was pleased to dismiss the petition under Section 34 of the Act of 1996.

4. Learned Advocate appearing for the appellant submits that, the award was dated November 19, 2018. Petition under Section 34 of the Act of 1996 was filed on March 15, 2019 well within the period of expiry of three months and thirty days from the date of the award. He submits that, a petition under Section 34(3) of the Act of 1996 was filed on September 20, 2019. Without adverting to the contents of such application under Section 34(3) of the Act of 1996, the learned Trial Judge proceeded to dismiss the petition under Section 34 of the Act of 1996 on the ground of delay.
5. Learned Advocate appearing for the respondent submits that, the power to condone the delay is discretionary. Learned Trial Judge exercised discretion as against the appellant. No perversity can be attached to the impugned order.
6. We find from the records that, the appellant suffered an award dated November 19, 2018. As noted by the learned Trial Judge, the appellant filed a petition under Section 34 of the Act of 1996 assailing such award on March 15, 2019. Again, as noted by the learned Trial Judge, the petition under Section 34 of the Act of 1996 did not contain a date when the award dated November 19, 2018 was received by the appellant. In absence of such relevant pleading, the learned Trial Judge rightly took the date of the award as the date of receipt of the same by the appellant.
7. Learned Trial Judge taking the date of the award being November 19, 2018 as the date of receipt thereof, proceeded to calculate the period of

limitation. Learned Trial Judge held that, under Section 34(3) of the Act of 1996, challenge to the award was to be treated to be within time, if it was filed on or before February 19, 2019. However, as noted above, the petition under Section 34 of the Act of 1996 was filed on March 15, 2019.

8. Section 34(3) of the Act of 1996 permits a challenge to the award to be made within three months from the date of the award and a further period of thirty days in the event appropriate and adequate cause is shown.
9. In the facts and circumstances of the present case, the petition under Section 34 of the Act of 1996 was filed after three months from the date of the award but within a period of thirty days from the date of expiry of the three months from the date of the award.
10. Appellant also filed a petition under Section 34(3) of the Act of 1996 *albeit* on September 20, 2019 seeking to explain the delay in filing the petition under Section 34 of the Act of 1996 within the statutory prescribed period of three months.
11. Learned Trial Judge, however, proceeded to dismiss the petition under Section 34 of the Act of 1996 purely on the ground of limitation. Learned Trial Judge did not consider the petition under Section 34(3) of the Act of 1996. Learned Trial Judge did not avert to the pleadings in such petition nor dealt with the grounds canvassed for the purpose of condoning the delay in filing the petition under Section 34 of the Act of 1996 beyond nine months from the date of the award.

12. The discretion sought to be exercised by the learned Trial Judge is, therefore, perverse. Learned Trial Judge, with the deepest of respect, did not take into consideration materials which are relevant for the decision under Section 34(3) of the Act of 1996. It did not refer to or deal with the grounds of delay canvassed on behalf of the appellant.
13. In such circumstances, the impugned Order No.17 dated August 14, 2025 is set aside. Misc. Arbitration (Commercial) Case No.24 of 2024 is remanded to the jurisdictional Court for decision on merits.
14. We clarify that none of the observations made by us in this appeal will prejudice to any of the parties.
15. At this stage, learned Advocate appearing for the respondent submits that, the jurisdictional Court be directed to dispose of the petition under Section 34 of the Act of 1996 in a time-bound manner.
16. In view of such prayer, it would be appropriate to request the learned Trial Judge not to grant any adjournment to the respondent on any ground whatsoever in the petition under Section 34 of the Act of 1996.
17. **AO-COM 61 of 2025** along with connected application is **disposed of** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(AD)

(Md. Shabbar Rashidi, J.)