2026:AHC:214253

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 12972 of 2026

Dhk Eduserve Limited

…..Petitioner(s)

Versus

Ganga Prasad Memorial Trust and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Tejas Singh
Counsel for Respondent(s)	:	Sunil Kumar Singh

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Ajay Kumar Singh, learned Senior Advocate assisted by Mr. Tejas Singh, learned counsel for the petitioner and Mr. Devansh Mishra, learned counsel for the respondents.

2. With the consent of the parties, the petition is being decided at the admission stage, without exchange of pleadings.

3. The present petition has been filed challenging the rejection order dated 27.08.2026 passed by the Presiding Officer, Commercial Court, Varanasi, in Arbitration Case No. 05 of 2026 on the application of the petitioner (51-Ga) for setting aside the entire proceedings of arbitration.

4. The brief facts are that the petitioner is a public limited company, provides academic consultancy and permits associate schools to use the name and logo “Sunbeam School”. Pursuant to an MoU and agreement, the respondents ran a school at Babatpur, Varanasi. The petitioner terminated the arrangement on 22.05.2023. Disputes were referred to a

Sole Arbitrator (Arbitration Case No. 110 of 2023). By award dated 07.12.2025, the Sole Arbitrator partly allowed the claim and awarded Rs. 75,80,304/- with 8% interest p.a. from 01.03.2024 until actual payment and directed to pay within 60 days. The respondents were also restrained from running the school under the name “Sunbeam School”. The respondent’s counter-claim (valued at approximately Rs. 15,00,000/-) was dismissed.

5. Further, on 25.02.2026 the respondent filed a petition under Section 34 of the arbitration act before the Commercial Court, Varanasi (Arbitration Misc. Case No. 15 of 2026), together with an application under Section 36. The respondents sought to amend the Section 34 petition by application (41-Ka), which was allowed on 20.05.2026.

6. On 16.03.2026 the petitioner filed Arbitration Execution Application No. 02 of 2026. The Commercial Court also stayed the execution proceedings. Both orders were stayed by this Court in Matters under Article 227 Nos. 7838 and 7796 of 2026 on 29.05.2026.

7. The petitioner then moved application (51-Ga), contending that the Section 34 petition was not maintainable on the ground that a single petition had been filed against an award in two parts, one allowing the claim other one dismissing the counter-claim, without taking any separate grounds against the dismissal of the counter-claim as well as without separate valuation and court fee paid.

8. By order dated 31.07.2026 the Commercial Court rejected the petitioner’s application, by registering the petition of the respondent, and refused to proceed with the execution case. The said order dated 31.07.2026 was set aside in Matters under Article 227 No. 10752 of 2026 on 10.08.2026, and the matter was remanded for fresh consideration of application (51-Ga) within two weeks.

9. However, by the impugned order dated 27.08.2026, the Commercial Court again rejected the petitioner’s application (51-Ga), further directed the respondents to take necessary action regarding valuation and court fees in the light of the Supreme Court’s decision in

Basudev and Others vs. Sanjay Kumar and Others 2026 INSC 831, and fixed 05.09.2026 for further orders. Hence, the present petition.

10. The Senior counsel for the petitioner submits that under Section 34 petition filed by the respondents on 25.02.2026 challenges only that part of the award dated 07.12.2025 by which the petitioner's claim of Rs. 75,80,304/- along with interest was allowed. But no ground has been raised at any stage, including in amendment application (41-Ka) (stayed by this Court), against the rejection of the respondent's counter-claim of about Rs. 15,00,000/-.

11. Relying on paragraph 29 of ***Basudev*** *(*supra), and ***Rajni Rani v. Khairati Lal*****, (2015) 2 SCC 682**, he submits that a challenge to an award disposing of both a claim and a counter-claim must satisfy a cumulative two-tier test, namely, separate grounds against the dismissal of the counter-claim and separate valuation with court fee, and that the impugned order dated 27.08.2026 addresses only valuation and court fee, while the first limb is admittedly unmet.

12. He further submits that the limitation under Section 34(3) of the Act, 1996 for challenging the counter-claim already expired on or about 06.04.2026. Any later attempt to introduce such challenge would raise a new cause of action after the petitioner's right had accrued, which is impermissible in view of ***Mithai Lal v. Ashok Kumar Gupta*****, MANU/UP/3890/2019**, ***Radhika Devi v. Bajrangi Singh*****, AIR 1996 SC 2358**, and ***Mahajan Sahkari Awas Samiti Ltd. v. Resham Singh*****, 2016 (1) AWC 110**.

