

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 7 OF 2019
WITH
CIVIL APPLICATION NO. 12 OF 2017

NAVNATH
SITARAM
WAGHMARE

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Date: 2026.07.20
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Mr. Abdulgapr Maktumsab Hudali
Age: 57 Years, Occu.: Business,
R/at 702/87, B-Ward, Subhash nagar,
Kolhapur.

... Appellant/
Applicant

Versus

1. Mr. Sardar Mohammad Pathan
Age: 43 Years, Occu.: Business

2. Mr. Bashir Mohammad Pathan
Age: 43 Years, Occu.: Business
Both are having address at Rabade Estate,
Kawala Naka, Kolhapur.

...Respondents

Mr. Yuvraj Narvankar, a/w Mr. Rahul Patil for the Appellant/Applicant.
Ms. Madhavi Ayyappan a/w Mr. S.B. Talekar i/b Talekar & Associates
for the Respondent Nos. 1 and 2.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 08th APRIL, 2026
PRONOUNCED ON : 20th JULY, 2026
(THROUGH VIDEO CONFERENCING)

JUDGMENT :

1. Heard. Admit. Learned counsel for the Respondents waives service.

2. Considering the narrow controversy involved, taken up for final disposal with the consent of the learned counsel for the parties.

3. This Appeal is filed under section 37 of the Arbitration and Conciliation Act, 1996 ('the said Act' for short) challenging the Judgment and Order dated 20.04.2016 passed by the Principal District Judge, Kolhapur in Civil Miscellaneous Application No.296 of 2008, dismissing application filed under section 34 of the said Act, confirming the Arbitral Award dated 04.08.2008.

4. The Respondents filed arbitration proceedings against the Appellant contending *inter alia* as under.

4.1. That Plot No. B-37 in Gokul Shirgaon Industrial Area, Village Kaneriwadi, Taluka Karveer, District Kolhapur admeasuring 1000 Sq. Mtr. with RCC structure/building thereon admeasuring 200 Sq. Mtr. alongwith all machineries, electric connection and other equipments situated at Maharashtra Industrial Development Corporation ('MIDC' for short) is the subject matter property ('the said property' for short).

4.2. That the firm 'M/s. Rubb Steel' was original proprietary concern of the Appellant, which was later on converted into Partnership Firm. That Respondents were admitted as partners with 50% share of Respondent No.1, 45% share of Respondent No.2 and only 5% share of the Appellant.

4.3. That Memorandum of Understanding ('the said MoU' for short) dated 05.12.1995 was agreed between the parties where under, Respondents agreed to pay total amount of Rs. 8,75,000/- to the Appellant towards consideration of the said property being assets of the partnership. That out of the said amount, Rs.1,25,000/- was to be paid to the MIDC for the expenses of getting the said property

transferred. That out of remaining Rs. 7,50,000/-, the amount of loan of M.S.F.C. raised by the Appellant was agreed to be paid by the Respondents, which amount of Rs. 3,70,000/- with interest was paid by the Respondents to MSFC. That remaining amount of Rs. 3,80,000/- have been paid in 'cash and cheques' to the Appellant. Thus on the ground that the entire amount is paid, Respondents sought directions against the Appellant for executing necessary transfer documents.

4.4. According to Respondents, the Appellant did not transfer the said property despite receiving full amount. It was contended that when application for transfer was made to MIDC by the Respondents as Power of Attorney ('PoA', for short) holder of the Appellant, it was objected by the Appellant and due to such objection, MIDC is insisting on signature of the Appellant.

4.5. That in case of failure to transfer the said property, the Appellant had agreed to refund Rs. 7,50,000/- with interest @ 21% p.a. within 7 days. However, Appellant has neither refunded such amount, nor transferred the said property.

5. The Appellant filed written statement resisting the claim, *inter alia* contending that the remaining amount of Rs. 3,80,000/- was not received by him. He denied signature on the alleged receipt. He contended that the receipt is forged. He admitted that the stamp paper on which the receipt is written was purchased by him and also admitted signature on the top of the stamp paper. He alleged that blank stamp paper has been misused by writing contents. He contended that since he has not received full amount, he did not retire from the firm. He contended that PoA executed by him is revoked and

therefore, the Respondents had no right to do act on his behalf. Lastly, he prayed for possession of the said property which is handed-over to the Respondents as per the MoU. He showed willingness to return the amount of Rs. 3,70,000/- received by him.

6. The learned Arbitrator, who considered the rival submissions and on appreciation of evidence on record, passed an award, thereby directing the Appellant to execute necessary documents of said property in the name of the Respondents as partners of M/s. Rubb Steel in the record of MIDC as well as Firm. The Appellant was also directed to pay cost of Rs. 21,000/- as costs of proceedings.

