2026:HHC:16401

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Appeal No.182 of 2026

Decided on: 05.05.2026

National Highway Authority of India ….Appellant

Versus

Inder Kumar ...Respondent

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the appellant: Mr. Sumeet Raj Sharma, Advocate.

For the respondent: Mr. Sanjeev Kuthialia, Senior Advocate with Ms. Tamanna Sharma, Advocate.

Romesh Verma, Judge (Oral)

The present appeal arises out of the order as passed by learned District Judge, Mandi, District Mandi, H.P. dated 01.08.2024, whereby application under Section 34(3) of the Arbitration and Conciliation Act, 1996 (for short, "1996 Act") read with Section 5 of the Limitation Act, 1963, was dismissed.

2. The facts of the case are that the land belonging to the respondent was acquired by the present appellant for the construction of Bilaspur Ner Chowk Section of National Highway (four-lane road). The competent authority passed an award dated 27.11.2013 in favour of the present respondent and assessed the market value of the acquired land at the rate of Rs.58,000,00/-

per bigha and further the valuation of the structure was done separately, as per the award.

3. Feeling dissatisfied, the claimant/respondent invoked the provisions of Section 3G(5) of the National Highways Act against the award dated 27.11.2013. Learned Arbitrator, vide its award dated 10.02.2022, partly allowed the application under Section 3G(5) of National Highways Act as filed by the claimant/respondent. The learned Arbitrator rejected the claim qua enhancement, but granted all statutory benefits in terms of judgment rendered by Hon'ble Supreme Court in Civil Appeal No.7064 of 2019, titled as Union of India vs. Tarsem Singh and others , decided on 19.09.2019 in favour of the respondent.

4. Against the award, as passed by learned Divisional Commissioner exercising the powers of an Arbitrator under the National Highways Act, dated 10.02.2022, the present appellant filed and application under Section 34(3) of the 1996 Act read with application under Section 5 of the Limitation Act, 1963 before the Learned District Judge, Mandi, who vide its impugned order dated 01.08.2024, dismissed the application under Section 34(3) of the 1996 Act read with Section 5 of the Limitation Act.

5. Feeling aggrieved against the impugned order passed by learned District Judge Mandi, the National Highway Authority of India has filed the instant appeal, invoking the provisions of Section 37 of the 1996 Act.

6. It is contended by Mr. Sumeet Raj Sharma, learned counsel for the appellant, that the impugned order as passed by the learned District Judge, Mandi, is erroneous and liable to be quashed and set aside. He further submits that the appellant has furnished sufficient reasons, which are reasonable and plausible, for non-filing of the application under Section 34 of the 1996 Act within the prescribed period of limitation, therefore, the learned District Judge has wrongly dismissed the application under Section 34(3) read with Section 5 of the Limitation Act for condonation of delay in an illegal manner.

7. On the other hand, Mr. Sanjeev Kuthiala, learned Senior counsel, duly assisted by Ms. Tamanna Sharma, Advocate, contended that as per the mandate as laid down by Hon'ble Apex Court, especially in view of the provisions of Section 34(3) of the 1996 Act and the proviso thereto, 90 days plus 30 days period cannot be extended. In the present case, the objection under Section 34 of the 1996 Act was admittedly filed by

the present appellant on 08.04.2024 which is more than 5 months after the passing of the award by the learned Arbitrator.

8. I have heard learned counsel for the parties and scanned the case file.

9. The only point to be determined by this Court is whether the application under Section 34/objection as filed by the present appellant was filed within a period of limitation or not.

10. The provisions of Section 34(3) of the 1996 Act read as follows:

> *"(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:*
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> *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. A perusal of the provisions of Section 34(3) of the 1996 Act shows that the objector is required to file an objection within three months from the date the party received the arbitral award. In the event, the aggrieved party provides a plausible

explanation by filing an appropriate application, the said three months period can be extended for further 30 days, but not thereafter.

