Case Citation: (2026) ibclaw.in 6187 HC

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 12th OF OCTOBER, 2026

CIVIL REVISION No. 1178 of 2026

CNR No.: MPHC020401162026

YOGESH

Versus

PORWAL FEB TAX THROUGH OWNER / AUTHORISED REPRESENTATIVE AND OTHERS

Appearance:

Shri Pavan Kumar Verma - Advocate for appellant through VC.

ORDER

1. The instant Civil Revision petition is preferred u/S. 115 of the CPC by the petitioner impugning the order dated 18.9.2026 passed by II District Judge, Indore in Arbitration Execution No. 1069/2023, whereby the application filed by the petitioner u/S. 47 read with Sec. 151 of CPC for dismissal of the execution petition was rejected.

2. Brief facts of the case are that the respondent No. 1 M/s. Porwal Feb Techs filed an arbitration case before the Arbitration Board of Shrimant Maharaja Tukojirao Cloth Market Merchant Association. An arbitration award has been passed in favour of respondent No. 1 on 16.6.2023 for recovery of amount against M/s. Mangal Creation, through Proprietor Yogesh S/o Basant Pawar. An execution has been preferred by the respondent No. 1, wherein attachment order was issued and from

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the attachment order the petitioner came to know that an arbitration case had been filed by respondent No. 1 against M/s. Mangal Creation showing the petitioner as proprietor of that firm, whereas the petitioner is not the proprietor of any such firm and not indulged in any business in the name and style of M/s. Mangal Creation and therefore the petitioner filed an application u/S. 47 read with 151 of CPC along with the copies of the Shop Establishment Registration Certificate and other documents of M/s. Mangal Creation to demonstrate that he is not the proprietor of M/s. Mangal Creation and a wrong arbitration award has been passed against him, which is not executable at all. He further submits that he has not purchased any material from respondent No. 1 M/s Porwal Feb Techs and no amount is due against him.

3. The application has been opposed by the respondent No. 1 and the executing Court dismissed the application on the ground that the petitioner was under obligation to appear before the Arbitration Board and raise the objection that he is not the proprietor of M/s. Mangal Creation. The Executing Court by impugned order dated 18.9.2026 dismissed the application and issued the attachment warrant against the petitioner. Hence, this civil revision petition has been filed by the petitioner.

4. The counsel for the petitioner submits that the petitioner has raised the objection in the execution regarding the executability of an arbitral award against the petitioner, which was passed on a wrong

premise that the petitioner is the proprietor of M/s. Mangal Creation, whereas the petitioner is not the proprietor of M/s. Mangal Creation and therefore the Executing Court has committed an error in dismissing the application. The counsel relied upon the judgment delivered by the Supreme Court in the matter of **Electrosteel Steel Limited Vs. Ispat Carrier Pvt. Ltd Civil Appeal No. 2896/2024 (2025 INSC 525),** whereby the Supreme Court has considered the issue of filing the objection in an arbitration execution and held that if the award passed by the Arbitration Board suffers from patent or inherent lack of jurisdiction, objection to award can be taken at the stage of execution without challenging the award u/S. 34 of the Act 1996. The Supreme Court has further held that a plea of nullity qua an arbitral award can be raised in a proceeding u/s. 47 of the CPC, but such a challenge will lie in a narrow compass.

5. After relying the judgment delivered by the Supreme Court in the matter of **Electrosteel** (supra), the counsel for petitioner prays for setting aside the impugned order as well as the arbitration award.

6. The arguments advanced by the counsel for petitioner are considered.

7. From perusal of the documents available on the record, it appears that an arbitration claim was filed by the respondent No. 1 before the institutional Arbitration Tribunal of M.P Cloth Market Indore, wherein the petitioner has been shown as proprietor of M/S. Mangal

Creation. An award has been passed in favour of the respondent No. 1 and the same was put for execution by the respondent No. 1. The petitioner filed the objection on the ground that he is not the proprietor of M/s. Mangal Creation and, therefore, the award is not executable against him. He filed the documents of registration of shop establishment of M/s. Mangal Creation and other documents to prove the allegation that he is not the proprietor of that firm. However, the same was dismissed by the Executing Court on the ground that such objection was not filed by the petitioner before Arbitration Tribunal and once the award has been passed, the execution proceedings cannot be rejected on this ground and the objections raised by the petitioner have been dismissed by impugned order dated 18.9.2026.

8. Learned counsel for the petitioner submits that the objections u/s. 47 of the CPC have been filed considering the law laid down by the supreme court in the matter of **ElectroSteel** (supra), which permitted to file the objection u/S. 47 of the CPC, if an award is nullity or the arbitration tribunal had no jurisdiction. The arguments advanced by learned counsel for petitioner are considered. Objection to the execution of an award u/S. 47 has been preferred by the petitioner in execution proceedings itself. The objections have not been preferred in respect of the patent or lack of inherent jurisdiction of the Arbitration Tribunal and the objections in respect of proprietorship of the judgment debtor firm have been raised. The petitioner ought to have filed the objections u/S.

