

M/S R.K. Transport Company vs M/S Bharat Aluminum Company Limited ... on 3 April, 2025

Author: Pamidighantam Sri Narasimha

Bench: Prashant Kumar Mishra, Pamidighantam Sri Narasimha

2025 INSC 438

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4763 OF 2025
ARISING OUT OF SLP (C) No. 26489 OF 2024

M/S R. K. TRANSPORT COMPANY

...APPELLANT(S)

VERSUS

M/S BHARAT ALUMINUM
COMPANY LTD. (BALCO)

...RESPONDENT(S)

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.
2. It is just as necessary to follow a precedent as it is to make a precedent.
3. The present appeal arises out of an order of the Chhattisgarh High Court dated 27.09.2024 by which it allowed the respondent's appeal under Section 37 of the Arbitration and Conciliation Act, 1996 1 and held the respondent's application under Section 34 as being filed within the limitation period.
4. The short facts necessary for adjudication are as follows. The parties entered into a contract on 01.04.2002 for bauxite mining INDU MARWAH Date: 2025.04.03 16:57:55 IST Reason:

Hereinafter "ACA".

and delivery. Pursuant to disputes arising on payments under the contract, the matter was referred to arbitration, resulting in an arbitral award of Rs. 51,33,40,100 dated 09.04.2022 in favour of the appellant. It is undisputed that the award was signed and delivered to the respondent on this very day. The respondent filed an application to set aside the award under Section 34 on 11.07.2022, along with an

application for stay of the award. The Trial Court, on 13.07.2022, passed an ex-parte order that the Section 34 application was within limitation as the 3-month period expired on 09.07.2022, which was a second Saturday and the following day was a Sunday. Since the court was closed on both these days, the respondent filed the application on the next working day. It also directed the respondent to deposit 50% of the arbitral sum. It is relevant to note that such amount was deposited by the respondent, and the same has been withdrawn by the appellant after furnishing a bank guarantee.

5. The appellant challenged the order dated 13.07.2022 by filing a writ petition under Article 227 of the Constitution, wherein the High Court gave the appellant liberty to file a recall application as the Trial Court order had been passed ex-parte. The appellant filed such recall application before the Trial Court, which was allowed on 25.04.2023 and it was held that the Section 34 application is barred by limitation as the 3-month period expired on 08.07.2022 on which day the court was working. The respondent filed a Section 37 appeal against this order, which was allowed by the High Court by the order impugned herein. The High Court relied on Section 12 of the Limitation Act, 1963² and this Court's decision in *State of Himachal Pradesh v. Himachal Techno Engineers*³ to hold that the limitation period expired on 09.07.2022, which was a court holiday. Therefore, Section 4 of the Limitation Act becomes applicable as per *Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited*⁴, and the Section 34 application must be considered as being within the limitation period as it was filed on the next working day. The High Court remanded the parties to appear before the Trial Court, and also directed that the interim order in respect of execution of pending recovery shall continue till the application is decided on merits.

6. We have heard learned senior counsel, Mr. Mukul Rohatgi for the appellant and learned senior counsel, Mr. Ranjit Kumar for the respondent and have also perused the written submissions. Hereinafter "the Limitation Act".

(2010) 12 SCC 210.

(2023) 8 SCC 453.

7. Mr. Rohatgi submitted that the limitation period must be calculated from the date on which the award was received by the respondent, i.e., 09.04.2022 and therefore, the 3-month limitation period expired on 08.07.2022. He submitted that the Limitation Act, including Section 12, does not apply to proceedings under Section 34 of the ACA. Since the court was working on the date on which limitation expired, Section 4 of the Limitation Act will not apply to hold the application filed on 11.07.2022 as being within the limitation period. There was a 3-day delay in filing the Section 34 application but the respondent did not file an application for condonation that showed sufficient cause to condone the delay. Finally, he also submitted that the respondent must be required to deposit 100% of the arbitral sum, and the High Court has not offered any reasons for restricting the deposit to 50%. 7.1 On the other hand, Mr. Ranjit Kumar has relied on Section 12 of the Limitation Act and the judgment in *Himachal Techno Engineers* (supra) to submit that the date on which the arbitral award was received, i.e. 09.04.2022, must be excluded while calculating the limitation

period. Hence, the High Court rightly concluded that the 3-month period commencing on 10.04.2022 expired on 09.07.2022, which was a court holiday and therefore Section 4 of the Limitation Act is attracted and the application was filed in time. He also took us through the prayer in the Article 227 writ petition to show us that the appellant only sought deposit of 60% of the amount before the High Court and a bank guarantee for the remaining 40%, and hence cannot demand deposit of the entire amount at this stage.

