



2025:DHC:8286-DB



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

***Reserved on: 29.08.2025***

***Pronounced on: 19.09.2025***

+ **FAO (COMM) 244/2025**

**ASHOK KUMAR**

**.....Appellant**

Through: **Mr.Jagjit Singh, Adv.**

**versus**

**DELHI METRO RAIL CORPORATION LIMITED**

**....Respondent**

Through: **Mr. Srinivasan Ramaswamy,  
Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

### **J U D G M E N T**

#### **NAVIN CHAWLA, J.**

1. This appeal has been filed by the appellant under Section 37 (1)(b) of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act') challenging the Order dated 02.04.2025 (hereinafter referred to as the 'Impugned Order') passed by the learned District Judge (Commercial)-03, Patiala House Courts, New Delhi (hereinafter referred to as the 'learned District Judge) in OMP (COMM)- 72/23, ***titled Ashok Kumar v. Delhi Metro Rail Corporation Limited & Anr.***, whereby the learned District Judge has dismissed the application under Section 14 of the Limitation Act, 1963 (in short, 'Limitation Act') read with Section 151 of the Code of Civil Procedure, 1908 (in short, 'CPC'), filed by the appellant herein, seeking exclusion of time



spent by the appellant in prosecuting its initial challenge to the arbitral Award dated 01.11.2019 before the court having no territorial jurisdiction.

**Brief facts:**

2. It is the case of the appellant that the appellant, *vide* acceptance letter dated 17.05.2012, was awarded parking rights at Netaji Subhash Place for a period of three years from 01.06.2012 to 30.06.2015 at a monthly license fee of Rs.2,73,300/- for a total super area measuring 4555.51 Sq. Mtrs. Subsequently, the parking area was reduced and area measuring 2871.79 Sq. Mtrs. was taken over from the appellant for construction by the respondent. Accordingly, license fee was reduced proportionately in accordance with terms and conditions of License Agreement.

3. It is averred that certain disputes arose between the parties and the respondent herein invoked arbitration and filed a claim petition against the appellant herein. The Arbitral Tribunal pronounced the *ex-parte* Award dated 01.11.2019 (hereinafter referred to as the 'Award'), granting Rs.11,70,826/- along with interest in favour of respondent herein. It is the admitted fact that the appellant received the signed copy of the Award on 06.12.2019.

4. It is the case of the appellant that it had filed objections against the Award under Section 34 of the A&C Act before the learned District Judge, (Commercial Court), North-West District, Rohini, Delhi, being OMP (Comm.) 11/2020, titled ***Ashok Kumar v. DMRC*** on 05.03.2020, that is, within the period of limitation of three months



as prescribed under Section 34(3) of the A&C Act.

5. It is averred that after hearing both the parties, the learned District Judge, (Commercial Court), North-West District, Rohini, *vide* its Order dated 09.11.2022, had returned the objections filed by the appellant under Section 34 of the A&C Act, to be presented before the court of competent territorial jurisdiction.

6. It is the case of the appellant that it had applied for the certified copy of the record of the learned District Judge, (Commercial Court), North-West District, Rohini, on 11.11.2022, and the same was finally made available to the appellant on 15.03.2023.

7. Thereafter, the appellant had filed the objections under Section 34 of the A&C Act before the learned District Judge on 11.05.2023, along with an application under Section 14 of the Limitation Act read with Section 151 of the CPC, seeking exclusion of time spent by the appellant in prosecuting its initial challenge to the Award before the learned District Judge, (Commercial Court), North-West District, Rohini.

8. The learned District Judge, *vide* the Impugned Order, dismissed the said application filed by the appellant by holding as under:

*“16. As noted above, the petitioner has applied for certified copies on 11.11.2022 and the same was ready and attested on 19.01.2023. Though there is nothing in the certified copy to indicate when it was delivered to the petitioner but even if this court accepts the words of the petitioner that it came to his hand only on 03.03.2023 and received on 15.03.2023, the fact remains that it was filed beyond the grace period of 30 days i.e. 50 days thereafter. It is thus obvious that though uptill 15.03.2023, the petitioner*



was prevented from filing the petition because of the fact that certified copy has been furnished to him before the date, it cannot be said that non availability of the copy has prevented him filing the petition during the period of 30 days. There is nothing in application why the petitioner waited till 04.05.2023 to institute instant petition after obtaining certified copy on 15.03.2023. If after having obtained certified copy, the petitioner remains inactive and still decides to wait, he does so at his peril. Rather facts shows on the face of the application is that it is a clear case of absence of disclosure of any sufficient cause. A party seeking to assail an award cannot be permitted to file the petition to stop the period of limitation and take its own time to re-file the same. Laxity and negligence cannot be a ground for condonation of delay.....

