2025 INSC 56

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 336 OF 2025
ARISING OUT OF SLP (C) NO. 9996 OF 2024

MY PREFERRED TRANSFORMATION &
HOSPITALITY PVT. LTD. & ANR. …APPELLANT(S)

VERSUS

M/S FARIDABAD IMPLEMENTS PVT. LTD. …RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

Table of Contents

1. *Introduction*: Leave granted. Facts, to the extent that they are relevant for determining the issue of limitation for filing an application challenging an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996[1] are as follows. The appellants received the arbitral award on 14.02.2022. The 3-month limitation period for filing the application under Section 34(3) of the ACA expired on 29.05.2022, on which date the court was functioning, but closed after five days for vacation commencing from 04.06.2022 to 03.07.2022. The application under Section 34 was filed immediately on the court's reopening, i.e. 04.07.2022. The High Court single judge under Section 34 and the High Court division bench under Section 37 dismissed the petition as barred by limitation. Under these circumstances, the issue before us is whether the benefit of the additional 30 days under the proviso to Section 34(3), which expired during the

[1] Hereinafter "ACA".

vacation, can be given when the petition is filed immediately after reopening in exercise of power under Section 4 of the Limitation Act, 1963[2].

1.1 After considering Sections 34(3) and 43(1) of the ACA, Sections 4 and 29(2) of the Limitation Act and Section 10 of the General Clauses Act, 1897[3], as well as precedents of this Court, we have answered the question in the negative and have dismissed the present appeal. While we have expressed certain concerns regarding the curtailment of a precious remedy to challenge an arbitral award due to a stringent construction of Section 4 of the Limitation Act vis-à-vis Section 34(3), we have held that in light of the current position of law, the Section 34 application preferred by the appellant is barred by limitation based on the following conclusions:

(i) There is no wholesale exclusion of Sections 4 to 24 of the Limitation Act when calculating the limitation period under Section 34(3) of the ACA.

(ii) Section 4 of the Limitation Act applies to Section 34(3) of the ACA only to the extent when the 3-month period expires on a court holiday. It does not aid the applicant

[2] Hereinafter "Limitation Act".
[3] Hereinafter "GCA".

when the 30-day condonable period expires on a court holiday.

(iii) In view of the applicability of Section 4 of the Limitation Act to Section 34 proceedings, Section 10 of the GCA does not apply and will not benefit the applicant when the 30-day condonable period expires on a court holiday.

2. *Facts*: The detailed facts leading up to the present appeal are as follows. The appellants entered into lease agreements with the respondent, who is the owner of the property. Pursuant to certain disputes, the respondent invoked arbitration and an arbitral award dated 04.02.2022 was made in its favour. The appellants received a scanned copy of the award by email on 04.02.2022 itself, and later received a signed hard copy of the award on 14.02.2022, from which day limitation must be calculated. The 3-month limitation period under Section 34(3), after considering the extension of limitation by operation of this Court's order dated 10.01.2022 on account of the COVID-19 pandemic,[4] expired on 29.05.2022. The further 30-day condonable period expired on 28.06.2022. This fell during the High Court's summer vacation between 04.06.2022 and 03.07.2022. The appellants filed the

[4] *In Re: Cognizance of Extension of Limitation*, Suo Motu Writ Petition (C) No 3 of 2020.

Section 34 petition along with an application for condonation of delay on the date when the court reopened, i.e., 04.07.2022. It would also be relevant to note the notification dated 20.05.2022 of the Registrar General of the Delhi High Court as per which 04.07.2022 would be considered the date of reopening for calculating limitation. In the meanwhile, the respondent filed for execution of the award.

3. *Decision of the High Court under Section 34 and Section 37 of the ACA*: The Section 34 application was dismissed by the single judge by order dated 07.02.2023 as being barred by limitation. The appellants preferred an appeal under Section 37, which was dismissed by the division bench by order dated 03.04.2024 that is impugned before us. The reasoning of the High Court proceeds as follows:

3.1 The limitation period commenced from 14.02.2022, when the appellants received a signed copy of the award. Under Section 34(3), an application to set aside the award must be made within a period of 3 months from the receipt of the award, which comes up to 14.05.2022. However, the High Court referred to this Court's order dated 10.01.2022[5], which extended the period of limitation

[5] ibid.

in cases where the limitation expired between 15.03.2020 and 28.02.2022. The extended period of limitation was 90 days from 01.03.2022, which expired on 29.05.2022. The condonable period of 30 days expired on 28.06.2022, which fell during the summer vacation. The application was filed on the first date of reopening of the court, i.e., on 04.07.2022.

3.2 The High Court referred to this Court's decision in *Assam Urban Water Supply & Sewerage Board* v. *Subhash Projects & Marketing Limited*[6], where it was held that Section 4 of the Limitation Act applies only to cases where the "prescribed period" of limitation expires on a date when the court is closed. However, it does not apply when the 30-day condonable period expires on a court holiday.

3.3 It further held that the notification dated 20.05.2022, which permitted filing between 27.06.2022 to 02.07.2022 would not impact the applicability of Section 10 of the GCA, as 04.07.2022 would be considered as the date of court reopening for the purpose of limitation.

3.4 Finally, the High Court referred to this Court's decision in *Bhimashankar Sahakari Sakkare Karkhane Niyamita* v.

[6] (2012) 2 SCC 624.

Walchandnagar Industries Limited[7], which held that Section 10 of the GCA is inapplicable to the condonable period stipulated in the proviso to Section 34(3) of the ACA. While noting the submission of the learned counsel on an inconsistency in *Bhimashankar* (supra) regarding the applicability of the Limitation Act to Section 34(3), it held that nevertheless, the decision is binding and unambiguous. Therefore, the High Court held that it does not have the power to condone the delay in the present case and dismissed the Section 37 appeal.

4. This Court, by its order dated 10.05.2024 issued notice on the condition that the appellants must deposit Rs. 2 crores with the Executing Court and also stayed the execution proceedings. The deposit condition has been complied with by the appellants.

