

Bhimashankar Sahakari Sakkare ... vs Walchandnagar Industries Ltd. (Wil) on 10 April, 2023

Author: M. R. Shah

Bench: Krishna Murari, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6810 of 2022
(@SLP (C) NO.11216 of 2022)

Bhimashankar Sahakari
Sakkare Karkhane Niyamita ..Appellant(s)

Versus

Walchandnagar Industries
Ltd. (WIL) ..Respondent(s)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.02.2022 passed by the High Court of Karnataka, at Kalaburagi in Misc. First Appeal No.201018/2018 by which the High Court has dismissed the said appeal and has confirmed the order dated 02.04.2018 passed by the learned III Additional District & Sessions Judge, Vijayapur (hereinafter referred to as “trial Court”) in rejecting the application for condonation of delay caused in preferring the application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Arbitration Act”) , the original applicant has preferred the present appeal.

2. The brief facts leading to filing of the present appeal in nutshell are as under:

2.1 That, an arbitral award was passed against the appellant under the provisions of the Arbitration Act on 24.08.2016. As per Section 34(3) of the Arbitration Act, 90

days are prescribed for preferring an application under Section 34 of the Arbitration Act against the arbitral award. However, the said period was extendable by a further period of 30 days in terms of the proviso to Section 34(3) of the Act, 2016. In the present case, the period of 90 days prescribed under Section 34(3) of the Arbitration Act expired on 24.11.2016. The appellant was entitled to a further extended period of 30 days from 23.11.2016 onwards in terms of the proviso to Section 34(3) which was upto 24.12.2016.

2.2 The trial Courts were closed on account of winter / Christmas vacations from 19.12.2016 to 01.01.2017. However, it so happened that extendable / condonable period of 30 days as contemplated in the proviso to Section 34(3) expired on 24.12.2016 on which day the trial Court was closed on account of winter / Christmas vacation. The appellant herein filed the application under Section 34 of the Arbitration Act, challenging the award passed by the Arbitral Tribunal. The appellant also filed IA No.1 for condonation of delay. Both, Section 34 application as well as the application for condonation of delay were filed on the reopening day i.e. on 02.01.2017. As the application under Section 34 of the Arbitration Act was beyond the prescribed period of provided under Section 34 of the Arbitration Act as well as beyond the condonable period of 30 days, the learned trial Court dismissed the IA No.1 and refused to condone the delay by observing that the period beyond 120 days is not condonable as under

the Arbitration Act, maximum period provided for preferring an application under Section 34 is 120 days. At this stage it is required to be noted that in the affidavit filed by the appellant before the High Court, filed in support of IA No.1, the appellant as such admitted that it received the copy of the award on 24.08.2016. However, according to the appellant, the said award was misplaced and thereafter obtained a fresh copy on 29.12.2016. The learned trial Court observed that in that view of the matter, the period of limitation would commence from 24.08.2016 and 120 days are to be counted from 24.08.2016.

2.3 Feeling aggrieved and dissatisfied with the order passed by the learned trial Court refusing to condone the delay in preferring application under Section 34 of the Arbitration Act, the appellant herein preferred an appeal before the High Court.

2.4 Before the High Court, Section 4 of the Limitation Act, 1963 and Section 10 of the General Clauses Act, 1897 were pressed into service. By the impugned judgment and order the High Court has dismissed the said appeal by observing that the expression “prescribed period” appearing in Section 4 of the Limitation Act cannot be construed to mean anything other than the period of limitation and therefore, any period beyond the prescribed period, during which the Court or Tribunal has the discretion to allow a person to institute the proceeding, cannot be taken to be “prescribed period”.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original applicant has preferred the present appeal.

3. Shri Shyam Diwan, learned Senior Advocate has appeared on behalf of the appellant and Shri Dhruv Mehta, learned Senior Advocate has appeared on behalf of the contesting respondent.

4. Shri Shyam Diwan, learned Counsel has submitted that Section 34(3) of the Arbitration Act specifies that the limitation period for filing an application for setting aside the arbitral award under Section 34 is three months from the date on which the party making application has received the award. However, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, the proviso to the Section specifies a further period of 30 days within which the application under Section 34 may be filed/entertained.

4.1 It is submitted that the central question in the present petition is whether when the last day of condonable period of 30 days falls on a holiday or during a court vacation, would the benefit of Section 10 of the General Clauses Act, 1897 would be available to the appellant?

