



2025:DHC:3288-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 288/2024 & CM APPL. 73709/2024**
VASISHTA MANTENA NH04 JV & ORS.Appellants
Through: Mr. Ashish Kothari, Adv.

versus

BLACKLEAD INFRATECH PVT. LTD.Respondent
Through: Mr. Varun Shankar, Mr. Aryan
Panwar, Mr. Anand Bhushan and Mr.
Ahmed Alam, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER (ORAL)
02.05.2025

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C. HARI SHANKAR, J.

1. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 Act¹, assailing judgment dated 29 October 2024 passed by a learned Single Judge of this Court in OMP (Comm) 419/2023.

2. Given the limited scope of controversy, it is not necessary to delve deep into the facts.

3. Suffice it, therefore, to state that arbitral proceedings between the appellants and the respondent culminated in an award dated 24

¹ "The 1996 Act" hereinafter



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May 2023, which was adverse to the appellants. The appellants, therefore, challenged the said award by way of a petition under Section 34 of the 1996 Act. The purported Section 34 petition was first filed by the appellants before this Court on 21 August 2023. 65 pages were filed, without any documents and without any copy of the award under challenge. The said papers were returned under defects. The appellants filed the Section 34 petition with the award and with all documents on 25 September 2023.

4. The law with respect to Section 34 and limitation in that regard is well-settled. The Supreme Court has held, in *UOI v Popular Construction*², that the normal period of three months and the extendable period of 30 days envisaged in Section 34(3)³ of the 1996 Act are non-compromisable and that the Section 34 petition cannot be filed beyond 3 months and 30 days of the receipt of the award under challenge.

5. As already noted, the Section 34 petition was first presented to the Registry on 21 August 2023. That petition was, however, not accompanied by any documents. No copy of the award under challenge accompanied the petition. A Full Bench of this Court has, in its judgment in *Pragati Construction Consultants v UOI*⁴, clearly held that a Section 34 petition, unaccompanied by the award under

² (2001) 8 SCC 470

³ (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.

⁴ 2025 SCC OnLine Del 636



challenge, cannot be regarded as having been filed at all, and that the filing is, therefore, *non est*. We may reproduce the relevant passages from the decision in *Pragati Construction Consultants*, thus:

“97. We summarise our answer to the reference, as under:

(a) *Non-filing of the arbitral award along with an application under the Section 34 of the A & C Act would make the said application liable to be treated and declared as non est*, and the limitation prescribed under Section 34(3) of the A & C Act shall continue to run in spite of such filing.

(b) Mere non-filing of the statement of truth or a defect in statement of truth being filed, that is, including with blanks or without attestation, would not ipso facto, make the filing to be non est. However, if accompanied with other defects, the court may form an opinion, based on a cumulative list of such defects, that the filing was non est.

(c) Similarly, non-filing or filing of a defective vakalatnama; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court-fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as non est. However, presence of more than one of such defects may, in the given set of facts involved in a case, justify the conclusion of the court that filing of the application was never intended to be final and therefore, is liable to be declared non est.”

(Emphasis supplied)

6. Categorizing the filing as *non est*, in plain terms, means that the document is to be treated as non-existent, i.e., as never having been filed at all. In law, therefore, no Section 34 petition was filed on 21 August 2023.



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7. The sequitur is that the Section 34 petition was first filed on 25 September 2023.

8. The extendable period of 30 days envisaged under the proviso to Section 34 of the 1996 Act beyond the normal period of three months admittedly expired on 24 September 2023. The petition had, therefore, to be filed on or before 24 September 2023.

9. The contention of the appellants before the learned Single Judge was that 24 September 2023 was a Sunday and that, therefore, by applying Section 10⁵ of the General Clauses Act, 1897, the filing of the Section 34 petition on 25 September 2023 had to be treated as within time.