5. *Submissions*: We have heard Mr. Neeraj Kishan Kaul, learned senior counsel for the appellants, and Mr. Syed Ahmed Naqvi, learned counsel for the respondent. Mr. Kaul's submissions proceed as follows:

5.1 *First*, referring to *Union of India* v. *Popular Construction*[8] and its reliance in *Assam Urban* (supra), he submitted that the Limitation Act, including Section 4, does not apply to Section 34(3).

[7] (2023) 8 SCC 453.
[8] (2001) 8 SCC 470.

Hence, he submitted that there was no occasion for the Court in *Assam Urban* (supra) to interpret Section 4 of the Limitation Act and delve into the difference between the "prescribed period" and the condonable period under Section 34(3).

5.2 *Second*, since the Limitation Act is excluded, Section 10 of the GCA applies to Section 34(3), including when the condonable period expires on a holiday. He relied on *Sridevi Datla* v. *Union of India*[9], where the benefit of Section 10 of the GCA was extended to the party when the condonable period under Section 16 of the NGT Act expired on a holiday and the appeal was filed on the next working day. Additionally, he submitted that the term "certain day" in Section 10 of the GCA gives it wider import than Section 4 of the Limitation Act, and extends its applicability to when the condonable period expires on a court holiday.

5.3 *Third*, Mr. Kaul expressed doubt regarding the correctness of *Bhimashankar* (supra), where Section 10 of the GCA was held to be inapplicable to Section 34(3) as the Limitation Act applies. He sought to highlight certain contradictions in the judgment by referring to paras 54, 55 and 57. He submitted that while paras 54 and 55 hold the Limitation Act to be inapplicable to Section 34(3),

[9] (2021) 5 SCC 321.

the Court rejected the benefit of Section 10 of the GCA in para 57 on the basis that the Limitation Act applies. In this manner, the Court distinguished *Sridevi Datla* (supra) and did not sufficiently deal with the reasoning there. Instead, the Court relied on *Assam Urban* (supra), which did not consider Section 10 of the GCA, and *Sagufa Ahmed*[10], which did not interpret Section 10 of the GCA sufficiently. He also submitted that the observations of the Court in *Bhimashankar* (supra) doubting *Sridevi Datla* (supra) on the ground that it did not deal with *Assam Urban* (supra) are untenable as Section 10 of the GCA was not under consideration in *Assam Urban* (supra).

5.4 The written submissions filed by the appellants adopt a slightly different line of argumentation. It is submitted that Section 4 of the Limitation Act does not apply *to the proviso* of Section 34(3), since that is not the "prescribed period". Hence, relying on *Sridevi Datla* (supra) and considering that Section 10 of the GCA is a beneficial legislation,[11] it is submitted that Section 10 of the GCA must apply to the proviso. Its inapplicability would be oppressive and would render the 30-day condonable period under

[10] *Sagufa Ahmed* v. *Upper Assam Polywood Products Pvt Ltd*, (2021) 2 SCC 317.
[11] Relied on *H.H. Raja Harinder Singh v. S. Karnail Singh*, 1956 SCC OnLine SC 111; *Manohar Joshi v. Nitin Bhaurao Patil*, (1996) 1 SCC 169; and *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department*, (2008) 7 SCC 169.

Section 34(3) otiose when it expires on a court holiday, leaving the party remediless.

6. Mr. Naqvi, learned counsel for the respondent, *first* referred to this Court's recent decision in *State of West Bengal* v. *Rajpath Contractors and Engineers Ltd*[12] to submit that in identical facts, this Court followed *Assam Urban* (supra) and held that Section 4 of the Limitation Act only applies to the 3-month limitation period and not to the 30-day condonable period under Section 34(3). These judgments, along with *Bhimashankar* (supra), determine the issue.

6.1 *Second*, Mr. Naqvi submitted that the entirety of Sections 4 to 24 of the Limitation Act are not excluded from applying to Section 34 proceedings. He took us through certain portions of *Consolidated Engineering Enterprises* v. *Principal Secretary, Irrigation Department*[13], which is a 3-judge bench decision, to submit that *Popular Construction* (supra) only deals with the exclusion of Section 5 of the Limitation Act. In this case, Section 14 of the Limitation Act was held to be applicable. Similarly, he submitted that other decisions also apply Section 12 of the

[12] (2024) 7 SCC 257.
[13] (2008) 7 SCC 169.

Limitation Act to Section 34(3). In the same vein, Section 4 of the Limitation Act also applies.

6.2 *Third*, regarding the manner in which Section 4 of the Limitation Act applies to Section 34(3), he submitted that *Sagufa Ahmed* (supra) clearly distinguishes the prescribed period and condonable period. The wording of Section 4 only makes it applicable to the 3-month period and not the 30-day condonable period, which cannot be extended any further. He also submitted that *Sridevi Datla* (supra) did not notice the distinction drawn in *Sagufa Ahmed* (supra) when applying Section 10 of the GCA.

6.3 *Fourth*, he submitted that Section 10 of the GCA does not apply to Section 34(3) as the Limitation Act applies. He also responded to Mr. Kaul's reliance on the words "certain day" in Section 10 of the GCA by submitting that they apply when a statute fixes a particular day or date for performing some act, which is not the case here. Therefore, the Section 34 application, which was filed on the 126th day, was barred by limitation and the High Court could not have condoned the delay through reference to Section 10 of the GCA.

6.4 In the written submissions, the respondent has further submitted that once Section 4 of the Limitation Act applies to

Section 34(3), the provision cannot be further split into individual sections, sub-sections, and provisos to make Section 10 of the GCA applicable. Moreover, Section 10 of the GCA cannot be applied to the condonable period as that would amount to reading the expression "prescribed period" in Section 10 as including the condonable 30-day period, which is contrary to various judgments of this Court. Lastly, that *Sridevi Datla* (supra) was decided in the context of Section 16 of the NGT Act, while *Assam Urban* (supra), *Bhimashankar* (supra), and *Rajpath Contractors* (supra) are specifically in the context of Section 34(3).

