



2025:DHC:3282-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 72/2025, CM APPL. 24942/2025, CM APPL. 24943/2025, CM APPL. 24944/2025 & CM APPL. 24945/2025
UNION OF INDIAAppellant
Through: Mr. Piyush Beriwal, Mr Nikhil Kumar Chaubey and Ms Jyotsna Vyas, Advocates

Versus

M/S NKB INFRASTRUCTURE
PVT. LTD. & ANR.Respondents
Through: Mr. Tarun Gupta and Mr. Hirday Viridi, Advocate

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

JUDGMENT(ORAL)

% **30.04.2025**

C. HARI SHANKAR, J.

1. This appeal assails order dated 14 February 2025, passed by a learned Single Judge of this Court, whereby a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging an award, which was rendered by the Arbitral Tribunal on 17 June 2023 and was received by the appellant on 20 June 2023 has been dismissed as barred by time.

2. The impugned order reads as under:

“1. The instant petition under Section 34 of the Arbitration &



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Conciliation Act has been filed by the Petitioner challenging an Award dated 17.06.2023 passed by the Arbitral Tribunal which was received by the Petitioner/Union of India on 20.06.2023.

2. Taking 20.06.2023 as the terminus quo, the challenge should have been made on or before 21.10.2023.

3. Material on record indicates that the petition under Section 34 of the Arbitration & Conciliation Act being OMP (COMM) No.137/2023 was filed by the Petitioner before the District Court, Patiala House, New Delhi. The said petition was rejected on the ground of pecuniary jurisdiction vide Order dated 27.02.2024. Taking into account Section 14 of the Limitation Act and excluding the time spent between the date of filing of the petition before District Court, Patiala House, New Delhi and the date of disposal of the said petition i.e., on 27.02.2024, the present petition should have been filed on or before 08.03.2024. The present petition has been filed by the Petitioner only on 16.03.2024.

4. The period of limitation under Section 34(3) of the Arbitration & Conciliation Act stipulates that time within which an Award can be challenged in a court having competent jurisdiction is defined under Section 2(1)(e) of the Arbitration & Conciliation Act.

5. The Apex Court in *Simplex Infrastructure Limited v Union of India*¹, has held that any challenge beyond the period of limitation cannot be entertained having been barred by limitation.

6. In view of the fact that the challenge made by the Petitioner is belated, this Court is not inclined to entertain the present petition under Section 34 of the Arbitration & Conciliation Act. Thus, the challenge fails on the ground of limitation.

7. The petition is dismissed along with pending application(s), if any.”

3. On a plain reading, there is obviously nothing erroneous with the impugned order.

4. The only ground that has been taken by the appellant in its

¹ (2019) 2 SCC 455



appeal is that as the Section 34 petition before the District Court at Patiala House Court was preferred within time, the entire period between the filing of the said petition and the filing of the present petition before this Court ought to be excluded.

5. The submission is not predicated on any known law. Section 14² of the Limitation Act is clear. The period which is excludable is the period *during which the party has been prosecuting, with due diligence, another proceeding*. The period between the disposal of the case by the Court before which the said proceeding was prosecuted, and the filing of the petition before the proper Court, is not excludable. In the present case, therefore, the period during which the Section 34 petition remained pending before the learned District Judge (Commercial) alone is excludible, and not the period after the petition was dismissed by the learned Commercial Court, till it came to be filed before this Court.

² 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.



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6. The fact that the petitioner may have moved the learned Commercial Court within time is of no consequence whatsoever.
7. Viewed thus, the impugned order is unexceptionable.
8. The appeal is without merit and is dismissed in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 30, 2025/yg

Click here to check corrigendum, if any