



CGHC010307022021



2026:CGHC:36942

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No. 76 of 2021

Steel Authority Of India Limited Bhilai Steel Plant Bhilai Steel Plant Through Deputy General Manager Purchase Bhilai Steel Plant Bhilai District Durg Chhattisgarh Pin 490001

--- Appellant

versus

Vandana Global Ltd. Vandanabhawan 1st Floor, M.G. Road, Raipur Chhattisgarh 492001

--- Respondent

For appellant	:	Dr. Saurabh Kumar Pandey, Adv.
For Respondent	:	Mr. Subham Pandey, Adv.

Hon'ble Shri Justice Naresh Kumar Chandravanshi

Order On Board

18-8-2026

1. This Arbitration Appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (in short, the 'Arbitration Act') by the appellant, challenging the order dated 30-7-2021 passed by the 6th Additional District Judge, Durg (C.G.) in Civil MJC No. 19/2017 (Steel Authority of India Limited Vs. Vandana Global Ltd.), whereby the application filed by the appellant under Section 34 of the Arbitration Act

has been dismissed on the ground that the said application was filed without compliance with the provisions of sub-section (5) of Section 34 of the Arbitration Act.

2. Learned counsel for the appellant would submit that, while filing the application under Section 34 of the Arbitration Act on 13-1-2017, the appellant/applicant had also filed an application for stay of the arbitral award along with an affidavit in compliance with sub-section (5) of Section 34 of the Arbitration Act. A copy of the same has also been filed before this Court as Annexure A-3 (colly). He further submits that, in the affidavit dated 13-1-2017, it has specifically been stated that a copy of the application, along with the stay application and other documents, had already been sent to the respondent/non-applicant. Despite the aforesaid compliance, the learned Additional District Judge dismissed the application under Section 34 of the Arbitration Act filed by the appellant/applicant. Hence, he prays that the appeal may be allowed, the impugned order dated 30-7-2021 may be set aside, and the matter may be remitted back to the 6th Additional District Judge, Durg, for deciding the same in accordance with law.
3. In reply, learned counsel for the respondent/non-applicant would support the impugned order.
4. Heard learned counsel for the parties and perused the material available on record.
5. Sub-section (5) of Section 34 of the Arbitration Act provides for service of prior notice upon the opposite party before filing an application under Section 34 of the Arbitration Act. Sub-section (5) of Section 34 of the

Arbitration Act reads as under:-

“34. Application for setting aside arbitral award.—

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx
- (4) xxx xxx xxx

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.”

6. Though the appellant/applicant has not filed a copy of the application filed under Section 34 of the Arbitration Act before this Court, he has filed a copy of the stay application filed along with the said application on 13-1-2017 (Annexure P-3 colly). He has also filed a copy of the affidavit dated 13-1-2017 filed along with the aforesaid application, wherein he has specifically stated in paragraph 3 that, in compliance with sub-section (5) of Section 34 of the Arbitration Act, a copy of the application under Section 34 of the Arbitration Act along with the stay application and other documents, had been sent to the respondent/non-applicant. Thus, a perusal of the aforesaid documents shows that the appellant/ applicant had complied with the provisions of sub-section (5) of Section 34 of the Arbitration Act. However, it appears that the learned Additional District Judge overlooked the affidavit filed by the appellant along with the original application under Section 34 of the Arbitration Act.

7. Even otherwise, the requirement of serving prior notice and filing an affidavit under sub-section (5) of Section 34 of the Arbitration Act is procedural in nature, intended to ensure that the non-applicant is made aware of the proceedings before the matter is listed before the Court. Further, the Hon'ble Supreme Court, in the case of **State of Bihar and Others Vs. Bihar Rajya Bhumi Vikas Bank Samiti**, [(2018) 9 SCC 472], in paragraphs 19, 26 and 27, has held as under :-

“**19.** It will thus be seen that Section 34(5) does not deal with the power of the Court to condone the non-compliance thereof. It is imperative to note that the provision is procedural, the object behind which is to dispose of applications under Section 34 expeditiously. One must remember the wise observation contained in *Kailash* [*Kailash v. Nanhku*, (2005) 4 SCC 480] , where the object of such a provision is only to expedite the hearing and not to scuttle the same. All rules of procedure are the handmaids of justice and if, in advancing the cause of justice, it is made clear that such provision should be construed as directory, then so be it.

26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues

notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.

27. We may also add that in cases covered by Section 10 read with Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the Commercial Appellate Division shall endeavour to dispose of appeals filed before it within six months, as stipulated. Appeals which are not so covered will also be disposed of as expeditiously as possible, preferably within one year from the date on which the appeal is filed. **As the present appeal has succeeded on Section 34(5) being held to be directory**, we have not found it necessary to decide Shri Rai's alternative plea of maintainability of the letters patent appeal before the Division Bench.”

8. Thus, since compliance with sub-section (5) of Section 34 of the Arbitration Act has been held to be directory and not mandatory, the impugned order, on this count also, suffers from illegality. As has been observed in preceding paragraph that, the appellant/ applicant had

already filed affidavit along with original application and stay application (Annexure A-3) while filing original application under Section 34 of the Arbitration Act, as such, it has complied with the provisions of sub-section (5) of Section 34 of the Arbitration Act, therefore, the impugned order dated 30-7-2021 passed by the learned 6th Additional District Judge, Durg deserves to be set aside.

9. Accordingly, the appeal is allowed. The impugned order dated 30-7-2021 passed by the 6th Additional District Judge, Durg, in Civil MJC No. 19/2017 (Steel Authority of India Limited Vs. Vandana Global Ltd.) is hereby set aside/quashed. The matter is remitted back to the 6th Additional District Judge, Durg, with a direction to restore the aforesaid case to its original number and decide the same in accordance with law.
10. Pending interlocutory application(s), if any, stand(s) disposed of.

Sd/-

(Naresh Kumar Chandravanshi)
Judge