

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**RESERVED ON: 09.06.2026
DELIVERED ON: 18.06.2026**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

AP 48 OF 2026

KANCHAN KONWER AND ANR.

VERSUS

TUSHAR KANTI JANA

Appearance: -

**Mr. Prasenjit Mukherjee, Adv.
Ms. Sima Ghosh, Adv.
Mr. Jahangir Hossain, Adv.**

..... for the Petitioners

**Mr. Aniruddha Bhattacharya, Adv.
Mr. Arnab Roy, Adv.**

..... for the Respondent

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioners have preferred the present application under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitral Award dated 29.01.2026 passed by the Learned Sole Arbitrator, Mr. Debasish Roy, Senior Advocate, in relation to disputes arising out of a Development Agreement dated 03.08.2018 executed between Late Shri Tapan Konwer and the Respondent. The Petitioners are the widow and son of Late Shri Tapan Konwer and have approached this Court in their capacity as his legal heirs.

- 2.** The dispute centers around a portion of land measuring about 258 sq. ft. at Premises No. 132/C, Keyatala Lane, P.S. Lake, District South 24 Parganas, Kolkata – 700029. The said portion forms part of a larger property measuring about 1 cottah 11 chittacks and 22.5 sq. ft., which originally belonged to Late Sudhir Chandra Konwer. Upon his demise on 13th October, 1981, the property devolved upon his legal heirs, including his son, Late Shri Tapan Konwer, who came to occupy and possess the aforesaid portion. According to the Petitioners, the property has never been partitioned amongst the co-sharers and is presently the subject matter of Title Suit No. 233 of 2006 (Sunil Chandra Konwer vs. Kalyani Konwer & Ors.), which is still pending.
- 3.** Late Shri Tapan Konwer entered into a Development Agreement dated 03.08.2018 with the Respondent, the proprietor of M/s T.M. Construction. Under the said arrangement, the Respondent agreed to develop the said land on a 70:30 sharing basis, retaining 70% of the constructed area and allotting the remaining 30% to Late Shri Tapan Konwer. The Respondent claims to have paid a sum of Rs.9,40,000/- in cash to Late Shri Tapan Konwer at or about the time of execution of the Agreement. However, the development project never progressed. It is not in dispute that possession of the land was never handed over to the Respondent. The pendency of the title suit and other disputes concerning the property stood in the way of the proposed development and, admittedly, no sanctioned building plan was ever obtained from the Kolkata Municipal Corporation.
- 4.** While matters stood thus, Late Shri Tapan Konwer passed away on 28.08.2023. Upon his demise, the Petitioners succeeded to his estate. Thereafter, by notices dated 24.03.2025 and 03.05.2025, the Respondent

called upon the Petitioners to honour the obligations arising under the Development Agreement and to hand over possession of the land. In their replies, the Petitioners denied that Late Shri Tapan Konwer had received any amount from the Respondent. They also relied upon the pending litigations concerning the property and contended that, in view thereof, the Agreement had become incapable of performance.

5. The Respondent invoked the arbitration clause contained in the Development Agreement by issuing a notice dated 03.05.2025, under Section 21 of the Act of 1996. The Petitioners responded by reiterating their stand regarding the disputes affecting the property and disputing the Respondent's monetary claim. Since the parties could not arrive at any consensus regarding the constitution of the arbitral tribunal, the Respondent approached this Court seeking appointment of an arbitrator. By an order dated 08.07.2025, this Court appointed Mr. Debasish Roy, Learned Senior Advocate, as the Sole Arbitrator to adjudicate the disputes between the parties.
6. Following his appointment, the learned Arbitrator entered upon the reference and issued notices to the Petitioners. The Petitioners, however, did not participate in the arbitral proceedings. According to them, financial constraints and their inability to engage legal representation prevented them from contesting the proceedings before the learned Arbitrator.
7. In the absence of participation by the Petitioners, the proceedings continued ex parte. Upon consideration of the materials placed before him, the learned Arbitrator passed the Award dated 29.01.2026. By the said Award, the Petitioners, as legal heirs of Late Shri Tapan Konwer, were directed to pay a sum of Rs.9,40,000/- together with interest at the rate of

12% per annum from 15.01.2019 until realization; a further sum of Rs.39,23,200/- together with interest at the rate of 12% per annum from the date of the Award until realization; and a sum of Rs.1,16,062/- together with interest at the rate of 6% per annum from the date of the Award until realization.

