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

Date of decision: 03.04.2025

+ **FAO(OS) (COMM) 203/2018 & CM APPL. 68202/2024**

UNION OF INDIA

.....Appellant

Through: **Mr. Om Prakash, SPC with Mr. Nitish Pande and Ms. Swati Mishra, Advocates, through video conferencing.**

versus

J M BAXI PORTS & LOGISTICS LIMITEDRespondent

Through: **Mr. Ajay Saroya, Advocate.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT (Oral)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present appeal under Section 37 of the **Arbitration & Conciliation Act¹, 1996**, challenges the **Order dated 09.07.2018²** passed by the Ld. Single Judge of this Court in O.M.P.(Comm.) No. 267/2018 titled as “*Union of India vs. International Cargo Terminal and Rail Infrastructure Pvt. Ltd.*”.

2. In the present appeal, *vide* order dated 04.05.2022, ‘*International Cargo Terminal and Rail Infrastructure Pvt. Ltd.*’ was substituted by ‘*J M Baxi Ports & Logistics Limited*’, as an Appellant.

3. By the impugned Order, the Ld. Single Judge, relying upon the judgment of the Hon’ble Supreme Court in *Anil Kumar Jinabhai*

¹A & C Act

² Impugned Order



Patel (D) thr. Lrs. V. Pravindchandra Jinabhai Patel and Ors.³, dismissed the Section 34 challenge to the arbitral award dated 30.05.2016 on the ground that the same is barred by limitation.

4. The Award dated 30.05.2016 was challenged on 23.08.2016 by a Petition bearing No. Arbitration 17341/2016, under Section 34 of the A & C Act before the Court of Additional District Judge, Patiala House Courts, New Delhi.

5. Admittedly, the Appellant received a copy of the Award dated 30.05.2016 on the very same day, meaning thereby that limitation would commence from 31.05.2016, under Section 34(3) of the A & C Act.

6. The Respondent herein, in the proceedings before the Patiala House Courts, challenged the maintainability of the Petition under Section 34 on the ground of pecuniary jurisdiction, which was acceded to by the Ld. Additional District Judge *vide* Order dated 24.02.2018, resulting in the return of the Petition to be filed before the appropriate Forum/Court.

7. It would appear that the Appellant, instead of re-filing the Petition before the High Court, being the appropriate Forum, chose to draft a fresh Petition and filed the same on 11.05.2018, averring it is within limitation.

8. The Ld. Single Judge has in the impugned Order also noted that though the Petition under Section 34 was ordered to be returned by the Order dated 24.02.2018, the Appellant applied for a copy of the order and return of the plaint only on 01.06.2018.

9. Section 14 of the Limitation Act reads as follows:

³2018 SCC OnLine SC 276



“14. Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation. —For the purposes of this section, —

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

10. Section 34(3) of the A & C Act reads as follows: -

“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.”

11. In order to avail the benefit of exclusion of the time period in calculating limitation under Section 14 of the Limitation Act, it is incumbent upon the party to show that the earlier proceedings were prosecuted with due diligence and in good faith before a Court which was ultimately found to be lacking jurisdiction.

12. In the present case, assuming *bonafide* in favor of the Appellant, the period which would stand excluded from the computation of the limitation period, would be from the date of filing of the petition before the Patiala House Courts, i.e. 23.08.2016 to the return of the petition *vide* Order dated 24.02.2018.

13. The limitation for filing the Section 34 Petition had commenced on 31.05.2016. The Appellant had, therefore, in the first instance, filed the Petition before Patiala House Courts, within the prescribed period of limitation.

14. After excluding the period between 23.08.2016 to 24.02.2018, the Appellant would be left with a period of 35 days, within which it could have filed the Petition in order to meet the statutorily maximum prescribed period under Section 34(3) of the A & C Act.

15. As already mentioned, the Section 34 Petition came to be filed before this Hon’ble Court only on 11.05.2018, which was 76 days after the date of return of the Petition by the Additional District Judge, Patiala House Courts. It is, therefore, evident that the Petition is barred by limitation in view of the judgments of the Hon’ble Supreme Court in *Anil Kumar Jinabhai Patel (D) thr. Lrs. (supra)*, as well as in *P.*



*Radha Bai v. P. Ashok Kumar*⁴, *Assam Urban Water Supply & Sewerage Board v. Subash Projects & Marketing Ltd.*⁵, *State of Himachal Pradesh v. Himachal Techno Engineers & Anr*⁶ and *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd*⁷.

16. For the sake of reference, the relevant extract of the judgment in *P. Radha Bai (supra)* is as follows:

“32.1. Section 34 is the only remedy for challenging an award passed under Part I of the Arbitration Act. Section 34(3) is a limitation provision, which is inbuilt into the remedy provision. One does not have to look at the Limitation Act or any other provision for identifying the limitation period for challenging an award passed under Part I of the Arbitration Act.

32.2. The time-limit for commencement of limitation period is also provided in Section 34(3) i.e. the time from which a party making an application “had received the arbitral award” or disposal of a request under Section 33 for corrections and interpretation of the award.