7. *Issues:* Before proceeding with our analysis, it is necessary to frame issues to systematically address the submissions of the learned counsels and the questions of law arising in this case regarding the applicability of Section 4 of the Limitation Act and Section 10 of the GCA to the condonable period under Section 34(3):

i. Do the provisions of the Limitation Act apply to Section 34 proceedings, and to what extent?

ii. Does Section 4 of the Limitation Act apply to Section 34(3) as per an analysis of the statutory scheme as well as precedents of this Court on the issue? If Section 4 applies,

does it apply only to the 3-month limitation period or also the 30-day condonable period?

iii. In light of the answer in (ii), will Section 10 of the GCA apply to Section 34(3), and if so, in what manner?

The answers to these issues will determine whether the Section 34 application in the present case was filed within the condonable period of 30 days.

8. *Applicability of the Limitation Act to ACA:* Section 29(2) of the Limitation Act stipulates that where any special or local law prescribes a period of limitation that is different from the Schedule, Section 3 of the Limitation Act[14] shall apply as if such period is the one prescribed in the Schedule. Further, Section 4 to 24 shall apply insofar as, and to the extent to which, *they are not expressly excluded by such special or local law*. Therefore, Section 29(2)

[14] Section 3 of the Limitation Act reads:

"***3. Bar of limitation.—****(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

imports the provisions of the Limitation Act to special and local laws that prescribe a different period of limitation, unless there is an express exclusion contained in such law. Section 29(2) reads:

> "***29. Savings.—***
> *(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."*

9. The effect of Section 29(2) has been summarised by this Court in *Mukri Gopalan* v. *Cheppilat Puthanpurayil*[15] as follows:

> "*8. …A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.*
>
> *(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.*
>
> *(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.*
>
> *9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:*
>
> *(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.*
>
> *(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all*

[15] *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, (1995) 5 SCC 5, as affirmed in *Bhakra Beas Management Board* v. *Excise & Taxation Officer*, (2020) 17 SCC 692, paras 13 and 14.

> *the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.*"

10. Section 43(1) of the ACA fortifies the applicability of the Limitation Act not only to court proceedings under the ACA but also to arbitrations. It reads:

> "***43. Limitations****.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.*"

11. This Court in *Consolidated Engineering Enterprises* (supra) considered the necessity of a provision in the nature of Section 43(1), when Section 29(2) of the Limitation Act already makes Sections 4 to 24 of the Limitation Act applicable to special statutes, including the ACA. It held that the ACA does not prescribe the period of limitation for various proceedings under the Act, and deviates from the Limitation Act in specific instances like Section 34(3) and Sections 43(2) to (4).[16] By virtue of Section 29(2), the Limitation Act applies to court proceedings under the ACA. The purpose of Section 43(1) of the ACA is to extend the applicability of the Limitation Act to arbitrations also, as these are private tribunals and not courts. Since the Limitation Act is only applicable to court proceedings, Section 43(1) is necessary to make

[16] *Consolidated Engineering* (supra), para 42.

it applicable to arbitrations in the same manner as it applies to court proceedings.[17]

12. *Applicability of the Limitation Act to Section 34(3):* Once it is clear that the Limitation Act generally applies to arbitrations and court proceedings under the ACA, it is necessary to consider its applicability to Section 34 proceedings. Section 34(3) provides the limitation period and condonable period to file a Section 34 application, and it reads:

> "***34. Application for setting aside arbitral award.—***
> *(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.*"

13. From reading the provision, it is clear that an application to set aside an arbitral award under Section 34 must be within 3 months from the receipt of the award or the date of disposal of a request under Section 33. This is the period of limitation.[18] Further, the court may exercise discretion to entertain the

[17] ibid, para 45.
[18] *State of Goa v. Western Builders*, (2006) 6 SCC 239, para 10; *Consolidated Engineering Enterprises* (supra), para 19.

application, within a further period of 30 days, if sufficient cause is shown, but not thereafter.[19]

14. As per Section 29(2) of the Limitation Act, the effect of there being a different limitation period under Section 34(3) is that: Section 3 of the Limitation Act applies to proceedings under Section 34 of the ACA as if the 3-month limitation period is the period prescribed in the Schedule to the Limitation Act. Further, Sections 4 to 24 of the Limitation Act apply to determine whether the application is within the period of limitation, "*insofar as, and to the extent to which, they are not expressly excluded.*".

15. There are two aspects necessary for our consideration at this point: *first*, the interpretation of "express exclusion"; and *second*, the extent of such exclusion.

16. The mere prescription of a period of limitation that is different from the Limitation Act, even if mandatory and compulsory, is not sufficient to displace the applicability of the Limitation Act's provisions.[20] However, an exclusion of the Limitation Act's provisions can be inferred if the nature and language of the provisions, and the scheme of the special law necessarily exclude the applicability of one or more of the provisions contained in

[19] See *State of Maharashtra v. Hindustan Construction Co. Ltd.*, (2010) 4 SCC 518, para 29.
[20] *Mangu Ram v. Municipal Corporation of Delhi*, (1976) 1 SCC 392, para 7.

Sections 4 to 24 of the Limitation Act.[21] Thus, as per settled case-law, an express reference to an exclusion is not essential and the court can examine the language of the special law and its scheme to arrive at a conclusion that certain provisions of the Limitation Act are impliedly excluded.

17. The applicability of Sections 4 to 24, and the extent of their applicability and exclusion under Section 34(3), has been considered by this Court in several cases. It is useful to categorise these cases based on the provision of the Limitation Act under consideration therein.

18. *Section 5 of the Limitation Act*[22]: In the leading judgment of *Popular Construction* (supra), this Court considered whether a court can condone delay beyond 30 days, as specified in the proviso to Section 34(3), by relying on Section 5 of the Limitation Act. It considered the expression "but not thereafter" in the proviso to Section 34(3), which it held would amount to an express

---

[21] *Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 2 SCC 133, para 17; *Popular Construction* (supra), paras 8-11; *Commissioner of Customs and Central Excise v. Hongo India Pvt Ltd*, (2009) 5 SCC 791, para 35.