13. He also submits that the Commercial Court could not, *suo moto*, direct the respondents to cure a time-barred defect while rejecting petitioner's application (51-Ga), consequently, the counter-claim of the respondents remains unchallenged and is barred by *res judicata*. Furthermore, Order VII Rule 11(b) CPC is inapplicable as the present case concerns the complete absence of a challenge to the counter-claim rather than a deficiency in court fee.

14. The learned counsel of the respondent submits that no fault can be found in the impugned order rejecting the petitioner's application, since the amendment to the petition by Section 34 is permissible in view of the law laid down in the case of ***Basudev*** *(*supra). The counsel for the respondent, therefore, supports the impugned order.

15. The submissions advanced by the learned counsel for the petitioner have been considered, and the material available on record has been carefully perused.

16. The award dated 07.12.2025 comprises two components allowing the petitioner's claim and dismissing the respondent's the counter-claim. Section 34 petition initially challenged only the first component. It is undisputed that no ground against the dismissal of the counter-claim were included in the petition, or added via any valid. As Amendment application (41-Ka) stayed by this Court. In addition, neither separate valuation nor court fee was submitted in respect of the counter-claim. The statutory period under Section 34(3), including the condonable period of thirty days, expired around April 2026.

17. The impugned order does not address the plea of limitation. It disposes of application (51-Ga) by directing the respondents to take steps on valuation and court fee, further no separate grounds against the dismissal of the counter-claim exist which is precisely the cure that the petitioner contends is no longer available.

18. The Court finds unsustainable as per Apex Court judgment in the case of ***Basudev*** (supra) test requires both that the separate grounds be shown against the counter-claim part and the challenge be valued separately with court fees paid accordingly. By its own terms, as per Supreme Court judgment in ***Basudev*** (supra) treats these as requirements of a composite challenge. <u>Compliance with one limb cannot cure the absence of the other.</u>

19. The impugned order considers only with valuation and court fee, but failed to consider that no separate challenge has been made to the counter-claim. Thus, the order is contrary to the law laid down by the

Supreme Court in the case of ***Basudev*** (supra). That is an error apparent on the face of the record.

20. This effectively defeats the legal right that had already occrued to the petitioner by lapse of time. Section 34(3) mandates an outer limit of three months plus 30 days, which a Court has no power to extend thereafter, however, this statutory constraint was completely ignored in the impugned order. Furthermore, despite the absence of any pleading from the respondent, the impugned order impermissibly, permitted necessary actions regarding valuations and court fee while deciding the petitioner's application (51Ga).

21. Hon'ble the Supreme Court in ***Rajni Rani*** **(**supra) held that the dismissal of a counter-claim on merits is a conclusive determination of the substantive rights of the party who set it up. It assumes the character of a decree and must be challenged in a properly instituted proceeding on payment of the requisite court fee on its valuation. The Supreme Court in ***Basudev*** (supra) explained and reaffirmed this principle, and held that a composite challenge must show separate grounds against the counter-claim and be valued as two separate challenges.

22. Further, the hon'ble Supreme Court in ***Radhika Devi*** (supra), following ***Laxmidas Dayabhai Kabarwala v. Nanabhai Chunilal Kabarwala,*** **AIR 1964 SC 11** held that an amendment that would deprive the opposite party of a right already accrued by bar of limitation cannot be allowed. Also in ***Mahajan Sahkari Awas Samiti Ltd*** (supra) it was reiterated that where it is clear from the pleadings and record that the relief sought to be introduced by amendment is barred by limitation, the amendment is to be declined as a matter of course.

23. The apex court in ***Union of India v. Popular Construction Co.,*** **(2001) 8 SCC 470** has held that the period prescribed in Section 34(3) is a special statutory limit. Section 5 of the Limitation Act does not apply, and the Court cannot condone delay beyond the thirty days permitted by the proviso.

24. As per the above discussions and applying the cited principles, the Court is of the view that the impugned order disregards the binding law laid down in ***Basudev*** (supra), ignores the bar of limitation under Section 34(3), and through a *suo moto* direction confers on the respondents an opportunity that the statute does not allow.

25. The impugned order dated 27.08.2026 passed by the Presiding Officer, Commercial Court, Varanasi, in Arbitration Case No. 05 of 2026 (earlier Arbitration Misc. Case No. 15 of 2026) is **set aside**.

26. In view of the above, the petition stands **allowed**.

27. The Commercial Court is directed to reconsider the petitioner's application (51-Ga) and shall endeavour to decide the same by passing a reasoned and speaking order within a month from the date of production of certified copy of this order, after giving due opportunity of personal hearing to the parties concerned.

(Piyush Agrawal,J.)

October 13, 2026
Abhishek Gupta/A.N. Mishra