\*\*\*\*\*

18. It is equally well settled principle of law that those who sleep over their rights and allow their rights, the court in exercise of its discretion does not ordinarily assist the tardy or acquiescent and the lethargic or in active.

19. In view of foregoing discussion, the applications under Section 14 of the Limitation Act, 1963 r/w Section 151 CPC and application under Section 151 of CPC are dismissed. The instant petition for setting aside the arbitral award dated 01.11.2019 was beyond the mandatory period of limitation permitted under the Act. Hence, the same cannot be entertained being hopelessly barred and the same could not have been entertained by taking the recourse of the provisions of Limitation Act, 1963. As consequence thereof, the petition under Section 34 of the Act is dismissed. Parties are left to bear their own costs.”

(Emphasis Supplied)

9. Aggrieved thereof, the appellant has filed the present appeal.



**Submissions by the learned counsel for the appellant:**

10. The learned counsel for the appellant submits that the learned District Judge has failed to appreciate that the appellant is entitled to claim the benefit of exclusion of time spent by the appellant in prosecuting its initial challenge to the arbitral Award in terms of Section 14 of the Limitation Act. In Support, he places reliance on the Judgment of Supreme Court in ***Northern Railway v. Pioneer Publicity Corpn. (P) Ltd.***, (2017) 11 SCC 234.

11. He submits that the application under Section 34 of the A&C Act filed by the appellant before the learned District Judge, after it was returned by the learned District Judge, (Commercial Court), North-West District, Rohini, shall not be treated as a fresh application. The original having been filed within the period of three months from the date of receipt of the Award, the subsequent objections filed before the learned District Judge will be treated as a re-filing to which the strict rules of Section 34(3) of the A& C Act would not apply. In support, he places reliance on the Judgments of Supreme Court in ***Oriental Insurance Co. Ltd. v. Tejparas Associates & Exports (P) Ltd.***, (2019) 9 SCC 435; and ***Northern Railways v. M/s Pioneer Publicity Corp. Pvt. Ltd.***, (2017)11 SCC 234.

**Submissions by the learned counsel for the respondent:**

12. The learned counsel for the respondent, who appears on the advance notice of the present appeal, submits that the learned District Judge has rightly rejected the application filed by the appellant under



Section 14 of the Limitation Act. He submits that even if the benefit of Section 14 of the Limitation Act is accorded to the appellant, still the objections filed by the appellant were hopelessly barred by limitation, inasmuch as, the appellant has failed to provide any justified reason for the delay caused in filing the objections between 15.03.2023, when the certified copies were received by the appellant, till 11.05.2023, when the objections were filed.

**Analysis and findings:**

13. We have perused the record and considered the submissions made by the learned counsels for the parties.

14. The Section 34(3) of the A&C Act prescribes a strict period of limitation, and reads as under:

***“34. Application for setting aside arbitral awards.***

xxxx

*(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.*

xxx”

15. The Section 14 of the Limitation Act reads as under:

***“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.”*



16. The Supreme Court in *Simplex Infrastructure Ltd. v. Union of India*, (2019) 2 SCC 455, while emphasising on the mandatory period of limitation and the maximum condonable delay in filing of an application under Section 34 of the A& C Act, and holding that Section 14 of the Limitation Act would be applicable to an application under Section 34 of the A&C Act, further observed as under:

*“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.*





\*\*\*\*\*

**13.** *Section 14 of the Limitation Act deals with the “exclusion of time of proceeding bona fide” in a court without jurisdiction, subject to satisfaction of certain conditions. The question whether Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the 1996 Act has been answered by this Court in Consolidated Engg. Enterprises v. Irrigation Deptt. [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] This Court observed thus : (SCC pp. 181-82, para 23)*

*“23. At this stage it would be relevant to ascertain whether there is any express provision in the 1996 Act, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the 1996 Act, this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the*



period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the 1996 Act, more particularly where no provision is to be found in the 1996 Act, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the 1996 Act would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. **From the scheme and language of Section 34 of the 1996 Act, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the 1996 Act for setting aside an arbitral**



**award.”**

*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.*

\*\*\*\*\*

*21. Under the circumstances, we are of the considered opinion that in view of the period of limitation prescribed in Section 34(3), the learned Single Judge of the High Court was not justified in condoning the respondent's delay of 514 days in filing the application. The judgment rendered by the learned Single Judge of the High Court of Calcutta on 27-4-2016, in Union of India v. Simplex Infrastructures Ltd. [Union of India v. Simplex Infrastructures Ltd., 2016 SCC OnLine Cal 12045] is set aside and the appeal is allowed. The petition under Section 34 stands dismissed on the ground that it is barred by limitation. There shall be no order as to costs."*

**(Emphasis Supplied)**

17. From a reading of the above, it is apparent that the limitation period of three months from the receipt of the signed copy of the Award, and the maximum condonable period of thirty days provided under Section 34(3) of the A&C Act is sacrosanct, and an application under Section 34 of the A&C Act cannot be made beyond the period prescribed. However, while filing such application under Section 34 of the A&C Act, a party can claim benefit of Section 14 of the Limitation Act, for seeking exclusion of time taken in proceedings in a court without jurisdiction in good faith.