[22] Section 5 of the Limitation Act reads:

> "***5. Extension of prescribed period in certain cases.—****Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*
>
> *Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.*"

exclusion within the meaning of Section 29(2) of the Limitation Act. Hence, Section 5 would not apply as it would render this phrase redundant if a further period was allowed to be condoned through reference to Section 5 of the Limitation Act.[23]

18.1 The Court further considered the scheme and object of the ACA and held that Section 34(1) provides for recourse against the arbitral award "in accordance with" sub-sections (2) and (3), which set out the grounds and the time period for challenging the arbitral award. Reading the provision as a whole, the Court held that an application beyond 3 months and 30 days would not be "in accordance with" Section 34(3), and hence the recourse under Section 34(1) cannot be availed.[24]

18.2 Further, the Court also considered the enforceability of the award under Section 36 of the ACA once the time to make an application under Section 34 expires.[25] Thus, it held that the scheme of the ACA would result in an exclusion of Section 5 of the Limitation Act, and therefore, a delay beyond 30 days cannot be condoned by recourse to Section 5.

---

[23] *Popular Construction* (supra), para 12.
[24] ibid, para 16.
[25] ibid.

19. *Section 12 of the Limitation Act*[26]: This Court in *State of Himachal Pradesh* v. *Himachal Techno Engineers*[27] held that Section 12 of the Limitation Act applies for the purpose of calculating limitation under Section 34(3), and the same is not excluded by the provisions of the ACA. It held that the day from which the 3-month limitation period is to be reckoned must be excluded as per Section 12(1).[28]

20. *Section 14 of the Limitation Act*[29]: In *State of Goa* v. *Western Builders* (supra), a division bench of this Court held that nothing in the ACA or in the language of Section 34 excludes the applicability of Section 14 of the Limitation Act. Hence, the time spent by a party who was bona fide prosecuting his remedy before a court that did not have jurisdiction must be excluded while calculating the prescribed period under Section 34(3). It held that

---

[26] The relevant portion of Section 12 of the Limitation Act reads:

> "***12. Exclusion of time in legal proceedings***.—*(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded…*"

[27] (2010) 12 SCC 210.

[28] ibid, paras 12, 19.

[29] The relevant portion of Section 14 of the Limitation Act reads:

> "***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…*"

when the special law is silent and there is no specific prohibition, it must be interpreted in a manner that advances justice. While the object of the ACA is to ensure expeditious decisions in commercial matters through arbitration, Section 43 makes the entirety of the Limitation Act applicable. The Limitation Act is excluded only to that extent of the area which is covered under the ACA, and hence Section 5 is excluded by virtue of the stipulation of the mandatory 30-day condonable period under Section 34(3).[30]

21. A three-judge bench of this Court in *Consolidated Engineering Enterprises* (supra) also held that Section 14 of the Limitation Act applies to Section 34(3). Merely because Section 5 of the Limitation Act stands excluded, does not lead to a conclusion that other provisions are also excluded.[31] Adopting a similar reasoning as *Western Builders* (supra), the Court held that there is no provision in the ACA that excludes the applicability of Section 14 of the Limitation Act to Section 34 proceedings.[32] Further, the Court held that there is a fundamental distinction between Sections 5 and 14 of the Limitation Act. Section 5 allows the court to exercise discretion to condone delay, and thereby extends the period of

[30] *Western Builders* (supra), paras 16-25. Followed in *Gulbarga University v. Mallikarjun S. Kodagali*, (2008) 13 SCC 539.
[31] *Consolidated Engineering Enterprises* (supra), para 20.
[32] ibid, paras 23, 27.

limitation.[33] However, under Section 14, the exclusion of time is mandatory if certain conditions are satisfied. Exercise of power under Section 5 is therefore broader than Section 14, as a wide range of reasons can be put forth to show sufficient cause for delay.[34] Hence, it held that the decision in *Popular Construction* (supra) does not mean that Section 14 of the Limitation Act is also inapplicable to Section 34(3) of the ACA. This decision has been subsequently followed by this Court in other cases.[35]

22. *Section 17 of the Limitation Act*[36]: In *P. Radha Bai* v. *P. Ashok Kumar*[37], this Court held that Section 17 of the Limitation Act does not enable condonation of delay in a Section 34 application beyond the 30-day period when such delay is caused due to fraud played on the applicant party. The Court took note of the applicability of Sections 12 and 14 of the Limitation Act (discussed above). It held

---

[33] ibid, paras 28, 54.
[34] ibid, para 28.
[35] *Coal India Limited v. Ujjal Transport Agency*, (2011) 1 SCC 117; *Commissioner, Madhya Pradesh Housing Board v. Mohanlal and Company*, (2016) 14 SCC 199.
[36] The relevant portion of Section 17 of the Limitation Act reads:

> "***17. Effect of fraud or mistake.—****(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*
> *(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
> *(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
> *(c) the suit or application is for relief from the consequences of a mistake; or*
> *(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,*
> *the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production…*"

[37] (2019) 13 SCC 445.

that Section 17 only defers the commencement of the limitation period, but does not extend or break the limitation period.[38] However, it held Section 17 to be inapplicable for the following reasons.

22.1 Under Section 34(3) of the ACA, the limitation period commences on the date of receipt of award or the date of disposal of request under Section 33 for correction or an additional award. However, if Section 17 of the Limitation Act were to apply, the limitation would commence on the date of discovery of the alleged fraud or mistake, and the outer limit to challenge the award would go beyond the mandatory 3 months plus 30 days period.[39] Based on these inconsistencies between Section 17 of the Limitation Act and the language of Section 34(3), the Court held that there is an "express exclusion".

22.2 It also considered the object of the ACA to ensure speedy dispute resolution and finality to the award; enforceability of the award under Section 36 of the ACA, once the time to challenge the award expires; and "unbreakability" of the time limit under Section 34(3), to hold that Section 17 of the Limitation Act is inapplicable.[40]

[38] ibid, para 30.
[39] ibid, paras 31.1-31.2.
[40] ibid, paras 36-37.