8. Aggrieved by the aforesaid Award and questioning its legality and validity, the Petitioners have filed the present application under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the award.

Submission on behalf of the Petitioners

9. Mr. Prasenjit Mukherjee, learned Counsel appearing for the Petitioners, submits that the impugned Award is liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 as the same suffers from patent illegality and is the result of a complete non-consideration of the material facts and evidence on record. Learned Counsel contends that the very foundation of the Respondent's claim is unsustainable, inasmuch as Late Tapan Konwer had no exclusive right or authority to execute the Development Agreement dated 03.08.2018 in respect of the subject property, which admittedly forms part of an unpartitioned estate and has been the subject matter of Title Suit No. 233 of 2006 pending since the year 2006. According to the Petitioners, the learned Arbitrator failed to appreciate that the Agreement itself was incapable of implementation in view of the unresolved disputes concerning the title and possession of the property.
10. Learned Counsel further submits that the Respondent's allegation that a sum of Rs. 9,40,000/- was paid in cash to Late Tapan Konwer was specifically denied by the Petitioners from the very outset. Despite such

denial, the learned Arbitrator accepted the alleged payment merely on the basis that the Respondent had withdrawn the corresponding amount from his bank account. It is argued that no receipt, acknowledgment, hand-note, account entry, or any contemporaneous document evidencing the actual payment was ever produced. Mere withdrawal of money from a bank account, it is submitted, cannot establish that the amount was paid to Late Tapan Konwer. The finding of the learned Arbitrator on this issue is therefore stated to be wholly unsupported by evidence and consequently perverse.

- 11.** It is next contended that the learned Arbitrator failed to properly consider the issue of limitation. Learned Counsel submits that the Development Agreement was executed on 03.08.2018 and no grievance regarding its alleged non-performance was raised by the Respondent for several years thereafter. It was only after the demise of Late Tapan Konwer on 28.08.2023 that notices came to be issued in March 2025. According to the Petitioners, the claim was ex facie barred by limitation and this aspect, which went to the root of the matter, was not adequately examined. It is further argued that the learned Arbitrator overlooked the fact that, having regard to the size of the plot and the applicable provisions of the Kolkata Municipal Corporation Act, 1980, no sanctioned building plan could ever have been obtained in respect of the said property, rendering the Development Agreement incapable of performance from its inception.
- 12.** Lastly, learned Counsel assails the quantum of damages awarded. It is submitted that the award of Rs. 39,23,200/- together with interest at the rate of 12% per annum is wholly arbitrary and based entirely on a valuation furnished by the Respondent without any independent

verification or objective assessment. The Petitioners were unable to participate in the arbitral proceedings on account of genuine financial hardship, though they had consistently disputed the claim at the pre-arbitral stage. The Award having been rendered ex parte on the basis of the Respondent's unilateral pleadings and evidence, without proper scrutiny of the underlying allegations and legal impediments, is stated to be contrary to the fundamental policy of Indian law and the principles of natural justice. On such grounds, learned Counsel submits that the impugned Award warrants interference and ought to be set aside under Section 34 of the Act.

Submission on behalf of the Respondent

- 13.** Mr. Aniruddha Bhattacharya, learned Counsel appearing for the Respondent, at the outset raised a preliminary objection as to the maintainability of the present petition on the ground of lack of territorial jurisdiction. He submitted that the Development Agreement specifically provides that disputes arising therefrom shall be subject to the jurisdiction of the courts within whose territorial limits the subject property is situated. Since the property in question is located at Premises No. 132/C, Keyatala Lane, P.S. Lake, District South 24-Parganas, any challenge to the Award would lie before the competent Commercial Court at Alipore and not before this Court. Learned Counsel further submitted that the value of the Award exceeds Rs.50 lakhs and, therefore, the matter squarely falls within the jurisdiction of the Commercial Court, at Alipore. On this ground alone, it was argued, the present petition is liable to be rejected.
- 14.** Without prejudice to the aforesaid objection, learned Counsel submitted that the Petitioners were duly served with notices of the arbitral

proceedings but consciously chose not to participate. Despite having sufficient opportunity to file their defence, produce evidence and contest the Respondent's claim, they remained absent throughout the proceedings. Having elected not to avail themselves of the opportunities granted by the learned Arbitrator, the Petitioners cannot now be permitted to challenge the Award on grounds which were available to them before the Tribunal itself. According to the Respondent, the present challenge is merely an afterthought and does not deserve the exercise of this Court's discretionary jurisdiction under Section 34 of the Act.