18. Moreover, the Supreme Court in ***Simplex Infrastructure Ltd.***



(supra) has categorically clarified that if there is any delay on part of the applicant beyond the period to be excluded under Section 14 of the Limitation Act, the same cannot be condoned beyond the limit prescribed under Section 34(3) of the A&C Act.

19. In the present case, the original application under Section 34 of the A& C Act had been filed by the appellant only on 05.03.2020, that is, the last day of limitation as prescribed in Section 34(3) of the A& C Act. It was returned by the learned District Judge, (Commercial Court), North-West District, Rohini, *vide* its Order dated 09.11.2022. In terms of Section 14 of Limitation Act, it was only the period between 05.03.2020 and 09.11.2022 that could have been excluded. The application under Section 34 of the A& C Act was filed by the appellant before the competent court only on 11.05.2023. Excluding the period spent in pursuing the application filed before the Rohini Court, therefore, the application filed later was beyond the period of limitation prescribed in Section 34(3) of the A& C Act.

20. Even assuming that the period spent on obtaining the certified copy is to be excluded, two things which stare on the face of the appellant are that the certified copy was ready for delivery on 19.01.2023; it was obtained by the appellant only on 03.03.2023. The reason for this delay has remained unanswered. Even after obtaining the certified copy on 03.03.2023, the appellant filed the application in the jurisdictional court on 11.05.2023, that is, after a further delay of more than two months. This period cannot also be excluded for purposes of limitation.

21. With respect to the submission of the learned counsel for the



appellant that the second filing of the application under Section 34 of the A&C Act before the learned District Judge shall not be treated as a fresh filing, we do not find any merit in the said submission. The reliance placed by the learned counsel for the appellant on the judgment of Supreme Court in ***Oriental Insurance*** (supra) is also erroneous, inasmuch as the said judgment has been expressly overruled by the Supreme Court in ***EXL Careers & Anr. v. Frankfinn Aviation Services (P) Ltd.***, (2020) 12 SCC 667, by holding as under:

***“17. We regret our inability to concur with Oriental Insurance Co. Ltd. [Oriental Insurance Co. Ltd. v. Tejparas Associates & Exports (P) Ltd., (2019) 9 SCC 435 : (2019) 4 SCC (Civ) 534], relied upon by Mr Patwalia, that in pursuance of the amendment dated 1-2-1977 by reason of insertion of Rule 10-A to Order 7, it cannot be said that under all circumstances the return of a plaint for presentation before the appropriate court shall be considered as a fresh filing, distinguishing it from Amar Chand Inani [Amar Chand Inani v. Union of India, (1973) 1 SCC 115]. The attention of the Court does not appear to have been invited to Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617] and the plethora of precedents post the amendment.***

\*\*\*\*\*

***21. For all these reasons, we hold that Oriental Insurance Co. Ltd. [Oriental Insurance Co. Ltd. v. Tejparas Associates & Exports (P) Ltd., (2019) 9 SCC 435 : (2019) 4 SCC (Civ) 534] does not lay down the correct law and overrule the same. R.K. Roja [R.K. Roja v. U.S. Rayudu, (2016) 14 SCC 275 : (2017) 3 SCC (Civ) 270] has no direct relevance to the controversy at hand.”***

***(Emphasis Supplied)***



22. The reliance placed by the learned counsel for the appellant on the judgment of Supreme Court in *Northern Railway* (supra) is also misplaced as in the said judgment, the issue was *qua* the delay in re-filing the application under Section 34 of the A&C Act, which is, in fact, not governed by the limitation prescribed under Section 34(3) of the A&C Act. In the present case, it is not the delay in re-filing but filing of the application under Section 34 of the A& C Act itself, that is, in issue. Therefore, the judgment in *Northern Railway* (supra) has no bearing on the present case.

**Conclusion:**

23. Keeping in view the aforesaid, we find no merit in the present appeal. The same, along with pending applications, is dismissed. There shall be no orders as to cost.

**NAVIN CHAWLA, J.**

**MADHU JAIN, J.**

**SEPTEMBER 19 2025/VS**

*Click here to check corrigendum, if any*