4.2 It is submitted that in other words, can the petitioner – appellant file the application on the next date when the Court reopens, in line with the settled principle that the law does not compel a person to do an impossible act. It is submitted that in the present case the petitioner – appellant had filed the application under Section 34 on the very day when the Court reopened.

4.3 It is submitted by Shri Shyam Diwan, learned Senior Counsel that not extending the benefit of Section 10 of the General Clauses Act to the appellant in such circumstances leads to an anomalous situation wherein the benefit of statutorily prescribed condonable period is cut short for some persons due to intervention of a holiday or a court vacation, while being fully available to other persons due to the fortuitous circumstance of no court vacation intervening.

It is submitted that this creates uncertainty and unpredictability in the application of provision in question.

4.4 It is submitted that the present case reflects an anomalous situation where Section 4 of the Limitation Act, which only deals with the period of limitation prescribed under the Limitation Act, leaves a vacuum as far as statutory condonable period is concerned. It is submitted that the judgment in the case of Assam Urban Water Supply and Sewerage Board vs. Subash Projects and Marketing Limited reported in (2012) 2 SCC 624 failed to take into account that in the case of such statutory condonable periods, Section 10 of the General Clauses Act, 1897, which is much wider in its import and applicability, and embodies the same legal principle, must necessarily step in to fill

the vacuum.

4.5 It is submitted that while passing the impugned judgment and order, the High Court has heavily relied upon the decision of this Court in the case of Assam Urban (Supra) while holding that the term “prescribed period” referred to in Section 4 of the Limitation Act, 1963 only includes the limitation period and not the 30 day condonable / grace period. It is submitted that however the case of Assam Urban (Supra) does not notice or deal with Section 10 of the General Clauses Act, 1897. It only notices and deals with Section 4 of the Limitation Act, 1963 and holds that the term “prescribed period” mentioned in Section 4 means the period of limitation. It is submitted that the judgment in the case of Assam Urban (Supra) fails to notice that Section 4 of the Limitation Act, 1963 which deals with the period of limitation prescribed under the Limitation Act, 1963, leaves a vacuum as far as the statutory condonable period is concerned.

4.6 It is submitted that in failing to notice Section 10 of the General Clauses Act, 1897, the judgment in the case of Assam Urban (Supra) disregards the principle embodied in the General Clauses Act which is much wider in its import and applicability and must necessarily step in to fill the vacuum left by Section 4 of the Limitation Act.

4.7 It is further submitted by Shri Diwan, learned Senior Counsel appearing for the appellant that although the same general principle of “elementary justice” is embodied in both Sections of the two Acts, there is a crucial distinction between the Limitation Act, 1963 and the General Clauses Act, 1897.

4.8 It is submitted that Section 2(j) of the Limitation Act defines “period of limitation”. It is submitted that thus, while the term “prescribed period” has a narrower meaning in the context of Limitation Act, there is no such restrictive definition clause in the General Clauses Act. It is submitted that in fact, the scheme of Section 10 of the General Clauses Act is clear from a bare perusal of the provision and indicates that there are two prescribed periods in this Section viz. (1) the prescribed period within which something is directed to be done, or (2) the prescribed period within which something is allowed to be done.

4.9 It is submitted that therefore, reading of Section 10 of the General Clauses Act, 1897 makes it clear that the period in which something is allowed to be done, such as 30 days condonable period provided by proviso to Section 34(3) of the Arbitration Act is also a prescribed period within the meaning of the General Clauses Act, 1897.

4.10 It is further submitted by Shri Shyam Diwan, learned Senior Counsel appearing on behalf of the appellant that the principle embodied in Section 10 of the General Clauses Act, 1897 is an elementary piece of justice. It is submitted that the 60th Law Commission Report on the General Clauses Act reiterated the parliamentary intention behind the Act and the provision, which is to deliver elementary justice.