23. *Section 4 of the Limitation Act*: We found it necessary to deal with the case-law, categorised as per the provisions of the Limitation Act, due to a certain view at the bar that the provisions of the Limitation Act are entirely inapplicable to Section 34(3). Such a view was put forth before the High Court as well as before us. Through the above discussion, it is amply clear that there is no wholesale exclusion of the provisions of the Limitation Act in calculating the period of limitation under Section 34(3). Rather, each provision's applicability/exclusion has been individually tested by this Court, on a case-to-case basis, based on the language and purpose of the specific provision in the Limitation Act, the language of Section 34(3) of the ACA, and the scheme and object of the ACA. It is in this light that we must consider whether Section 4 of the Limitation Act applies to Section 34(3), and in what manner. The above context is also necessary to appreciate the precedents on this issue.

24. Before analysing the case-law, it is relevant to extract Section 4 of the Limitation Act:

> "***Section 4. Expiry of prescribed period when court is closed.—****Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.*
>
> *Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any*

part of its normal working hours it remains closed on that day."

We will also extract Section 10 of the GCA to juxtapose these provisions:

> "***Section 10. Computation of time.—****(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*
> *Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.*
> *(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.*"
>
> (emphasis supplied)

25. As per Section 4, if the "prescribed period", which is defined in Section 2(j) of the Limitation Act as the period of limitation computed in accordance with its provisions[41], expires on a day when the court is closed, the application may be made on the day when the court reopens.

26. This Court in *Assam Urban* (supra) considered the applicability of Section 4 of the Limitation Act in a situation when

[41] Section 2(j) of the Limitation Act reads:
"***2. Definitions.—****In this Act, unless the context otherwise requires,—*
(j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;" (emphasis supplied)

the condonable period of 30 days expired on a court holiday. The brief facts are that the appellants received the arbitral awards on 26.08.2003, the 3-month limitation period expired on 26.11.2003, on which date the court was open. The further condonable period of 30 days expired during court vacation between 25.12.2003 to 01.01.2004. The application under Section 34 was filed on 02.01.2004, on the date of court reopening. This Court upheld the dismissal of the Section 34 application on the ground of delay, as the same could not be condoned.

26.1 First, the Court held that by virtue of Section 43(1), the Limitation Act applies to matters of arbitration, "*save and except to the extent its applicability has been excluded by virtue of the express provision contained in Section 34(3) of the 1996 Act*".[42]

26.2 It then considered the meaning of the expression "prescribed period" in Section 4, to determine whether the appellants in this case would be entitled to an extension of time. Reading Section 2(j) of the Limitation Act in the context of Section 34(3) of the ACA, it held that the "prescribed period" for an application to set aside the arbitral award is 3 months. The 30-day period is not the period of limitation, but the condonable period,

[42] *Assam Urban* (supra), para 9.

and is therefore not the "prescribed period". Hence, it held that Section 4 was not attracted to the facts of the case.[43]

27. Contrary to the interpretation of the judgment put forth by Mr. Kaul during the hearings, a reading of the entire judgment does not indicate that the Court in *Assam Urban* (supra) held Section 4 of the Limitation Act to be inapplicable. The wording of para 9 of the judgment makes it clear that the Limitation Act does not apply *only to the extent* that its applicability is excluded by an express provision in Section 34(3). While the Court did not explicitly deal with whether Section 4 of the Limitation Act was excluded, a reading of the entire judgment makes it clear that the Court proceeded on the basis that Section 4 applies. Therefore, we find it difficult to accept Mr. Kaul's submission that Section 4 was held to be excluded in *Assam Urban* (supra). His further submission that once the Limitation Act is inapplicable, there was no occasion for the Court to decide on the applicability of Section 4 only to the prescribed period of 3 months, must also be rejected for the same reason.

28. The position of law after *Assam Urban* (supra) is that while Section 4 of the Limitation Act applies to Section 34(3) of the ACA,

[43] ibid, paras 11-14.

it only applies in relation to the prescribed period of 3 months. It does not apply when the condonable period of 30 days expires on a day when the court is not working.

29. This position of law was subsequently considered and reiterated in *Bhimashankar (supra)* as well. Here, the arbitral award was made on 24.08.2016, the 3-month period of limitation expired on 24.11.2016, and further 30 days came upto 24.12.2016, which fell during the court's winter/Christmas vacation. The Court here considered the applicability of Section 4 of the Limitation Act and Section 10 of the GCA.

29.1 On the issue of Section 4 of the Limitation, it held that the issue is covered by *Assam Urban* (supra), where it was held that the benefit of exclusion of the period when the court is closed is only available with respect to the "prescribed period of limitation" and not the period extendable by the court in exercise of its discretion.[44]

29.2 To determine the applicability of Section 10 of the GCA, it considered whether the Limitation Act applies to the ACA. It specifically rejected the submission that the Limitation Act does

[44] *Bhimashankar* (supra), paras 50-53.

not apply. It further referred to *Assam Urban* (supra) on the *extent of exclusion* and held as follows in para 54:

> "*54. Now, so far as the submission on behalf of the appellant that the Limitation Act shall not be applicable to the proceedings under the Arbitration Act is concerned, the aforesaid has no substance. Section 43(1) of the Arbitration Act specifically provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceeding in Court. However, as observed and held by this Court in Assam Urban, the Limitation Act, 1963 shall be applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of express provision contained in Section 34(3) of the Arbitration Act.*"
>
> (emphasis supplied)

In paras 55 and 56, it discussed *Popular Construction* (supra) and *Hindustan Construction* (supra) on the inapplicability of Section 5 of the Limitation Act and the mandatory nature of the 30-day time limit for condonation of delay, respectively.

29.3 Finally, in paras 57 and 58, in light of the proviso to Section 10 of the GCA which specifically excludes its applicability to any act or proceeding to which the Limitation Act applies, the Court rejected the applicability of Section 10 of the GCA to Section 34(3).

