



1

AA-157-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 16th OF JUNE, 2026ARBITRATION APPEAL No. 157 of 2025*ASHISH AND OTHERS**Versus**NATIONAL HIGHWAY AUTHORITY OF INDIA*

.....
Appearance:

Shri Yash Nitin Nasery - Advocate for the appellants.

Shri Mohan Sausarkar - Advocate for the respondent.

.....

ORDER

The present appeal has been filed by the appellants being aggrieved by the order dated 26.6.2025 passed by XVIV District Judge, Jabalpur, whereby an application submitted by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (The Act of 1996 for the sake of brevity) filed along with Section 14 of the Limitation Act has been dismissed.

2. It is submitted by the Learned Counsel for the appellants that due to lack of knowledge of law, the appellants preferred a Writ Petition No.11569/2018 against the award dated 12.4.2017 passed under section 3(g) (5) of the National Highway Act by the Arbitrator/Commissioner, Jabalpur Division. The said writ petition was dismissed as withdrawn vide order dated 4.5.2023 with liberty to pursue such remedies as available in law. Thereafter, the appellant had preferred an application under section 34



for setting aside an award passed by the Commissioner, Jabalpur Division before the Civil Court, Jabalpur. However, as the statutory period to file an application under Section 34 as provided under sub-section (3) of section 34 of the Act of 1996 is three months from the date of award, the appellant had filed an application under Section 14 of the Limitation Act to condone the delay in filing the said application. The Learned Court below finding that the application has been submitted beyond the statutory period and the award was passed on 12.4.2017, thereafter the writ petition challenging the said award was filed on 16.5.2018 i.e. after a year, accordingly the application under section 14 of the Limitation Act to condone the delay which is much beyond the statutory period, has been dismissed.

3. The Learned Counsel for the appellants submits that the period consumed in prosecuting the impugned award before the wrong forum deserves to be condoned by applying the principle of section 14 of the Limitation Act. The counsel for the appellants has relied upon the Judgment passed by Hon'ble Apex Court in the case of *M/s R.K. Transport Company Vs. M/s Bharat Aluminum Company Limited (BALCO)* in civil appeal No.4763 of 2025 arising out of SLP(C) No.26489 of 2024 to bolster his submission that the Hon'ble Apex Court has also held that such period consumed before the wrong forum deserves to be condoned.

4. Per contra, Learned Counsel for the respondent has vehemently opposed the prayer on the ground that the statutory period provided under the Arbitration and Conciliation Act is mandatory in nature and cannot be condoned, as per the dictum of the Hon'ble Apex Court in the case of *Union*



of India Vs. Popular Construction Co., 2001 (8) SCC 470. It is further submitted that the statutory period for setting aside an award cannot be relaxed by applying the principle of Limitation Act. It is further submitted that Proviso to Sub-section (3) of section 34 provides that in the grace period of 30 days after expiry of the statutory period, the application for condonation of delay can be entertained and "not thereafter". It is submitted that "not thereafter" phrase has been interpreted by Hon'ble Apex Court in the case of *Union of India Vs. Popular Construction Co., 2001 (8) SCC 470* and therefore it is submitted that the civil court has rightly dismissed the application of the appellants.

5. Heard learned counsel for the parties and perused the record.

6. The only legal question which has been raised by the appellants in the present appeal is that whether the period exhausted by the appellants before the wrong forum can be condoned by applying the principle of section 14 of the Limitation Act for entertaining an application submitted under section 34 of the Act of 1996. Section 34 (3) provides as under:-

"34(3). An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

From perusal of the provision of law, it is abundantly clear that for filing an application under section 34, the statutory period as provided is of three months. The proviso of subsection also grants liberty to person to take



the recourse of filing of application under Limitation Act to condone the further delay of 30 days from the expiry of statutory period. However, the phrase "not thereafter" in the proviso has been used categorically to make it clear that no further period of limitation shall be condoned.

7. It is further submitted by learned counsel for the appellants that as the appellant on a wrong advice has pursued a wrong remedy of the writ petition before this Court, therefore the period consumed in prosecuting the writ petition deserves to be condoned by applying the principle of section 14 of the Limitation Act. It is found from the record that the award was passed on 12.4.2017, and the petitioner had submitted the writ petition challenging the award on 16.5.2018, that is after more than a year. The said writ petition was dismissed as withdrawn with liberty to pursue the remedy as available in the law vide order dated 4.5.2023. Thereafter, the application for setting aside the award has been filed on 10.6.2023. It is submitted by the Counsel for the appellants that the said application was filed immediately on the opening day of the court after summer vacation was over. However, the appellant could not justify delay of more than a year to submit the writ petition for setting aside the award. Even assuming that the appellant on a wrong advice had preferred a writ petition but that was also required to be submitted within reasonable time, that too considering the statutory period of Limitation as provided under Act of 1996. Section 14 of the Limitation Act provides as under:-

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of



appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of subsection (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."

For the purpose of entertaining an application beyond statutory period applying the provision of section 14, the principle which is to be followed is that the person prosecuting or challenging the order or award, decree under the wrong advice, has chosen a wrong forum with due diligence and in good faith. The said period consumed before the wrong forum from the date of award, decree, or order should be in continuity and despite due diligence, the appellant could not prefer the appropriate proceedings before the appropriate forum. However, when the facts of the present case has been tested, it is found that the award was passed on 12.4.2017 and the writ petition was filed on 16.5.2018 i.e. after a period of one year. The appellant in the application could not justify any reason for not filing writ petition within the statutory period of Limitation as provided under the Act of 1996. The Hon'ble Apex Court in the case of Union of India Vs. Popular Construction Co. (supra) has held as under:-

"12. As far as the language of Section 34 of the 1996 Act is concerned,



the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

8. Considering the totality of the facts of the case and the principle of law enunciated by the Hon'ble Apex Court, it is clear that the period the appellant has exhausted before the writ court could have been condoned, if the writ petition was filed within the statutory period of limitation provided under Section 34(3) of the Act of 1996 by extending the grace period of 30 days, but in the present case in hand, as the writ petition was preferred after a year from date of award, this Court is of the considered opinion that the period consumed by the appellant before a wrong forum cannot be condoned by applying the principle of section 14 of the Limitation Act. Therefore, this Court has not found any infirmity or irregularity much less illegality in the impugned order and accordingly, the appeal is hereby dismissed.

(DEEPAK KHOT)
JUDGE