4.11 It is submitted that in the case of HUDA & Anr. vs. Dr. Babeswar Kanhar & Anr. reported in (2005) 1 SCC 191, this Court has observed and held that every consideration of justice and

expediency would require that the accepted principle which underlines Section 10 of the General Clauses Act, 1897 should be applied in cases where it does not otherwise in terms apply. It is observed that the principles underlying are *lex non cogit ad impossibilia* (law does not compel a man to do the impossible) and *actus curiae neminem gravabit* (the act of court shall prejudice no man). It is submitted that in the case of *Manohar Joshi vs. Nitin Bhaurao Patil and Ors.* reported in (1996) 1 SCC 169, it is observed and held by this Court that the litigant has a right to avail limitation up to the last day and his only obligation is to explain his inability to present the suit / petition on the last day of limitation and each day thereafter till it is actually presented.

4.12 It is further submitted that if as held in the case of *Assam Urban (Supra)*, the benefit of Section 4 of the Limitation Act is only available for the period of limitation and is not available for the statutorily granted condonable period. Section 10 of the General Clauses Act, 1897 must step in to fill the vacuum. It is submitted that any contrary view would deny individuals the full play of the statutory period of 30 days for condonation of delay.

4.13 Now, so far as the contention on behalf of the respondent that present proceeding is “any Act or proceeding to which the Limitation Act applies” is a misconceived argument is concerned, it is submitted that the respondents have sought to rely on proviso to Section 10 of the General Clauses Act, 1897. Relying upon Section 43(1) of the Arbitration Act to contend that the Limitation Act applies to the present proceedings, it is submitted that Section 43(1) of the Arbitration Act merely states that “the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in Court”. It is submitted that this cannot be interpreted to mean that the Limitation Act, in its entirety applies to proceeding under Section 34 of the Arbitration Act and that the present proceedings are an act or proceeding to which the Limitation Act applies. It is submitted that in fact, in matters of limitation, Section 34 of the Arbitration Act is a complete code. It is submitted that the respondent’s entire case, on one hand, is that the benefit of Limitation Act, particularly Section 4 of the Limitation Act, cannot be given to the condonable period in the instant case. It is submitted that therefore on one hand, the respondent is arguing that the benefit of Section 4 of the Limitation Act, as well as Section 5 of the Limitation Act has no application to the condonable period under Section 34 of the Arbitration Act, i.e. the Limitation Act has no application in the present proceedings, at the same time, the respondent is contending that the benefit of Section 10 of the General Clauses Act, 1897 cannot be given to the appellant, as the present proceeding falls within the ambit of the phrase “any act or proceeding to which the Indian Limitation Act, 1877, applies”.

4.14 It is further submitted by Shri Diwan, learned Senior Counsel that the reliance placed on the case of *Sagufa Ahmed & Ors. vs. Upper Assam Polywood Products Private Limited and Others* reported in (2021) 2 SCC 317 is misconceived for the following two reasons:

- (1) The reference to Section 10 of the General Clauses Act, 1897 in the case of *Sagufa Ahmed (Supra)* is tangential at best;
- (2) The facts of *Sagufa Ahmed (Supra)* are clearly distinguishable from the case at hand. In that case, the appellants had waited 5 months after the discretionary period had expired to file an appeal against the order of the Ld. NCLT. In the present case, there was no undue delay on the part of the Petitioner □appellant herein. The petitioner □appellant filed the petition under

Section 34 of the very day of the reopening of the Ld. Court.

4.15 It is submitted that this Court in its order dated 08.03.2021 in suo moto Writ Petition (Civil) No.3/2020, has put a quietus to the artificial distinction between the 'limitation period' and 'grace period', wherein it extended the benefit of exemption due to COVID 19 to the limitation period as well as the condonable period.

4.16 It is further submitted by Shri Diwan, learned Senior Counsel that the aim and object of the limitation period and statutory grace period / condonable period provided in the Arbitration Act is to ensure that parties who sleep over their rights and come to the court belatedly are not allowed to upset the apple cart. It is submitted that in the present instance, the appellant has been nothing but diligent and approached the learned trial Court on the very day of reopening. It is submitted that Section 10 of the General Clauses Act, 1897 has been enacted to address precisely this kind of a situation and merely because the benefit of Section 4 of the Limitation Act, 1963 is unavailable in a case, should not ipso facto exclude the application of the General Clauses Act, 1897.

4.17 It is submitted that the appellant is an agriculturists' society, and despite having suffered losses due to non-fulfillment of their obligations by the respondent, the appellant's case has never been heard on merits. It is submitted that therefore non-suiting the appellant in the present instance and denying the benefit of Section 10 of the General Clauses Act, 1897 (with the elementary rule of justice captured in it) will cause a grave miscarriage of justice.