30. The logic of the above reasoning in *Bhimashankar* (supra), like in *Assam Urban* (supra), proceeds on the basis that Section 4 of the Limitation Act applies to Section 34(3), as the same is not expressly or impliedly excluded. Reading paragraphs 54 to 58 together, it is clear that any apparent contradiction within them,

which was raised by Mr. Kaul, does not in fact exist. The judgment is consistent throughout, in that it necessarily affirms the applicability of Section 4 of the Limitation Act while calculating limitation under Section 34(3), and consequently, relies on the proviso of Section 10 of the GCA to hold that Section 10 of the GCA does not apply.

31. The applicability of Section 4 of the Limitation Act is also implicit in the recent decision in *State of West Bengal v. Rajpath Contractors* (supra). Here, the award was served on the appellant on 30.06.2022. The 3-month limitation was reckoned from 01.07.2022, which came upto 30.09.2022. The court vacation started from 01.10.2022. The further 30-day period ended on 30.10.2022, which was during the court vacation. The application was filed on 31.10.2022. The Court held that the prescribed limitation period ended on 30.09.2022, when the court was working. Hence, by referring to *Assam Urban* (supra), it held that the appellant could not benefit from Section 4 of the Limitation Act as only the 30-day period expired on a court holiday. Hence, it held that the application was filed beyond the time under Section 34(3) and the delay could not be condoned.[45]

[45] *Rajpath Contractors* (supra), paras 10-12.

32. *Applicability of Section 10 of the GCA*: In view of this legal position, the final issue for our consideration is whether the appellant can claim the benefit of Section 10 of the GCA. This issue is also answered against the appellant by virtue of the clear and express language of the proviso to Section 10 of the GCA.

33. This Court in *Bhimashankar* (supra) has already considered this issue and has clearly held that since the Limitation Act applies to Section 34(3), Section 10 of the GCA is not applicable.[46] The argument put forth by the appellant in its written submissions that Section 10 of the GCA must apply to the 30-day period stipulated in the proviso to Section 34(3) also warrants rejection due to the statutory language of the proviso to Section 10 of the GCA, which states that it does not apply to "*any act or proceeding*" to which the Limitation Act applies. Considering that Section 4 of the Limitation Act applies to a Section 34 proceeding, the appellant cannot simultaneously claim benefit of Section 10 of the GCA.

34. Since the applicability of Section 10 of the GCA is rejected at the very threshold, it is no longer necessary to consider the interpretation of "prescribed period" under Section 10 of the GCA as including the condonable period, as put forth by this Court in

[46] *Bhimashankar* (supra), paras 57 and 58.

Sridevi Datla (supra) in the context of Section 16 of the NGT Act. The position of law in the context of Section 34(3) of the ACA has been clearly enunciated in *Assam Urban* (supra), *Bhimashankar* (supra), and *Rajpath Contractors* (supra). Hence, *Sridevi Datla* (supra) can be differentiated on this ground as well.

35. *Summarising the Current Position of Law*: From the reasoning and decisions in the above cases, the following conclusions evidently follow:

35.1 *First*, Section 4 of the Limitation Act applies to Section 34(3) of the ACA.

35.2 *Second*, Section 4 of the Limitation Act benefits a party only when the "prescribed period", i.e. the 3-month limitation period under Section 34(3) expires on a court holiday. In such a situation, the application under Section 34 will be considered as having been filed within the limitation period if it is filed on the next working day of the court.

35.3 *Third*, Section 4 of the Limitation Act does not come to the aid of the party when the 3-month limitation period expires on a day when the court was working. The 30-day condonable period expiring during the court holidays will not survive and neither Section 4, nor any other provision of the Limitation Act, will inure

to the benefit of the party to enable filing of the Section 34 application immediately after reopening.

35.4 *Fourth*, since Section 4 of the Limitation Act applies to proceedings under Section 34 of the ACA, the applicability of Section 10 of the GCA stands excluded in view of the express wording of its proviso that excludes the applicability of the provision when the Limitation Act applies.

36. *Highlighting Certain Concerns with the Current Legal Position*: Before parting with this judgment, we find it necessary to express certain difficulties with the current position of law. In our view, the above construction of limitation statutes is quite stringent and unduly curtails a remedy available to arbitrating parties to challenge the validity of an arbitral award. This must be addressed by the Parliament.

36.1 The purpose of reading the Limitation Act alongside the ACA is not to restrict the special remedy under the ACA, but to enable exercise of such remedy in circumstances as contemplated under the Limitation Act. In this context, Section 29(2) of the Limitation Act becomes relevant as it incorporates Sections 4 to 24 of the Limitation Act in special statutes, including the ACA, to the extent that its provisions are not expressly excluded.

36.2 The language of Section 34(3) read with its proviso does not expressly or impliedly exclude Section 4 of the Limitation Act and this interpretation is in consonance with the important principle contemplated under Section 29(2) to protect rights and remedies. This Court has already recognised the applicability of Section 4 of the Limitation Act.

36.3 The substantive remedies available under Sections 34 and 37 of the ACA are, by their very nature, limited in their scope due to statutory prescription. It is therefore necessary to interpret the limitation provisions liberally, or else even the limited window available to parties to challenge an arbitral award will be lost. The remedy under Section 34 is precious, and courts will keep in mind the need to secure and protect such remedy while applying limitation provisions.[47] If this limited remedy is denied on stringent principles of limitation, it will cause great prejudice and has the effect of (a) denying the remedy, and (b) in the long run, it will have the effect of dissuading contracting parties from seeking resolution of disputes through arbitration. This is against public policy.