8. Section 34(3) of the ACA stipulates the limitation period for filing an application to set aside an arbitral award as 3 months from the date on which the party receives the arbitral award, which can be further extended by 30 days on sufficient cause being shown. ⁵ At this stage, it is necessary to reiterate that the statutory language of Section 34(3) clearly stipulates the limitation period as “three months”, as opposed to the condonable period as “thirty days”. This difference in language unambiguously demonstrates the legislative intent that the limitation period is 3 calendar months as opposed to 90 days. ⁶ Therefore, we reject the argument Section 34(3) of the ACA 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.”
Himachal Techno Engineers (supra), paras 14 and 15.

taken by the appellant in its written submissions that 3 months must be read as 90 days in the context of Section 34(3).

9. We will now deal with how limitation must be calculated in the present case. The law on the applicability of the Limitation Act to Section 34 proceedings has been summarised by us in a recent decision in *My Preferred Transformation & Hospitality Pvt Ltd v. Faridabad Implements Pvt Ltd* ⁷ as follows:

“23. ...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...”

10. The applicability of Section 12 of the Limitation Act is in issue in the present case. The relevant portion of Section 12 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...”

11. This Court in Himachal Techno Engineers (supra) held that Section 12(1) of the Limitation Act applies while calculating the limitation period under Section 34(3) such that the day from which 2025 INSC 56.

such period is to be reckoned must be excluded. 8 The relevant portion reads as follows:

“12. Section 12 of the Limitation Act, 1963 provides for exclusion of time in legal proceedings. Sub-section (1) thereof provides that in computing the period of limitation for any application, the day from which such period is to be reckoned, shall be excluded. The applicability of Section 12 of the Limitation Act, 1963 to petitions under Section 34 of the Act is not excluded by the provisions of the Act.”

12. In the recent decision in State of West Bengal v. Rajpath Contractors and Engineers Ltd 9 also, this Court applied Section 12(1) while calculating the limitation period of 3 months under Section 34(3).¹⁰ There is nothing in the statutory language or scheme of Section 34(3) that is contraindicative that Section 12(1) does not apply.

13. In the present case, the respondent received a signed copy of the award on 09.04.2022. Since Section 12(1) applies, this date must be excluded and the 3-month limitation period must be reckoned from 10.04.2022. This expires on 09.07.2022, which Himachal Techno Engineers (supra), para 12. (2024) 7 SCC 257.

ibid, para 8. The relevant portion of this decision reads as follows:

“8. As per Section 12(1) of the Limitation Act, the day from which the limitation period is to be reckoned must be excluded. In this case, the period of limitation for filing a petition under Section 34 will have to be reckoned from 30-6-2022, when the appellants received the award. In view of Section 12(1) of the Limitation Act, 30-6-2022 will have to be excluded while computing the limitation period. Thus, in effect, the period of limitation, in the facts of the case, started running on 1-7-2022. The period of limitation is of three months and not ninety days. Therefore, from the starting point of 1-7-2022, the last day of the period of three months would be 30-9-2022. As noted earlier, the pooja vacation started on 1-10-2022.” happened to be a second Saturday when the court was not working. Hence, the benefit of Section 4 of the Limitation Act will inure to the benefit of the respondent. This position of law is well-

settled and has been reiterated by us in My Preferred Transformation & Hospitality (supra) as follows:

“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.”

14. Therefore, the respondent’s application under Section 34, which was filed on 11.07.2022, i.e., the next working day of the court, must be considered as being filed within the limitation period. Consequently, there was no delay in filing the application and sufficient cause need not be shown for condonation of delay. The High Court therefore rightly allowed the Section 37 appeal and held that the respondent’s Section 34 application was filed within the limitation period.

15. Further, we do not wish to interfere with the High Court’s direction to stay the execution of pending recovery till the matter is adjudicated on merits, since the same is interim in nature and the appellant has already withdrawn 50% of the arbitral sum that was deposited by the respondent. In this view of the matter, the present appeal is dismissed.

16. No order as to costs.

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

.....J. [PAMIDIGHANTAM SRI NARASIMHA]J.
[PRASHANT KUMAR MISHRA] NEW DELHI;

APRIL 03, 2025