Making above submissions, it is prayed to set aside the order passed by the learned trial Court as well as the High Court and to condone the delay caused in preferring application under Section 34 of the Arbitration Act and to direct the learned trial Court to hear the application under Section 34 of the Arbitration Act on merits by giving the appellant an opportunity to put forth its case on merits.

5. Present appeal is vehemently opposed by Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent.

5.1 It is submitted that in the present case the appellant admittedly received the award on 24.08.2016. As per Section 34 of the Arbitration Act, "the prescribed period" of 3 months to challenge the award expired on 24.11.2016 and further period of 30 days under the proviso to Section 34(3) of the Arbitration Act expired on 24.12.2016. That, the learned trial Court was on winter vacation between 19.12.2016 to 01.01.2017. The appellant preferred its Section 34 of the Arbitration Act before the learned trial Court on 02.01.2017 i.e. on the day of reopening, accompanied by an application seeking condonation of delay. It is submitted that the learned trial Court after considering both, the maintainability and merits of the appellant's application for condonation, has found that the application was not maintainable and also that no sufficient cause had been shown by the appellant. It is submitted that the High Court has upheld the order of trial Court that the petition under Section 34 of the Arbitration Act was not maintainable for being beyond the "prescribed period" under Section 34(3) of the Arbitration Act. It is submitted that therefore the following questions arise for consideration in the present case.

(1) Whether the benefit of Section 4 of the Limitation Act, 1963 is available to a party when the “prescribed period” of 3 months for filing a petition under Section 34(3) of the Arbitration Act has already expired and the discretionary period of 30 days under the proviso to Section 34(3) falls on a day when the Court is closed?

(2) Whether the benefit of Section 10 of the General Clauses Act, 1897 is separately available to a party in such circumstances?

5.2 Now, so far as the applicability of Section 4 of the Limitation Act is concerned, it is vehemently submitted by Shri Dhruv Mehta, learned Senior Counsel that Section 4 of the Limitation Act shall not be applicable to the 30 days’ discretionary condonable period contemplated under proviso to Section 34(3) of the Arbitration Act. It is submitted that Section 34(3) of the Arbitration Act stipulates that an application under Section 34(1) of the Arbitration Act challenging an arbitral award may not be made after a period of three months from the date on which the party making the application had received the arbitral award. The proviso to Section 34(3) gives limited powers to the Court, on sufficient cause being shown, to condone delay in filing the application under Section 34(1) only for a maximum period of 30 days, but not thereafter. It is submitted that in the case of *Union of India v. Popular Construction Co.* reported in (2001) 8 SCC 470 (Paras 10, 12, 14 and 16), this Court has observed that usage of words “but not thereafter” in the proviso to Section 34(3) amounts to an express exclusion within the meaning of Section 29(2) of the Limitation Act. Therefore, the Court would have no discretion to condone the delay in excess of 30 days. Section 5 of the Limitation Act was, therefore, held to be inapplicable to Section 34(1) of the Arbitration Act.

5.3 It is submitted that Section 4 of the Limitation Act is only applicable when the last date of the “prescribed period” falls on a day on which the Court is closed. It is submitted that the term, “prescribed period” is defined in Section 2(j) of the Limitation Act as being the period of limitation computed in accordance with the provisions of the Limitation Act.

5.4 It is submitted that this Court in the case of *Assam Urban* (Supra) (Paras 10 to 14) has held that “prescribed period” under Section 34(3) of the Arbitration Act is three months. It is submitted that “further period” of 30 days mentioned in the proviso to Section 34(3) of the Arbitration Act cannot be said to be the “period of limitation” and therefore, would not be the “prescribed period” for the purposes of making an application for setting aside the arbitral award. It is submitted that thus, in the said decision, this Court has categorically held that Section 4 of the Limitation Act which applies only to “prescribed period” is not attracted when the last date of the “further period” of 30 days mentioned in Section 34(3) of the Limitation Act falls on a day on which the Court is closed. It is submitted that the facts of the case in *Assam Urban* (Supra) are identical to the facts of the present case. It is submitted that decision of this Court in the case of *Assam Urban* (Supra) has been affirmed by Three Judges’ Bench of this Court in the case of *Sagufa Ahmed* (Supra) (Paras 20 – 22).