36.4 However, the difficulty arises as the judgments affirming the applicability of Section 4 of the Limitation Act equate the

[47] *Kirpal Singh v. Government of India*, 2024 SCC OnLine SC 3814, para 10.

expression "prescribed" in that section and Section 29(2) of the Limitation Act only with the main period of limitation (3 months). The problem with this construction is that the special law, i.e., Section 34(3) of the ACA, along with its proviso does not prescribe the period of limitation in the manner that a period is specified in the Schedule of the Limitation Act. The statutorily prescribed period under Section 34(3) of the ACA is 3 months, and an additional 30 days. In our opinion, it will be wrong to confine the period of limitation to just 3 months by interpreting it as the "prescribed period" and excluding the balance 30 days under the proviso to Section 34(3) as not being the prescribed period through a process of interpretation.

36.5 The purpose of applying the Limitation Act to special laws is to vest in the court the power to exercise discretion or to grant the benefit of exclusion. In such cases, when the Limitation Act applies, the discretion of the court as contemplated under its provisions, commencing from Sections 4 to 24, must be given full effect. In this light, the additional period of 30 days specifically provided under the ACA loses its efficacy and purpose, and becomes untenable due to the current position of law. This takes us to a fundamental question as to the meaning of "express

exclusion" of certain provisions of the Limitation Act by the ACA. In *Popular Construction* (supra), the Court came to the conclusion that Section 34(3) proviso "impliedly" – as against the specific expression "expressly" in Section 29(2) of the Limitation Act – excludes Section 5 of the Limitation Act.

36.6 Once the Court commenced disapplying provisions of the Limitation Act to the ACA on the ground of implied exclusions, it is only a matter of interpretation to include or exclude provisions from Sections 4 to 24 of the Limitation Act on a case-to-case basis. Thus, for example, while the Court held that Sections 5 and 17 of the Limitation Act are excluded from Section 34(3), it came to the conclusion that Sections 4, 12, and 14 of the Limitation Act are applicable. In a way, the applicability of provisions from Sections 4 to 24 of the Limitation Act and the manner in which they apply are at the doorstep of the court, rather than being determined by a clear and categorical statutory prescription. This is perhaps the reason why the Parliament has used the expression "express exclusion" in Section 29(2) of the Limitation Act. We are conscious of the fact that it is too late in the day to hold that "express exclusion" will not include implied exclusion. It is for the legislature to take note of this position and bring about clarity and

certainty. We say no more, for the overbearing intellectualisation of the Act by courts has become the bane of Indian arbitration.

37. *Conclusion*: For the reasons set forth above, the application preferred by the appellant under Section 34 of the ACA stands dismissed as it was filed beyond the condonable period of 30 days, which conclusively and absolutely expired on 28.06.2022.

38. For the reasons stated above, we affirm the judgment and order passed by the High Court in FAO (OS) (COMM) No. 67/2023 dated 03.04.2024 and dismiss the appeal.

39. There shall be no order as to costs.

40. Pending applications, if any, stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
JANUARY 10, 2025.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 336 OF 2025
(Arising out of SLP (C) No.9996 of 2024)

MYPREFERRED TRANSFORMATION AND HOSPITALITY PVT. LTD. AND ANR. ...APPELLANT(S)

VERSUS

M/S FARIDABAD IMPLEMENTS PVT. LTD. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. The sole issue arising in this appeal for our consideration is whether the High Court was justified in dismissing the petition filed by the appellants herein under Section 34 of the Arbitration and Conciliation Act, 1996[1] as barred by time.

2. My esteemed brother, in his opinion expressed on the above issue, has clearly concluded that the petition filed by the appellants under Section 34 of the A & C Act was beyond

[1] Hereinafter referred to as 'the A & C Act'

limitation and was rightly dismissed as barred by time. I fully agree with the said opinion expressed by my brother on the basis of the legal interpretation of the various relevant provisions and the conclusions drawn on its basis. However, I would like to write a supporting opinion in my own way based upon the facts of the case at hand.

3. On account of lease agreements entered into between the appellants and the respondent, certain disputes arose between them. Therefore, respondent invoked the arbitration clause whereupon the disputes were referred to arbitration. An arbitral award was passed on 04.02.2022, a soft copy of which was supplied to the appellants on the very same day by e-mail. A signed hard copy of the award dated 04.02.2022 was made available to the appellants on 14.02.2022.

4. The prescribed period of time for filing a petition under Section 34 of the A & C Act is 3 months from the date on which the party, filing the petition, had received the arbitral award or if a request had been made under Section 33 of the A & C Act, from the date on which the request has been disposed of by the Arbitral Tribunal. Here, we are not

concerned with the second part of Sub-Section (3) of Section 34 of the A & C Act but only with the first part of it which provides for a limitation of 3 months from the date on which the party, filing the petition, had received the arbitral award. Since the appellants in the present case received the arbitral award on 14.02.2022, the 3 months period prescribed for filing a petition as per sub-Section (3) of Section 34 expired on 14.05.2022. By operation of this Court's order dated 10.01.2022 on account of COVID-19 pandemic, the said period of limitation stood extended upto 29.05.2022.

5. The day on which the limitation expired for filing a petition under Section 34 of the A & C Act after giving the benefit of the COVID-19 pandemic i.e., 29.05.2022, as mentioned above, happened to be a working day. However, the appellants filed the petition under Section 34 of the A & C Act, not on the last day of limitation i.e. 29.05.2022 but on 04.07.2022 when the Courts re-opened after the summer vacation which were notified between 04.06.2022 and 03.07.2022. The petition filed by the appellants under

Section 34 of the A & C Act was accompanied by an application for condonation of delay.

6. The High Court rejected the delay condonation application and accordingly dismissed the petition filed by the appellants under Section 34 of the A & C Act *vide* order dated 07.02.2023 as barred by limitation. The appeal preferred by the appellants under Section 37 of the A & C Act before the Division Bench also met the same fate.

7. The submission is that, though, the period of limitation for filing a petition under Section 34 of the A & C Act is 3 months but the court, on being satisfied that the appellants were prevented by sufficient cause from filing the petition within the aforesaid 3 months, could have entertained it within a further period of 30 days. Therefore, the maximum period in which the petition under Section 34 of the A & C Act, after condoning the delay, could be entertained is 90+30 days i.e., 120 days. The said period expired on 28.06.2022 which fell during the summer vacation of the Court. Therefore, the petition filed by the appellants on the first day of re-opening of the Court after summer vacation was within time.