7. The Appellant filed Civil Miscellaneous Application No. 296 of 2008 under Section 34 of the said Act challenging the said award. Learned Principal District Judge at Kolhapur by impugned order dated 20.04.2016, dismissed the application under Section 34 of the said Act, thereby confirming the award.

8. In these circumstances, the Appellant filed the present appeal under Section 37 of the said Act. By order dated 10.09.2024, this Court had directed that the request of interim stay shall be decided with the appeal. However, by subsequent order dated 14.01.2026, for the first time, ad-interim stay was granted to execution of the said award, which is continued from time to time.

SUBMISSIONS

9. Mr. Narvankar, Learned counsel for the Appellant submitted as under.

9.1 That learned District Judge, despite holding that the Respondents have invoked arbitration clause by making reference which appears to be time barred, did not consider the aspect of limitation, just because the Appellant did not raise the issue of limitation before the arbitrator.

9.2. That the Limitation Act is applicable to the arbitration proceedings under section 41 of the said Act and under Section 3 of the Limitation Act, 1963 it is the duty of the Arbitrator to decide the aspect of limitation, whether such defence is raised or not, and time barred claim could not have been granted.

9.3. That during pendency of application under Section 34 of the said Act, handwriting expert was appointed and report of the hand-writing expert in Appellant's favour has been perversely appreciated by the learned District Judge. That it has been discarded only on the ground of specimen being given after 14 years, holding that there is natural variation in the signature.

9.4. He relied on the following judgments in support of his case :

- i) Binod Bihari Singh Vs. Union of India, (1993) 1 SCC 572.
- ii) Sealand Shipping and Export Pvt. Ltd. Vs. Kin-Ship Services (India) Pvt. Ltd. (2011) 5 Bom CR 572.
- iii) Pepsi Co. India Holding Pvt. Ltd. Vs. Nishiland Park Limited 2012 SCC OnLine Bom 581.
- iv) Borosil Glass Works Limited Vs. Tata Motors Limited 2015 SCC OnLine Bom 225.
- v) Housing Board Haryana And Another Vs. M/s Comfits Marketing And Ors. 2019(2) ILR(P&H) 481.

10. On the other hand, learned counsel Mr. Talekar a/w Ms. Ayyappan submitted as under:

10.1. That scope of Section 34 of the said Act is limited and unless Court comes to the conclusion that arbitral award can be set aside on one of the grounds mentioned in the said provision including ground of conflict with public policy of India, award can not be set aside.

10.2. That none of these requirements under Section 34 of the said Act are established and therefore learned District Judge was justified in rejecting the application.

10.3. That the issue of limitation is 'jurisdictional issue', which has to be decided at the stage of Section 16 of the said Act, meaning thereby that the stage for such objection was the stage of Section 16(2) of the said Act. That since the Appellant has not raised the issue of limitation at all, in its written statement, nor was argued before the Arbitrator, Appellant has waived the said objection and therefore at the stage of appeal under Section 37 of the said Act, issue of limitation cannot be agitated.

10.4. He submitted that some of the judgments relied upon by the Appellant are passed in ignorance of earlier judgment and therefore such judgments will have to be treated as *per incuriam*.

10.5. He relied on following judgments in support of his case.

i) **Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coal Field Limited (2020) 2 SCC 455** and **C. Shamsuddin Vs. Now Realty Ventures LLP and Ors. 2020 (6) Mh.L.J. 108** in support of his

submission that issue of limitation is a jurisdictional issue and has to be decided at the stage of Section 16.

ii) **Vimal G. Jain Vs. Vertex Financial Services Pvt. Ltd. 2007 (3) Mh.L.J. 866** in support of his contention that issue regarding limitation not being raised before the Arbitrator, would be deemed waived and limitation being mixed question of law and fact, it cannot be decided in abstract and the point of limitation has not been raised before the Arbitrator. The question of entertaining such issue in proceeding under Section 34 or 37 cannot arise.

iii) **Municipal Corporation of Delhi Vs. Gurnam Kaur (1989) 1 SCC 101** in support of his submission that judgments which are rendered in ignorance of statutory provision earlier judgment is *per incuriam*.

REASONS AND CONCLUSION

11. At the outset, it is necessary to note that admittedly, the contention of limitation was not raised by the Appellant before the learned Arbitrator. This fact is clear from paragraph No. 9 of the award, which recorded the Appellant's contention in detail. This aspect is not seriously disputed.