5.5 It is further submitted by Shri Dhruv Mehta, learned Senior Counsel that the correct application of Section 4 of the Limitation Act will result in a petition being entertained as a matter of right, without a party having to seek condonation of delay, since it applies only to petitions that would otherwise be within the “prescribed period” but its presentation within this period has been

prevented due to closure of the Court. However, on the other hand, this cannot apply to a delayed petition where, in any event, the right to present the petition is subject sufficient cause being shown and condonation of delay being sought.

5.6 Now, so far as the submission on behalf of the appellant that the judgment in the case of Sagufa Ahmed (Supra) is not a good law or is distinguishable is concerned, it is submitted that as such the decision in the case of Sagufa Ahmed (Supra) lays down the correct law and shall be applicable with full force on interpretation of “to condone delay within further period”.

5.7 It is submitted that the judgment in the case of Sagufa Ahmed (Supra), in the context of Section 421(3) of the Companies Act, 2013, which provides a prescribed period of 45 days for filing an appeal, and empowers the appellate Tribunal to condone the delay within “further period” not exceeding 45 days. A Three Judges Bench of this Court rejected the contention of the appellants therein that the benefit of order of this Court dated 23.03.2020 in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10, is extendable to them, by holding that under the order dated 23.03.2020, which was extended was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by statute.

5.8 It is submitted that thus, in the case of Sagufa Ahmed (Supra), this Court while affirming Assam Urban (Supra) has held that the expression “prescribed period” appearing in Section 4 of the Limitation Act cannot be construed to mean anything other than the period of limitation. Any period beyond the “prescribed period” during which the Court or Tribunal has the discretion to allow a person to institute the proceedings cannot be taken to be “prescribed period”.

5.9 Now, so far as the submission on behalf of the appellant that the judgment in the case of Assam Urban (Supra) has the effect of denying the parties to right to file their application for condonation in situation where the discretionary period expires during vacation and that such interpretation was incorrect inasmuch as it leaves parties at the mercy of “fortuitous circumstance”, it is submitted that such a submission is not tenable. It is submitted that the Court vacations are notified well in advance and would not account to a fortuitous circumstance as alleged. It is submitted that on the date of receipt of award, the party would be well aware of the limitation period under Section 34(3) of the Arbitration Act and ought to diligently secure its right. It is submitted that in the present case, having received the award on 24.08.2016, the appellant had a further period of 25 days after expiry of “prescribed period” and before commencement of the winter vacation of the trial Court. However, the petitioner / appellant chose not to file its petition during this time and therefore, as to suffer for the inevitable consequences.

5.10 It is further submitted that right under Section 34 of the Arbitration Act is a restricted right to challenge an award on extremely limited ground. The proviso to Section 34(3) of the Arbitration Act further excludes the general power of the Court under Section 5 of the Limitation Act and imposes a strict timeline for presentation of a petition under Section 34. In such circumstances, acceptance of appellant’s argument will have the effect of providing an unduly enlarged time period (beyond the statutory 30 day discretionary period) for delayed presentation of a petition under Section 34, which would be contrary to the scheme and intent of the Arbitration Act.

5.11 Now, so far as the applicability of Section 10 of the General Clauses Act, 1897 as per the case of the appellant is concerned, it is vehemently submitted that as such the contention is untenable in light of the proviso to Section 10 of the General Clauses Act, 1897, which specifically excludes the application of this section to any Act or proceeding to which the Indian Limitation Act applies. It is submitted that reference to 1877 Act will now have to be read as reference to Limitation Act, 1963 in view of section 8 of the General Clauses Act, 1897. It is submitted that it is no longer *res integra* that the Limitation Act, 1963 applies to arbitrations and court proceedings arising out of the arbitrations in light of Section 41(3) of the Arbitration Act. Reliance is placed upon the decision of this Court in the case of *State of Maharashtra v. Borse Brothers Engineers and Contractors Pvt. Ltd.* reported in (2021) 6 SCC 460 and *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Ors.* reported in (2008) 7 SCC 169. It is submitted that therefore in light of the application of the Limitation Act, 1963 applicable to the proceedings under the Arbitration Act (both in Court and in arbitration), Section 10 of the General Clauses Act, 1897 is specifically excluded, and therefore, cannot be relied upon by the appellant.