10. The learned Single Judge has rejected this contention, placing reliance, while doing so, on the following passages from the judgments of the Supreme Court in *Assam Urban Water Supply & Sewerage Board v Subash Projects & Mktg Ltd*⁶, *Bhimashankara Sahakari Sakkare Karkhane Niyamita v Walchandnagar Industries Ltd*⁷ and *Shahgufa Ahmed v Upper Assam Polywood Products Pvt Ltd*⁸ as well as on a judgment of a Division Bench of this Court in *Mypreferred Transformation and Hospitality Pvt Ltd v Faridabad*

⁵ 10. **Computation of time.**—

(1) Where, by any ⁴⁸[Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

⁶ (2012) 2 SCC 624

⁷ (2023) 8 SCC 453

⁸ (2021) 2 SCC 317



Implements Pvt Ltd⁹:

From *Assam Urban Water Supply & Sewerage:*

“6. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.”

From *Bhimashankara Sahakari Sakkare Karkhane Niyamita:*

“50. Section 34(3) of the Arbitration Act and Sections 2(j) and 4 of the Limitation Act, 1963 fell for consideration before this Court in *Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd.* Even the very issue raised in the present appeal fell for consideration before this Court in *Assam Urban*. In the aforesaid decision, this Court interpreted the aforesaid provisions and has specifically observed and held that *the benefit of exclusion of period during which Court is closed is available only when application for setting aside the award is filed within “prescribed period of limitation” and it is not available in respect of period extendable by the Court in exercise of its discretion.*

58. Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and when Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Limitation Act, 1963 applies and in light of the definition of “period of limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in *Assam Urban*, *benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.*”

(Emphasis supplied)

From *Shahgufa Ahmed:*

⁹ 2024 SCC Online Del 2437



“17. But we do not think that the appellants can take refuge under the above order in ***Cognizance for Extension of Limitation, In re***¹⁰. What was extended by the above order of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *vigilantibus et non dormientibus jura subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

19. The principle forming the basis of Section 10 (1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which reads as follows:

“4. **Expiry of prescribed period when court is closed.**

– Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation. – A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

20. The words “prescribed period” appear in several sections of the Limitation Act, 1963. Though these words “prescribed period” are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

20.1. Section 3(1) makes every proceeding filed after the *prescribed period*, liable to be dismissed, subject however to the provisions in Sections 4 to 24.

20.2. Section 5 enables the admission of any appeal or application after the *prescribed period*.

20.3. Section 6 uses the expression *prescribed period* in relation to proceedings to be initiated by persons under legal disability.

¹⁰ (2020) 19 SCC 10



21. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the *prescribed period*, during which the court or tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.

22. In *Assam Urban Water Supply & Sewerage Board v Subash Projects & Mktg. Ltd.*, this Court dealt with the meaning of the words “prescribed period” in paras 13 and 14 as follows:

“13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

“2. (j) “period of limitation” which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.”

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

From *Mypreferred Transformation and Hospitality*:

28. Mr. Nayar, earnestly contended that there is inconsistency in the decision of the Supreme Court in *Bhimashankara Sahakari Sakkare Karkhane Niyamita v Walchandnagar Industries Limited (WIL)*. He referred to paragraph 54 of the said decision where the Supreme Court had reiterated that the provisions of the Limitation Act would be inapplicable to the extent, they were



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excluded by virtue of express provision contained in Section 34(3) of the A&C Act. He submitted that if the provisions of the Limitation Act were expressly excluded in view of the special provisions relating to limitation contained in Section 34(3) of the Limitation Act, the proviso to Section 10 of the General Clauses Act would be applicable. The said contention appears attractive but we are unable to accept the same. There is no ambiguity in the decision in *Bhimashankara Sahakari Sakkare Karkhane Niyamita v Walchandnagar Industries Limited (WIL)*. The Supreme Court has expressly held that Section 10 of the General Clauses Act is not applicable in respect of the period of delay, which could be condoned by the Court in terms of the proviso to Section 34(3) of the A & C Act. This Court is informed that a petition seeking review of the said decision is pending before the Supreme Court. However, that is of little assistance to the appellants at this stage as undisputedly, the said decision, unless reviewed, is a binding authority.”

(Emphasis supplied)

11. The position of law, as it emerges from the aforesaid decisions, is that the benefit of Section 10 of the General Clauses Act is available only where the petition is filed within the normal period of limitation, and the Court was closed on the date when the normal period of limitation came to an end. It does not apply where the closure of the Court was on the date when the extendable period came to an end.

12. We, therefore, find no error in the impugned judgment.

13. The appeal is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 2, 2025

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[Click here to check corrigendum, if any](#)