15. Learned Counsel further contended that the principal grounds urged by the Petitioners relate to the learned Arbitrator's findings regarding the payment of Rs.9,40,000/- and the assessment of damages. These, according to him, are pure findings of fact arrived at upon consideration of the pleadings, evidence and documents placed before the Tribunal. The Petitioners are, in substance, inviting this Court to re-appreciate the evidence and take a different view on factual issues already decided by the learned Arbitrator. Such an exercise, it was submitted, is wholly impermissible in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. So long as the view taken by the Arbitrator is a plausible one based on the material on record, the Court cannot interfere merely because another view may also be possible.

16. In conclusion, learned Counsel submitted that the petition is devoid of merit. The challenge is not only barred by jurisdictional limitations but is also founded upon grounds that fall outside the narrow scope of judicial review available under Section 34 of the Act. In the circumstances, and having regard to the Petitioners' conscious non-participation in the arbitral

proceedings as well as the limited scope of interference with arbitral awards, the Respondent submits that the present petition deserves to be dismissed *in limine*.

Legal Analysis

- 17.** This Court has heard the learned Advocates appearing for the parties and has carefully considered the pleadings, the arbitral award, the documents placed on record and the submissions advanced on behalf of the respective parties.
- 18.** Before entering into the merits of the challenge mounted against the arbitral award, this Court is required to consider the preliminary objection raised by the Respondent regarding the maintainability of the present petition before this Court. The Respondent has contended that the dispute arises out of a Development Agreement pertaining to an immovable property situated at Keyatala Lane, P.S. Lake, District South 24-Parganas. It has further been submitted that the agreement itself contemplates adjudication before the courts having jurisdiction over the area in which the property is situated. According to the Respondent, the competent court for the purpose of entertaining a petition under Section 34 of the Arbitration and Conciliation Act, 1996 would therefore be the Courts at Alipore and not the Original Side of this Court.
- 19.** The objection merits acceptance. Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 defines the expression "Court" to mean the principal civil court of original jurisdiction in a district, or the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit. Thus, while considering the

maintainability of a petition under Section 34 of the Act, the Court is required to examine whether the disputes between the parties, if brought by way of an ordinary civil suit, would fall within its territorial jurisdiction.

20. In the present case, the arbitral dispute emanates from a Development Agreement concerning an immovable property situated within the jurisdiction of P.S. Lake, District South 24-Parganas. It is not in dispute that the said area falls within the territorial jurisdiction of the courts at Alipore. The rights and obligations asserted by the parties under the Development Agreement are intrinsically connected with the said property and the disputes adjudicated upon by the learned Arbitrator arise directly therefrom. Consequently, if the disputes forming the subject matter of the arbitration had been instituted as a civil suit, such suit would ordinarily have been maintainable before the competent court exercising territorial jurisdiction over the property.

21. The contention advanced on behalf of the Petitioner that the pecuniary value of the claim satisfies the monetary threshold applicable to the Original Side of this Court does not advance the Petitioner's case. Pecuniary jurisdiction by itself does not confer jurisdiction upon a court in the absence of territorial jurisdiction. The two requirements operate cumulatively and not alternatively. A court may possess pecuniary competence to entertain a matter; however, unless territorial jurisdiction is also established in accordance with law, such court cannot assume jurisdiction merely on the basis of the valuation of the claim.

22. Upon a consideration of the materials on record, this Court finds that no facts have been demonstrated by the Petitioner which would independently confer territorial jurisdiction upon the Original Side of this Court. The

subject property remains situated within the territorial limits of the courts at Alipore and the agreement itself recognizes the jurisdiction of the courts having authority over the situs of the property. In such circumstances, this Court cannot be regarded as the "Court" within the meaning of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 for the purpose of entertaining the present application.

23. Since this Court lacks territorial jurisdiction to entertain the petition, it would be inappropriate to enter upon an examination of the merits of the challenge to the arbitral award. Any observation on the merits may prejudice the rights of the parties before the forum of competent jurisdiction. This Court, therefore, refrains from expressing any opinion whatsoever on the merits of the rival claims and contentions.

24. Accordingly, the preliminary objection raised by the Respondent is upheld. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 is dismissed as not maintainable for want of territorial jurisdiction. The Petitioner shall, however, be at liberty to approach the appropriate court having jurisdiction in accordance with law. It is made clear that this Court has not examined the merits of the challenge to the arbitral award and all questions on merits are left open for consideration by the competent forum.

(GAURANG KANTH, J.)