12. In **Nusli Neville Wadia Vs. Ivory Properties and Others (2020) (6) SCC 557**, three Judges bench of the Hon'ble Supreme Court has clarified that the 'issue of limitation' is not 'an issue of jurisdiction'. Meaning of the word of 'jurisdiction' is explained that it is the authority of law to act officially in a particular matter and it is a power to take cognizance and decide the case. It is clarified that it is power to decide rightly or wrongly. It is a power to hear and determine. It is also explained that though Section 3 of Limitation Act, 1963 provides that every suit / appeal / application made after prescribed period

would be dismissed, it nowhere provides that the Court has no jurisdiction to deal with the matter. It is further clarified that until and unless the Court has the jurisdiction, it cannot proceed to dismiss on the ground of limitation. In that view of the matter there is no merit in the submission of learned counsel for the Respondent that the issue of limitation being jurisdictional issue, ought to have been raised at the threshold i.e. at the stage of Section 16 of the said Act.

13. Even then, assuming that 'limitation' can be considered as 'jurisdictional issue', the present case is peculiar where Arbitrator was not required rule on it's own jurisdiction. Also, since the Appellant did not raise any issue about claim being time barred, there was no occasion for the Respondents to respond by leading evidence. It is settled position of law that the issue of limitation is mixed question of fact and law and it cannot be decided in abstract and it has to be ruled upon in the facts and circumstances of the given case.

14. In this respect judgment of division bench of this Court in **Vimal G. Jain (supra)** is important, where, the Division Bench of this Court, while dealing with similar situation as present one, held that the point regarding bar of limitation was not raised before the Arbitrator and therefore, it should be deemed to have been waived. It is also clarified that once the point of limitation stands waived, the question of entertaining such point in proceedings under Section 34 or 37 of the said Act cannot arise. In this judgment, the Division Bench of this Court was considering a limitation clause applicable under a by-law that operated between the parties.

15. Now let us examine remaining judgments relied upon by the

learned counsel for the parties.

16. In **Binod Bihari Singh (supra)** the Hon'ble Supreme Court was considering the matter at the stage of 'an application to direct the Arbitrator to file the award before the concerned subordinate Judge Patna', for making the award a rule of the Court. It was a case under old Arbitration Act, 1940 ('1940 Act' for short) and award involved was dated 26.02.1965. The application was under Section 17 of the 1940 Act. Section 17 of the 1940 Act provided for judgment in terms of award and decree to follow thereafter. While objecting to such application, bar of limitation was not taken. In this context, the Hon'ble Supreme Court held that a bar of limitation may be considered even if such plea has not been specifically raised. It is therefore, clear that in the said judgment, 'objection about limitation to the original dispute' was not involved. Therefore, present case at hand being completely distinguishable on facts, the said judgment will not advance the case of the Appellant.

17. In **Sealand Shipping and Export Pvt. Ltd (supra)**, learned Single Judge of this Court was not shown the judgment of **Vimal G. Jain (supra)** of the Division Bench which was in existence at the relevant time. Since, the said judgment takes a direct contrary view with the earlier Division Bench without considering it, said judgment will not help the Appellant.

18. In **Pepsi Co. India Holding Pvt. Ltd.(supra)**, the Opponent therein had raised the ground of limitation in written statement and therefore, the said case is clearly distinguishable from the present case. In the present case admittedly the ground/defence of limitation was not

raised at all. Therefore, the said judgment will also not advance the case of the Appellant.

19. In **Borosil Glass Works Limited (supra)** also facts involved were that the Opponent in its written statement had denied the statement about claim being within limitation. This Court held that initial onus is on the claimant to prove that the claim is within limitation and not barred by limitation. In the said case, though no issue was framed about plea of limitation, Tribunal had allowed both parties to make submissions on the issue of limitation and rejected the submissions on the issue of limitation on merits. The learned Single Judge, though was aware of the judgment of **Vimal G. Jain Vs. Vertex Financial Services Pvt. Ltd. (Supra)** being shown and relied, held in paragraph No.52 of the judgment that it need not be dealt with, in such peculiar facts. Therefore, the facts of this case are completely distinguishable from the matter at hand, and therefore, this judgment would also not advance the case of the Appellant.

20. Lastly in **Housing Board Haryana And Another (supra)**, learned Single Judge of Haryana High Court has held that even if plea of limitation was not raised in arbitral petition, Court is bound to consider it while perusing the objections. Unfortunately, view of the Division Bench of this Court in **Vimal G. Jain (supra)** was not pointed out to the learned Single Judge. Therefore, in the teeth of view taken by the Division Bench of this Court in the case of **Vimal G. Jain (supra)**, the judgment of **Housing Board Harayan (supra)** will not help the Appellant.