5.12 It is submitted that even otherwise this Court in the *Sagufa Ahmed (Supra)* has held that the principle forming the basis of Section 10(1) of the General Clauses Act, 1897 also finds a place in Section 4 of the Limitation Act. Therefore, when the benefit of Section 4 of the Arbitration Act is not available, the appellant cannot seek to take recourse to Section 10 of the General Clauses Act, 1897 which embodies the same principle.

5.13 It is further submitted that just like Section 4 of the Limitation Act, Section 10 of the General Clauses Act, 1897 also uses the term “prescribed period”. Section 10 of the General Clauses Act, 1897 provides that where any act is directed to be done on a certain day, or any proceeding is allowed to be done in any Court or office within prescribed period, if the Court or office is closed on that certain day, or the last day of the prescribed period, it may be done or taken on the next working day. Accordingly, if Section 10 of the General Clauses Act, 1897 was to be applicable, the term “prescribed period” must be given the same meaning as that in the Limitation Act. Thus, Section 10 of the General Clauses Act, 1897 will also only then apply for the prescribed period of three months under Section 34(3) of the Arbitration Act and not to the discretionary period of 30 days under the proviso to Section 34(3) of the Arbitration Act.

Making above submissions and relying upon the decision of this Court in the case of *Assam Urban (Supra)* and *Sagufa Ahmed (Supra)*, it is prayed to dismiss the present appeal.

6. Having heard learned Counsel appearing for the respective parties, a short question which is posed for consideration of this Court is whether in the facts and circumstances of the case, the learned trial Court was justified in not condoning the delay in preferring the application under Section 34(3) of the Arbitration Act, which was filed after the expiry of 120 days but filed on the first day of reopening after the winter / Christmas vacation and in a case where the condonable period of 30 days under Section 34(3) of the Arbitration Act had fallen during the winter / Christmas vacation ? The question is with respect to applicability of Section 4 of the Limitation and Section 10 of the General Clauses Act, 1897 in the facts and circumstances of the case.

Therefore, the central question in the present appeal is whether when the last day of condonable period of 30 days (under Section 34(3) of the Arbitration Act) falls on holiday or during the Court vacation, would the benefit of Section 10 of the General Clauses Act, 1897 be available?

7. While considering the aforesaid issues/ questions, Section 34 of the Arbitration Act is required to be referred to, which reads as under:

“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.” The relevant provisions of the Indian Limitation Act and the General Clauses Act, 1897 are also required to be referred to which are as under:

“2.(j) ‘period of limitation’ (which) 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;” “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 reopens.

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.” “Section 10 of the General Clauses Act,

10. Computation of time.□(1) Where, by any 47 (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, 48 applies.

(2) This section applies also to all 49 (Central Acts) and Regulations made on or after the fourteenth day of January, 1887.” (emphasis supplied)” 7.1 Section 34(3) of the Arbitration Act and Sections 2(j) and 4 of the Limitation Act, 1963 fell for consideration before this Court in the case of Assam Urban (Supra). Even the very

issue raised in the present appeal fell for consideration before this Court in the case of Assam Urban (Supra). In the aforesaid decision, this Court interpreted the aforesaid provisions and has specifically observed and held that the benefit of exclusion of period during which Court is closed is available only when application for setting aside the award is filed within 'prescribed period of limitation' and it is not available in respect of period extendable by the Court in exercise of its discretion. By holding so, this Court considered the earlier decisions in the case of Popular Construction Co. (Supra) and State of Maharashtra vs. Hindustan Construction Co. Ltd. reported in (2010) 4 SCC 518 and has observed and held in paragraphs 6 to 9 as under:

"6. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.

7. In Popular Construction Co.¹, this Court has held that an application for setting aside an award filed beyond the period mentioned in Section 34(3) would not be an application "in accordance with sub-section (3) as required under Section 34(1) of the 1996 Act" and Section 5 of the 1963 Act has no application to such application. In para 12 of the Report, it was held in Popular Construction Co.¹ thus: (SCC pp.474-75) "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. Recently, in State of Maharashtra v.

Hindustan Construction Company Limited², a two-Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) emphasised the mandatory nature of the limit to the extension of the period provided in proviso to Section 34(3) and held that an application for setting aside arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) of Section 34 i.e., within three months and a further period of 30 days on sufficient cause being shown and not thereafter.

