IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.3 of 2024

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1. The Union of India through the General Manager, East Central Railway, Hazipur Bihar.
2. The Sr. DEN/2/DNR, Danapur.

... ... Appellants

Versus

M/s. Oberoi Thermit Pvt. Ltd. through its Authorized representative Sri Arjun Rajput, D-33, Sector- 59, Noida (U.P.) 201301.

... ... Respondent

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Appearance :
For the Appellant/s : Mr. Alok Kumar Agrawal, Sr. CGSC
For the Respondent/s : Mr. Bhavneet Singh, Advocate
Mr. Shrawan Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE KUMAR MANISH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 25-06-2026

Heard learned counsel for the appellants and learned counsel for the State.

2. This appeal has been preferred seeking setting aside of the order dated 17.08.2023 passed by the learned District Judge, Patna in Miscellaneous (Arbitration) Case No. 133 of 2022 (Union of India through the General Manager, East Central Railways, Hazipur, Bihar and Anr. vs. M/s. Oberoi Thermit Private Limited) whereby and whereunder the learned District Judge has been pleased to dismiss the application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as

the ‘the Act of 1996’ as amended upto date) read with Section 151 of the Code of Civil Procedure filed on behalf of the petitioners-respondents for setting aside the arbitral award dated 14.12.2021 passed by a learned sole Arbitrator in Arbitration Case No. 05A of 2019 arising out of Request Case No. 28 of 2019.

3. On perusal of the impugned order, it appears that the application preferred by the present appellant for setting aside the arbitral award has been rejected on the ground of the same being hopelessly barred by limitation. The Sheristedar’s report was that there was a delay of 222 days in filing of the application.

4. It is submitted that on behalf of the appellants an application seeking condonation of delay was filed and it was pointed out to the learned court that due to the COVID period delay was caused in preparation of the draft and its approval. It is submitted that after taking approval and sanction from the competent authority of the Railways, the matter was sent to Railway Lawyers for drafting the challenge petition in May, 2022 and the department was waiting for the final drafting of the petition. It is also stated that the counsel for the East Central Railways was delisted from its panel by the order of Ministry of Law and Justice and thereafter the deponent assigned the work to one of the learned Standing Government Counsel after approval of

the same from the competent authority. It is finally submitted that the Hon'ble Supreme Court has also given a direction to condone the delay, if any, and after 01.03.2022, there is a delay of only 89 days in filing of the present application.

5. This Court finds that the learned District Judge has taken note of report of Sheristedar which showed that there is a delay of 222 days in filing of the present case. The Court has also taken note of subsection (3) of Section 34 of the Act of 1996 and held that the delay of 222 days in filing of the case cannot be condoned.

6. Mr. Alok Kumar Agarwal, learned counsel for the appellants, has strenuously argued before this Court that the learned District Judge, Patna has not considered the order passed by this Court as well as the Hon'ble Supreme Court during the COVID period in Suo Motu Writ Petition (Civil) No. 03 of 2020 in which the period between 15.03.2020 and 28.02.2022 have been excluded in reckoning of the period of limitation. It is submitted that the learned court has merely considered the Sheristedar's report and based on that the order impugned has been passed. In his submissions, the impugned order suffers from non-consideration of the materials, therefore, it is liable to be set aside.

7. On the other hand, Mr. Bhavneet Singh, learned counsel for the respondent submits that on a bare perusal of the impugned order it would appear that the learned District Judge has duly considered the scope and ambit of subsection (3) of Section 34 of the Act of 1996. So far as Sheristedar's report is concerned, there is no contest that the appeal has been filed on 22.10.2022 for setting aside of the arbitral award delivered on 14.12.2021. It is submitted that if the overall period is computed, the Sheristedar's report is correct. So far as the COVID period is concerned, no doubt the learned District Judge has not specifically taken note of the said report in the impugned order but that would not make any change in the opinion of the court and the same would be totally irrelevant so far as the present case is concerned. Even if the period between 14.12.2021 and 28.02.2022 are excluded in reckoning the period of limitation, the fact remains that the application under Section 34(1) has been preferred after eight months.