8. In order to appreciate the above submission, it may be pertinent to refer to Section 43 of the A & C Act which provides for the applicability of the Limitation Act, 1963 which in unequivocal terms states that the Limitation Act shall apply to Arbitrations as it applies to proceedings in court. In view of the above provision and the case law on the subject as discussed by my brother, there remains no doubt that the Limitation Act is applicable to the arbitration proceedings as also to court proceedings under the A & C Act.

9. The Limitation Act is based on public policy to bring to an end the life of a dispute for which appropriate remedy has not been availed within a time bound period.

10. Section 3 of the Limitation Act, 1963 clearly lays down that every suit instituted, appeal preferred and application made to the court after the prescribed period shall be dismissed even though limitation has not been setup as a defence.

11. Section 2(j) of the Limitation Act defines "period of limitation" to mean the period of limitation prescribed for any suit, appeal or application under the Schedule. The Schedule to the Limitation Act lays down the limitation prescribed *inter*

alia for any suit, appeal or application. However, by virtue of Section 29(2) of the Limitation Act, the period of limitation for any suit, appeal or application as contained in the Schedule of the Limitation Act stands substituted by the period prescribed in Section 34(3) of the A & C Act for the purposes of filing a petition under Section 34 of the A & C Act.

12. Section 4 of the Limitation Act provides that if the prescribed period of limitation of any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application can be submitted/presented or made to the court on the day when the court reopens which on such presentation would be treated as within time.

13. The period of limitation prescribed for filing a petition under Section 34 of the A & C Act is 3 months i.e., 90 days. In the present case, the said period of limitation prescribed by extending the benefit of COVID-19, expired on 29.05.2022 when the courts were working. Therefore, the appellants were not entitled to the benefit of Section 4 of the Limitation Act to permit them to prefer the petition on the re-opening of the

court as the period of limitation prescribed had not expired on the day when the court was closed.

14. The appellants are not entitled even to any benefit as per Section 10 of the General Clauses Act[2], 1897 which also permits the filing of a petition on the re-opening of the court where the last day of prescribed period for filing it falls or expires on the day on which the court is closed. The proviso to Section 10 in no uncertain terms states that the provisions of Section 10 of the GC Act shall not apply to any Act or proceedings to which the Limitation Act applies. In the case at hand, admittedly in proceedings of arbitration as also to court proceedings under the A & C Act, the Limitation Act squarely applies. Therefore, by proviso to Section 10 of GC Act, Section 10 of the GC Act stands excluded and would not be attracted to accord any benefit to the appellants.

15. The period of limitation prescribed for instituting a suit or filing an appeal or making an application has to be

[2] Hereinafter referred to as 'the GC Act'

distinguished from a condonable period which cannot be made part of the period of limitation prescribed.

16. In view of the above discussion, as the period of limitation prescribed for filing a petition under Section 34 of the A & C Act expired on a working day and not on a day on which the court was closed, the appellants were not entitled to file it on the re-opening of the court after the summer vacation and as such the petition so filed was patently barred by limitation.

17. Admittedly, as the period of limitation prescribed for filing a petition under Section 34 of the A & C Act expired on 29.05.2022 whereas the petition was preferred on 04.07.2022 much beyond the period of limitation prescribed and the condonable period of 30 days stipulated under the proviso to Section 34(3) of the A & C Act, the petition under Section 34 of the A & C Act was beyond time and the delay could not have been condoned. Accordingly, there is no error or illegality on part of the High Court in dismissing the petition under Section 34 of the A & C Act as barred by limitation.

18. It would not be out of context for me to mention on the basis of my experience that practically all new/recent enactments are deviating from the prescribed period of limitation as per the Schedule of the Limitation Act and are generally prescribing its own period of limitation as under the A & C Act itself. At the same time, statutes further provide that the delay beyond a certain period cannot be condoned by the court. This is obviously in deviation to what is prescribed by Section 5 of the Limitation Act.

19. In my personal opinion, the statutes ought not to provide different period of limitation for instituting suit, preferring appeal and making an application, rather all statutes should stick to a uniform period of limitation say 90 days for preferring Special Leave Petition/Appeal to the Supreme Court of India. The courts should also be empowered to condone the delay if sufficient cause is shown for not filing it within the time prescribed rather than restricting the condonable period to a fix period of 15 days or 30 days as provided in some of the statutes.

20. This deviation and restriction create confusion and ordinarily even a lawyer at times fails to notice that a different period of limitation has been prescribed for preferring an appeal under a particular statute. Moreover, there may be genuine cases where the litigant may not be able to approach the court in time for cogent reasons beyond his control. For example, in arbitration matters where an award is passed on a particular date and a copy of it is also served upon the litigating party but that party happens to be seriously ill and hospitalised for months together and as such is unable to prefer a petition under Section 34 within the period of limitation prescribed. If the delay in challenging the award is not condoned beyond the period of 30 days, he would suffer great prejudice and may lose the remedy on a technical ground even though he may be having a good case on merit. There may also be a situation where a litigant is facing proceedings by the law enforcement agencies like the Enforcement Directorate, Central Bureau of Investigation, etc., and is taken into custody and as such is unable to take the legal remedy within the period of limitation prescribed. He avails the remedy only

after he is out of custody; months after the service of the order. In such circumstances, in my opinion, the legislature ought not to confine condoning the delay only for a prescribed period and not beyond it. Rather it should follow the principle of condoning the delay as enshrined under Section 5 of the Limitation Act. This would not only avoid a good case to be thrown out on the ground of limitation but at the same time would bring about uniformity in law.

21. I, therefore, suggest to the law makers to keep this in mind while enacting new Acts and ensure that uniform system is applied in all enactments, be it present or future.

..... J.
(PANKAJ MITHAL)

NEW DELHI;
JANUARY 10, 2025.