12. The provisions are specifically clear and unambiguous. In the event of an objector failing to file the objection within a period of three months after the receipt of arbitral award, further 30 days' period cannot be extended automatically. Such an extension can be granted only on the filing of an application and to the satisfaction of the Court by assigning the reasons. Thereafter, the Court does not have the power to extend the time of limitation in any manner under the provisions of 1996 Act.

13. The Hon'ble Apex Court in ***Civil Appeal No.336 of 2025,*** titled ***My Preferred Transformation & Hospitality Pvt. Ltd. & Anr. vs. M/s Faridabad Implements Pvt. Ltd.***, has reiterated the provisions of the Act in the following manner:

> *"17. Admittedly, as the period of limitation prescribed for filing a petition under Section 34 of the A & C Act expired on 29.05.2022 whereas the petition was preferred on 04.07.2022 much beyond the period of limitation prescribed and the condonable period of 30 days stipulated under the proviso to Section 34(3) of the A & C Act, the petition under Section 34 of the A & C Act was beyond time and the delay could not have been*

condoned. Accordingly, there is no error or illegality on part of the High Court in dismissing the petition under Section 34 of the A & C Act as barred by limitation.

18. It would not be out of context for me to mention on the basis of my experience that practically all new/recent enactments are deviating from the prescribed period of limitation as per the Schedule of the Limitation Act and are generally prescribing its own period of limitation as under the A & C Act itself. At the same time, statutes further provide that the delay beyond a certain period cannot be condoned by the court. This is obviously in deviation to what is prescribed by Section 5 of the Limitation Act.

19. xx xx xx xx

20. This deviation and restriction create confusion and ordinarily even a lawyer at times fails to notice that a different period of limitation has been prescribed for preferring an appeal under a particular statute. Moreover, there may be genuine cases where the litigant may not be able to approach the court in time for cogent reasons beyond his control. For example, in arbitration matters where an award is passed on a particular date and a copy of it is also served upon the litigating party but that party happens to be seriously ill and hospitalised for months together and as such is unable to prefer a petition under Section 34 within the period of limitation prescribed. If the delay in challenging the award is not condoned beyond the period of 30 days, he

> *would suffer great prejudice and may lose the remedy on a technical ground even though he may be having a good case on merit. There may also be a situation where a litigant is facing proceedings by the law enforcement agencies like the Enforcement Directorate, Central Bureau of Investigation, etc., and is taken into custody and as such is unable to take the legal remedy within the period of limitation prescribed. He avails the remedy only after he is out of custody; months after the service of the order. In such circumstances, in my opinion, the legislature ought not to confine condoning the delay only for a prescribed period and not beyond it. Rather it should follow the principle of condoning the delay as enshrined under Section 5 of the Limitation Act. This would not only avoid a good case to be thrown out on the ground of limitation but at the same time would bring about uniformity in law."*

14. An identical issue came up for consideration before the Hon'ble Supreme Court in ***Union of India vs M/s Popular Construction Company (2001) 8 SCC 417***, wherein it was observed as under:

> *"11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the*

provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.4

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.

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 unextendable by Court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process".6 This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms :

> *"5. Extent of judicial intervention. - Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part."*

15. Further, in case titled as ***State of H.P. vs. Himachal Techno Engineers (2010) 12 SCC 210***, the Hon'ble Supreme Court while dealing with the provisions of Section 34(3) of the 1996 Act observed as under:

> *"Having regard to the proviso to section 34(3) of the Act, the provisions of section 5 of the Limitation Act, 1963 will not apply in regard to petitions under section 34 of the Act. While section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days but not thereafter." Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned."*

16. Similar issue came up before the Hon'ble Apex Court in ***Simplex Infrastructure Ltd. Vs. Union of India, (2019) 2 SCC 455*** and it was held that Section 5 of the Limitation Act,

1963, has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. The relevant paras read as under:

> *"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 Company7, where it held as follows –*
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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.*

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 7 (2001) 8 SCC 470 at para 12 and 14 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.

14. The position of law is well settled with respect to the applicability of Section14 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."