32.3. Section 34(3) prohibits the filing of an application for setting aside of an award after three months have elapsed from the date of receipt of award or disposal of a request under Section 33. Section 34(3) uses the phrase “an application for setting aside may not be made after three months have elapsed”. The phrase “may not be made” is from the Uncitral Model Law [“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 award or, if a request had been made under Article 33, from the date on which that request had been disposed of by the Arbitral Tribunal”.] and has been understood to mean “cannot be made”. The High Court of Singapore in *ABC Co. Ltd. v. XYZ Co. Ltd.* [*ABC Co. Ltd. v. XYZ Co. Ltd.*, 2003 SGHC 107] held:

“The starting point of this discussion must be the model law itself. On the aspect of time, Article 34(3) is brief. All it says is that the application may not be made after the lapse of three months from a specified date. Although the words used are ‘may not’, these must be interpreted as ‘cannot’ as it is clear that the intention is to limit the time during

⁴(2019) 13 SCC 445

⁵(2012) 2 SCC 624

⁶(2010) 12 SCC 210

⁷(2021) 7 SCC 657



which an award may be challenged. This interpretation is supported by material relating to the discussions amongst the drafters of the Model Law. It appears to me that the court would not be able to entertain any application lodged after the expiry of the three months' period as Article 34 has been drafted as the all-encompassing, and only, basis for challenging an award in court. It does not provide for any extension of the time period and, as the court derives its jurisdiction to hear the application from the Article alone, the absence of such a provision means the court has not been conferred with the power to extend time.”

(emphasis supplied)

32.4. The limitation provision in Section 34(3) also provides for condonation of delay. Unlike Section 5 of the Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause. The crucial phrase “but not thereafter” reveals the legislative intent to fix an outer boundary period for challenging an award.

32.5. Once the time-limit or extended time-limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase “where the time for making an application to set aside the arbitral award under Section 34 has expired”. [“36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.”(emphasis supplied)] There is an integral nexus between the period prescribed under Section 34(3) to challenge the award and the commencement of the enforcement period under Section 36 to execute the award.

33. If Section 17 of the Limitation Act were to be applied to determining the limitation period under Section 34(3), it would have the following consequences:

33.1. In Section 34(3), the commencement period for computing limitation is the date of receipt of award or the date of disposal of request under Section 33 (i.e. correction/additional award). If Section 17 were to be applied for computing the limitation period under Section 34(3), the starting period of limitation would be the date of discovery of the alleged fraud or mistake. The starting point for limitation under Section 34(3) would be different from the Limitation Act.

33.2. The proviso to Section 34(3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates, “but not thereafter”. The use of the phrase “but not thereafter” shows that the 120 days' period is the outer boundary for challenging an



award. If Section 17 were to be applied, the outer boundary for challenging an award could go beyond 120 days. The phrase “but not thereafter” would be rendered redundant and otiose. This Court has consistently taken this view that the words “but not thereafter” in the proviso of Section 34(3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt. (State of H.P. v. Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605], Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd. [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] and Anil kumar Jinabhai Patel v. Pravinchandra Jinabhai Patel [Anil kumar Jinabhai Patel v. Pravinchandra Jinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC

34. In our view, the aforesaid inconsistencies with the language of Section 34(3) of the Arbitration Act tantamount to an “express exclusion” of Section 17 of the Limitation Act.

35. This Court in Popular Construction case [Union of India v. Popular Construction Co., (2001) 8 SCC 470] followed the same approach when it relied on the phrase “but not thereafter” to hold that Section 5 of the Limitation Act was expressly excluded: (SCC pp. 474-75, para 12)

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

(emphasis supplied)

...”

(emphasis supplied)

17. The Hon’ble Supreme Court in *Simplex Infrastructure Ltd. v. Union of India*⁸ with respect to the applicability of Section 14 of the Limitation Act to a petition filed under Section 34 of the A & C Act, held as follows:

⁸(2019) 2 SCC 455



“9. Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section (3) of Section 34, would not be an application “in accordance with” that sub-section. By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words “but not thereafter” in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of up to thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.

14. The position of law is well settled with respect to the applicability of Section 14 of the Limitation Act to an application filed under Section 34 of the 1996 Act. By applying the facts of the present case to the well-settled position of law, we need to assess whether the learned Single Judge of the High Court was justified in condoning the delay for filing an application under Section 34 of the 1996 Act.

18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

19. The respondent received the arbitral award on 31-10-2014. Exactly ninety days after the receipt of the award, the respondent



filed an application under Section 34 of the 1996 Act before the District Judge, Port Blair on 30-1-2015. On 12-2-2016, the District Judge dismissed the application for want of jurisdiction and on 28-3-2016, the respondent filed an application before the High Court under Section 34 of the 1996 Act for setting aside the arbitral award. After the order of dismissal of the application by the District Judge, the respondent took almost 44 days (excluding the date of dismissal of the application by the District Judge and the date of filing of application before the High Court) in filing the application before the High Court. Hence, even if the respondent is given the benefit of the provision of Section 14 of the Limitation Act in respect of the period spent in pursuing the proceedings before the District Judge, Port Blair, the petition under Section 34 was filed much beyond the outer period of ninety days.”

(emphasis supplied)

18. In view of the afore-stated facts and circumstances and the settled legal position, this Court finds no infirmity in the impugned Order dated 09.07.2018 passed by the Ld. Single Judge dismissing the Section 34 Petition.

19. The other questions raised by the Appellant are rendered otiose.

20. The present appeal stands disposed of in the above terms.

21. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 3, 2025 *akc/sm/sj*