9. Section 43(1) of the 1996 Act provides that the 1963 Act shall apply to arbitrations as it applies to proceedings in court. The 1963 Act is thus 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 the express provision contained in Section 34(3) of the 1996 Act." Before this Court there existed, similar facts

like in the present case. In the case before this Court, the arbitral awards were received by the appellants on 26.08.2003. No application for setting aside the arbitral award was made before elapse of three months from the receipt thereof. Three months from the date of receipt of the award expired on 26.11.2003. The District Court had Christmas vacation for the period from 25.12.2003 to 01.01.2004. On reopening of the Court i.e. on 02.01.2004, the appellants made application for setting aside the award under Section 34 of the Arbitration Act. Considering the aforesaid facts and thereafter considering Sections 2(j) and 4 of the Indian Limitation Act, 1963, this Court observed and held and concluded in paragraphs 11 to 15 as under:

“11. The question, therefore, that falls for our determination is □whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts?

12. Section 4 of the 1963 Act reads as under :□"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 reopens.

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."

The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

“2(j) ‘period of limitation’ [which] 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.” Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in proviso that follows sub□section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub□section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

15. Seen thus, the applications made by the appellants on 2nd 2004 for setting aside the arbitral award dated 26th 2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time-barred.” Therefore, as such the question involved in the present appeal is squarely answered against the appellant and the said issue is as such not res integra.

8. 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 Limitation Act, 1963 shall apply to arbitrations as it applies to proceeding in Court. However, as observed and held by this Court in the case of Assam Urban (Supra), Limitation Act, 1963 shall be applicable to the matters of arbitration covered by 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.

8.1 In the case of Popular Construction Co.

(Supra), when section 5 of the Limitation Act was pressed into service to proceedings under Section 34 of the Arbitration Act for setting aside the arbitral award, this Court has observed that the Arbitration Act being a special law and provides a period of limitation different from that prescribed under the Limitation Act, the period of limitation prescribed under the Arbitration Act shall prevail and shall be applicable and to that extent the Limitation Act shall be excluded. That, thereafter, it is observed and held that application challenging an award filed beyond period mentioned in Section 34(3) of the Arbitration Act would not be an application “in accordance with” sub-section (3) as required under Section 34(1) of the Arbitration Act.

8.2 In the case of Hindustan Construction Company Ltd. (Supra), in fact this Court has emphasized the mandatory nature of limit to the extension of period provided in proviso to Section 34(3) and has held that an application for setting aside an arbitral award under Section 34 of the Arbitration Act has to be made within time prescribed under sub-section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter.

9. Now, so far as reliance placed upon Section 10 of the General Clauses Act, 1897 on behalf of the appellant is concerned, at the outset it is required to be noted that such a contention is untenable in light of the proviso to Section 10 of the General Clauses Act, 1897, which specifically excludes the application of Section 10 of the General Clauses Act, 1897 to any act or proceeding to which the Indian Limitation Act, 1877 applies. Reference to 1877 Act will now have to be read as reference to Limitation Act, 1963 in view of Section 8 of the General Clauses Act, 1897. Therefore, in light of the application of Limitation Act, 1963 to the proceedings under the Arbitration Act and when Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Indian Limitation Act, 1963 applies and in light of the definition of “period of limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in the case of Assam Urban (Supra), benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.

10. Now, so far as the reliance placed upon the decision of this Court in the case of Sridevi Datla vs. Union of India reported in (2021) 5 SCC 321 relied upon on behalf of the appellant is concerned, at the outset it is required to be noted that in the said decision, this Court has not noticed the decision in the case of Assam Urban (Supra) and there is no discussion on distinction between “prescribed period” and the “discretionary condonable period”. On the other hand, the binding decision of this Court in the case of Assam Urban (Supra) is directly on point.

11. In view of the above and for the reasons stated above, applying the law laid down by this Court in the case of Assam Urban (Supra), it cannot be said that the High Court and the learned III Additional District & Sessions Judge, Vijaypur have committed any error in refusing to condone the delay caused in preferring application under Section 34 of the Arbitration and Conciliation Act, 1996 which was beyond the period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. Under the circumstances, the present Appeal deserves to be dismissed and is, accordingly, dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. (M. R. SHAH)J. (KRISHNA MURARI) New
Delhi, April 10, 2023