17. Thereafter, similar issue came up before Hon'ble Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. M/s Navigant Technologies Pvt. Ltd***. ***Air 2021 Supreme Court 2493,*** wherein the Hon'ble Apex Court, after placing reliance in M/s Popular Construction Company (supra) and Simplex Infrastructure Ltd. (supra), observed as under:

"35. The date on which the signed award is provided to the parties is a crucial date in arbitration proceedings under the Indian Arbitration and Conciliation Act, 1996. It is from this date that:

35.1 The period of 30 days' for filing an application under Section 33 for correction and interpretation of the award, or additional award may be filed;

35.2 The arbitral proceedings would terminate as provided by Section 32(1) of the Act;

35.3 The period of limitation for filing objections to the award under Section 34 commences

36. Section 34 provides recourse for judicial scrutiny of the award by a Court, upon making an application under sub-sections (2) and (3) for setting aside the award. The period of limitation for filing the objections to the award u/S. 34 commences from the date on which the party making the application has "received" a signed copy of the arbitral award, as required by Section 31(5) of the 1996 Act. Section 34(3) provides a specific time limit of three months from the date of "receipt" of the award, and

a further period of thirty days, if the Court is satisfied that the party was prevented by sufficient cause from making the application within the said period, but not thereafter.

37. In Union of India v. Popular Construction,12 this Court held that Section 5 of the Limitation Act, 1963 would not apply to applications filed under Section 34 of the Arbitration Act. It was held that :

"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." 12 (2001) 8 SCC 470. In Simplex Infrastructure v. Union of India,13 this Court held that the phrase "but not thereafter" provided under Section 34(3) of the Act makes it evident that the statutory period of limitation for filing an application for setting aside is three months, which is extendable by thirty days, if sufficient cause is made out. No further period of time can be granted for the filing of an application under Section 34."

18. The Hon'ble Supreme Court in recent judgment in case titled ***Gayatri Balasamy vs. M/S Isg Novasoft***

Technologies Ltd., (2025) 7 SCC 1, has laid down the exposition of law in the following manner:

> *"30. Section 34(2-A) stipulates that an award may be set aside when it is vitiated by patent illegality appearing on the face of the award. The proviso clarifies that such determination shall not be made solely because there is an erroneous application of law or through reappreciation of evidence. Section34(3) provides timelines which needs to be adhered to while filing an application under Section 34. Section 34(4) stipulates the court's power of remanding an award to the arbitral tribunal. We have addressed this remand power in Part VI of our Analysis. Section 34(5) outlines notice requirements, while Section 34(6) mandates the expeditious disposal of Section 34 applications, setting a hard outer limit of one year from the date of service of notice on the other party under Section 34(5)."*

19. In view of the exposition of law, as laid down by Hon'ble Supreme Court, and in conjunction with the provisions of the 1996 Act, it is clear that the application under Section 34(3) of the 1996 Act read with Section 5 of the Limitation Act filed by the present appellant was rightly rejected. The same was highly belated having been filed after an elapse of more than 4 months and 5 days from the passing of the award by the learned Arbitrator. After relying upon the law as laid down by the Hon'ble

Supreme Court, learned District Judge came to the conclusion that the applicant was aware of the passing of the award by the learned Arbitrator. Though, it was stated that they received a copy of the award on 19.07.2022, the period of 3 months expired on 18.10.2022 and the additional 30 days expired on 17.11.2022, however, in the present case, the application for condonation of delay was filed on 22.03.2023, which is beyond the extended period of limitation of 30 days. Therefore, the learned District Judge, Mandi, after applying ratio as laid down by Hon'ble Supreme Court, vide impugned order dated 01.08.2024 has rightly dismissed the application under Section 34(3) of the 1996 Act read with Section 5 of the Limitation Act for condonation of delay in filing the objections under Section 34 of the 1996 Act. This Court sees no infirmity or illegality or jurisdictional error in the same.

20. In view of aforesaid discussion, and exposition of law, as noted above, the present appeal deserves to be dismissed, and the same is accordingly dismissed along with pending application(s), if any.

(Romesh Verma)
Judge

May 05, 2026
(vt)