34 of the Act 1996 for setting aside the arbitral award. The petitioner has also raised the issue that no notice of arbitral proceeding was ever served on the petitioner and the notice was published in a newspaper, which is not having adequate circulation in the city, but this objection could have also been raised by the petitioner in the application u/S. 34 of the Act 1996. The position of law is very clear that except the objection of nullity, all other objections are required to be raised under petition u/s. 34 of the 1996 Act.

9. At this stage the counsel for petitioner submits that the limitation for filing the application under Section 34 of the Act 1996 has already been expired and, therefore, the petitioner will not be able to file the objections u/S. 34 of the Arbitration Act. He submits that the petitioner has filed the objection u/s. 47 of the CPC under the belief that the same is permissible in law and the petitioner was prosecuting the said objections bona-fidely.

10. The issue involved in this case is that the arbitration award passed in favour of respondent No. 1 is executable against the petitioner or not. As per the petitioner, the petitioner is not the proprietor of M/s. Mangal Creation and therefore, no arbitration award could be passed against the petitioner and there was no transaction between the petitioner and respondent No. 1. The petitioner has also raised an objection that no notice of arbitration proceeding was ever served upon the petitioner and it was published in a newspaper having no circulation at all in the city of

Indore. An ex-parte arbitration award has been obtained by the respondent No. 1 and thereafter the award put to the execution.

11. The petitioner came to know about the arbitration award, when the attachment warrant was tried to be executed upon the petitioner. The petitioner ought to have raised the objection u/S. 34 of the 1996 Act and the limitation for filing the objection/application was 90 days from the date of receipt of knowledge of the arbitration award for the first time, but instead of filing the objection u/S. 34 of 1996 Act, the petitioner opted to file objections u/s. 47 read with Sec.151 of the CPC before the executing Court, which have been dismissed by the executing Court on the ground of maintainability.

12. The petitioner may file the objection now u/S. 34 of 1996 Act, but the issue is that the limitation for filing the objections have already been expired. The window for filing the objections to the arbitration award is very narrow and the period of limitation for filing the objection is also not condonable for more than 30 days. Provisions of Section 5 of the Limitation Act are not applicable to the proceedings of Section 34 of the Arbitration Act, but at the same time if the party has raised the objection to arbitration award bona-fidely before a court, which is not having jurisdiction to entertain the objections, the time spent in prosecuting those objections are liable to be excluded u/S. 14 of the Limitation Act. Section 14 of the Limitation Act will be applicable in the case in hand.

13. The Supreme Court has also held that the period spent in bona fide proceedings may be condoned u/S. 14 of the Limitation Act for the purpose of filing the objections u/S. 34 of the Arbitration Act. The Supreme Court in **Consolidated Engineering Enterprises Vs. Irrigation Department (2008) 7 SCC 169**, held as under:-

> *"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds 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 Act of 1996, more particularly where no provision is to be found in the Act of 1996, 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 Act of 1996 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 Act of 1996, 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 Act of 1996 for setting aside an arbitral award."

14. As per the Supreme Court judgment delivered in the matter o f **Consolidated Engineering** (supra), the provisions of Sec. 14 of the Limitation Act are applicable as the same does not provide for a fresh period of limitation, but only provides for exclusion of a certain period. Supreme Court reiterated the law laid down in the matter of **Consolidated Engineering** (supra) in **Kirpalsingh Vs. Govt. of India, (2024) 19 SCC 401,** wherein the Supreme Court has held that the provisions of Sec. 14 of the Limitation Act are applicable in a case of Section 34 of the Act 1996 and if the challenge to the arbitral award has been filed by way of objection in a court having no jurisdiction, the period of time spent bona-fidely is liable to be condoned.

15. The Supreme Court has further held that as the substantive remedy is u/S. 34 and/or Sec. 37 of the Arbitration Act are by their very nature limited in their scope due to statutory prescription, it is necessary to interpret the limitation provisions liberally, or else, even that limited window to challenge an arbitral award will be lost. The time spent from filing Section 47 application by the petitioner till today should be excluded u/S. 14 of the Limitation Act, while calculating the period for filing objection under the Arbitration and Conciliation Act u/S. 34 of Act of 1996 and thus this civil revision petition is disposed of a with a liberty granted to the petitioner to file objections u/S. 34 of the Act of 1996, before the competent court and if such objections are filed by the petitioner, the court will exclude the period from filing of Section 47 CPC application till the decision of this civil revision i.e.12.10.2026 for the purpose of calculating the limitation for filing the section 34 application.

16. With the aforesaid, present civil revision petition is **disposed of.**

(VINAY SARAF)
JUDGE

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