8. It is submitted that in such circumstance, the learned District Judge could not have condoned the delay of more than 30 days from the date of expiry of the period of limitation i.e. three months from the date of receipt of the arbitral award by the party making the application.

Consideration

9. We have heard the rival contentions. The facts are not in dispute. The arbitral award has been delivered on 14.12.2021. It is not the case of the appellant that the Award was served on the appellant on any other date. Thus, the period of limitation of three months for filing of an application under Section 34(1) of the Act of 1996 would have expired on 14th March, 2022. By virtue of the order of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 03 of 2020 the period between 15.03.2020 and 28.02.2022 were liable to be excluded. In this case, the last date for filing of the application under subsection (1) of Section 34 of the Act of 1996 was due to expire on 14th March, 2022. The period between 14th December, 2021 and 15th March, 2022 are liable to be excluded for the purpose of filing of the application.

10. The application was not filed within a period of three months even if the period between 14th December, 2021 and 15th March, 2022 are excluded, still on showing sufficient cause for not preferring the application within the prescribed period of limitation, the appellant would have got a condonation of another thirty days. Unfortunately, the appellant being such a big organisation having battery of lawyers, law officers and the senior officers dealing with the matter did not take care of the period of

limitation and the mandatory nature of subsection (3) of Section 34 of the Act of 1996. They have to blame themselves for this gross negligence on their part in not attending their matter within time. This is not the solitary case in which such inordinate delay has taken place. It is for the Railways to set their house in order and the means and ways by which it is to be taken care of or the responsibilities are to be fixed are in the domain of Railways. Sub-section (1) and sub-section (3) of Section 34 of the Act of 1996 are quoted hereunder for a ready reference:-

> "**34. Application for setting aside arbitral award.-**
> (1) 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).
> (2) …...
> (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. We remind ourselves of the two judgments of the Hon'ble Supreme Court on this issue. In the case of **Simplex Infrastructure Ltd. vs. Union of India** reported in **(2019) 2 SCC**

455, the Hon'ble Supreme Court has held that condonation of delay beyond a period of limitation, even when applicant is the State and delay is owing to the administrative difficulties would be impermissible and in such cases, there would be no application under Section 5 of the Limitation Act. We would reproduce paragraph '11', '12', '13' and '14' of the said judgment hereunder for a ready reference:-

> "**11.** Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period for any appeal or application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in *Union of India* v. *Popular Construction Company*[7] wherein it held as follows : (SCC pp. 474-75, paras 12 &14)
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> > "*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.
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7. [*Union of India* v. *Popular Construction Company*, (2001) 8 SCC 470]

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act."

12. Section 14 of the Limitation Act, 1963 provides thus:

"**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 23 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."

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*[8]. 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

8. [*Consolidated Engg. Enterprises* v. *Irrigation Deptt.*, (2008) 7 SCC 169]

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."

12. Earlier in the case of **Union of India vs. Popular Construction Co.**, reported in **(2001) 8 SCC 470**, the Hon'ble Supreme Court has held that the application challenging the award filed beyond the period mentioned in Section 34(3) would not be an application "in accordance with" subsection (3) as required under Section 34(1).

13. This Court has discussed both the judgments with the learned counsel for the appellant. Even as we have noticed that in its application under Section '5' of the Limitation Act, 1963 filed before the learned District Judge, the appellant took a plea that the Hon'ble Supreme Court has directed for condonation of delay, if any, we are of the view that the blanket plea taken by the appellant before the learned District Judge has no basis to stand.

14. In result, we are of the considered opinion that the learned District Judge is correct in taking a view that the miscellaneous arbitration application preferred by the present appellant was hopelessly barred by limitation. In view of the clear mandate of subsection (3) of Section 34 of the Act of 1996, the learned Court could not have condoned the delay of more than 30 days from the date of expiry of the prescribed period of limitation

of three months. Thus, no illegality or infirmity may be found in the impugned order.

16. This appeal fails.

(Rajeev Ranjan Prasad, J)

(Kumar Manish, J)

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CAV DATE	
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