21. In **Uttarakhand Purv Sainik Kalyan Nigam Limited (supra)**, the

Hon'ble Supreme Court was considering the exercise of power under Section 11 by the Court. At the relevant time, Section 6-A was applicable as it was inserted with effect from 23.10.2015 and subsequently omitted by Act No. 33/2019. Since the objection regarding limitation was raised at pre-reference stage, it was held that in view of Section 11(6-A), the issue of limitation has to be decided by the Arbitrator.

22. In **C. Shamsuddin (supra)** also, the learned Single Judge of this Court was considering the scope of Court's jurisdiction at pre-reference stage. In view of Section 11(6-A) of the said Act, it was held that the scope is confined to examination of existence of arbitration agreement and if there is defence that claim is time barred, same be decided by Arbitrator under Section 16 and not by the High Court at pre-reference Stage.

23. Therefore, it is clear that in both the above caselaw i.e. **Uttarakhand Purv Sainik Kalyan Nigam Limited (supra)** and **C. Shamsuddin (supra)** the Court was considering the aspect of limitation at pre-reference stage. The facts of present case are completely different. To contend at the pre-reference stage that limitation must be considered by the Arbitrator and to contend that limitation be considered at the stage of appeal under section 37 of the said Act, are two completely different things and can not be mixed.

24. Now, at this juncture, it is necessary to consider the scope of consideration under Section 34 and 37 of the said Act.

24.1. In **MMTC Limited Vs. Vedanta Limited (2019) 4 SCC 163**, while

considering the grounds on which arbitral award can be interfered with, the Hon'ble Supreme Court has clarified as under :

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings".

(emphasis supplied)

24.2. In a latest judgment of **Somdatt Builders-NCC-NEC (JV) Vs. National Highways Authority of India and Ors. 2025 INSC 113**, the Hon'ble Supreme Court has referred to above judgment of **MMTC Vs Vedanta (Supra)**, explaining that under Section 34 of the said Act the Court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) of the said Act. It is further observed that as far as interference with an order made under Section 34 of the said Act by the Court under Section 37 of the said Act is concerned, such interference cannot travel beyond the restrictions laid down under Section 34 of the said Act. It is explained that Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the Court under Section 34 of the said Act has not exceeded

the scope of the provision. It is clarified that an arbitral award can be set aside on the ground of patent illegality i.e. where the illegality goes to the root of the matter, but re-appreciation of evidence cannot be permitted under the ground of patent illegality.

In the present case, entering into the aspect of limitation, at the stage of Section 37 of the said Act will amount to re-appreciation of evidence and entering into the merits of the claim and therefore, it will not be permissible as held in Paragraph No. 8 of **Haryana Tourism Ltd. Vs. Kandhari Beverages Ltd. (2022) 3 SCC 237.**

24.3. In **Reliance Infrastructure Ltd. Vs. State of Goa (2024) 1 SCC 479**, the Hon'ble Supreme Court relied on **MMTC Vs Vedanta (Supra)** and has reiterated same view.

24.4. In **Indian Farmers Fertilizer Cooperative Limited. VS. Bhadra Products (2018) (2) SCC 534**, the Hon'ble Supreme Court held that a ruling on the issue of limitation is not a ruling on jurisdiction for it to be appealable under Section 37 of the said Act.

25. In view of above settled law, in my considered opinion, the aspect of limitation as raised by the learned counsel for the Appellant cannot be considered. For the same reason, in my considered view, the learned District Judge was justified in holding that since the Petitioner has not raised the issue of limitation before the arbitrator and the same being mixed question of facts and law, cannot be considered first time in application under Section 34 of the said Act and of course not under Section 37 of the said Act.

26. So far as the submission about opinion of hand-writing expert is concerned, the learned District Judge was fully justified in holding that since specimen signatures were taken 14 years after the questioned signature, the variation in the signature was obvious. I do not find any error in the view taken by the learned District Judge that opinion of the hand-writing expert is not decisive.

27. In the aforesaid facts and circumstances and for reasons indicated above, there is no merit in the appeal.

28. **Accordingly, appeal is dismissed.** In view of the dismissal of the appeal, pending civil application (for interim stay) is also dismissed. Ad-interim stay granted to the execution of the award is vacated. No order as to costs.

29. At this stage, learned counsel for the Appellant seeks extension of the *ad interim* stay. Considering the peculiar facts of the case, the *ad interim* stay is extended only for a period of 4 weeks.

30. **Appeal as well as pending civil application are disposed of in above terms.** All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)