

Mrs. Kiran Suran vs Sh. Satish Kumar & Ors. on 7 April, 2025

Author: Navin Chawla

Bench: Navin Chawla

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Reserved on: 23.01.2025
Pronounced on: 07.04.2025

+ FAO (COMM) 27/2025 & CM APPL. 4381/2025
MRS. KIRAN SURANAppellant
Through: Mr.Shailendra Dahiya, Adv.

versus

SH. SATISH KUMAR & ORS.Respondent
Through: Mr.Sanjay Katyal and
Ms.Ritika Bansal, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RAVINDER DUDEJA

JUDGMENT

NAVIN CHAWLA, J.

1. This appeal has been filed by the appellant under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act'), challenging the Order dated 18.10.2024 (hereinafter referred to as 'Impugned Order') passed by the District Judge (Commercial Court-

01) East District Karkardooma Courts, Delhi (hereinafter referred to as the 'learned Trial Court') in OMP (COMM) No. 11/2022, titled Kiran Suran v. Satish Kumar & Ors. (hereinafter referred to as 'Section 34 Petition'), whereby, the learned Trial Court has dismissed the application filed by the appellant herein under Section 34(3) of the A&C Act seeking condonation of delay of 287 days in filing the said Section 34 Petition.

Case of the Appellant:

2. The appellant, on or around 18.04.2022, had filed the above mentioned Section 34 petition challenging the Arbitral Award dated 03.06.2019 passed by a learned Sole Arbitrator (hereinafter referred to as the 'Impugned Award').

3. The learned Sole Arbitrator had been appointed by this Court vide its Order dated 16.10.2005 passed on an application filed under Section 11 of the A&C Act by Late Shri N.K. Chopra, father of

the appellant, and Late Shri I.P. Chopra, respondent no. 17 herein, against the respondent no. 1, Mr. B.P. Arora (now represented by the respondent nos. 3 and 4), and Mrs. Sushma Arora, respondent no. 5 herein, to adjudicate the disputes that had arisen between the parties in relation to the Collaboration Agreement dated 14.05.2001 between these parties. Later, the subsequent transferees from the said respondents were also added as parties to the arbitration proceedings.

4. As the Section 34 Petition had been filed beyond the period prescribed in Section 34(3) of the A&C Act, the appellant filed an application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act') seeking condonation of delay of 287 days in filing the same. The said application along with the Section 34 Petition has been dismissed by the learned Trial Court by way of the Impugned Order as being barred by limitation prescribed in Section 34(3) of the A&C Act.

5. In the application filed under Section 5 of the Limitation Act, it is the case of the appellant that the appellant was not aware of the arbitration proceedings before the learned Sole Arbitrator. She, on 06.04.2021, had received a notice from the Court of the learned ADJ - 06, District West, Tis Hazari Courts, Delhi in Execution Petition no. 277/2020, titled Shyam Sunder Gupta & Ors v. Sh. N.K. Chopra (since deceased) & Ors. (hereinafter referred to as the 'Execution Petition') along with an incomplete copy of the Impugned Award. It was asserted that thereafter, the appellant filed her objections under Section 34(2) of the A&C Act in the Execution Petition, however, the same were dismissed vide Order dated 21.12.2021 as being not maintainable in the Execution Petition. It was asserted that therefore, the appellant was pursuing the above objections in good faith from 04.10.2021 till 21.12.2021, whereafter the appellant obtained the certified copy of the Order dated 21.12.2021, on 30.12.2021, and filed the Section 34 Petition on 18.04.2022.

6. In the application, it was further asserted that in view of the Orders passed by the Supreme Court in *Suo Moto Writ Petition (C) No. 03/2020*, the period between 15.03.2020 till 28.02.2022 is to be excluded for purposes of limitation, and where the limitation would have expired during the period between 15.03.2020 till 28.02.2020, it shall stand extended by a further 90 days from 01.03.2022. The appellant contended that on account of Covid-19, she was having a bona fide ground for seeking condonation of delay.

7. Before us, it is asserted that the appellant did not have "sufficient knowledge" about the said arbitration proceedings before the learned Sole Arbitrator and also about the Impugned Award until the receipt of notice of the Execution Petition, as she had never received any notice from the learned Sole Arbitrator or the other parties regarding the said proceedings.

8. The appellant submits that though she had received a notice dated 24.09.2019 from the counsel for Smt. Indira Chopra, mother of the appellant, referring to the Impugned Award, and there was also subsequent correspondence on the same, as there was only a reference to the Impugned Award in the said correspondence, it was not sufficient notice of the arbitral proceedings or the Impugned Award. In any case, it was not claimed in the correspondence that a copy of the Impugned Award had been supplied to the appellant.

9. The appellant claims that even with the Execution Petition, the complete copy of the Impugned Award was not received nor had she received a copy of the Interim Award dated 04.08.2014 or of the application under Section 19 of the A&C Act.

10. The appellant claims that only on demand, the counsel for the Decree Holder in the Execution Petition supplied a copy of the application under Section 19 of the A&C Act, from which, the appellant came to know that after the death of her father Mr. N.K.Arora, the appellant was being represented before the Sole Arbitrator by her mother-Smt. Indira Chopra on the basis of a Power of Attorney allegedly executed by the appellant. The counsel for the appellant therefore, demanded copy of the General Power of Attorney from the counsel of the respondent nos. 7, 9, 10, 11, 12 and 13, and counsel for respondent nos. 14 to 17, however, they expressed their inability to supply the same.

11. The appellant asserts that she does not remember having ever executed any Power of Attorney in favour of her mother after the death of her father. The appellant even filed an application before the learned Executing Court for summoning the original arbitral record from the Sole Arbitrator, however, the said application was dismissed vide Order dated 21.12.2021, observing that in the Execution Petition, the Court need not summon the arbitral record as it cannot go behind the Arbitral Award, and shall only execute it according to its terms.

12. On 04.10.2021, the appellant, without having copy of the alleged power of attorney, had also filed objections under Section 34 of the A&C Act along with an application under Section 34(3) of the A&C Act read with Section 5 of the Limitation Act, in the Execution Petition. The same were, however, dismissed vide order dated 21.12.2021, holding the same to be not maintainable.

13. The appellant thereafter filed an application under Section 34 of the A&C Act, being OMP (COMM) 14/2022, along with an application under Section 5 of the Limitation Act, before the court of the learned District Judge (COMM-02) District West, Tis Hazari Court. On 17.08.2022, the said objections were returned by the learned Court for lack of territorial jurisdiction, as the seat of the arbitration was at Patparganj, Delhi- 110092.

14. Thereafter, the appellant filed before the learned Trial Court, the above Section 34 Petition along with an application seeking the condonation of delay.

15. The learned Trial Court, on 17.01.2023, while issuing notice on the Section 34 petition, directed for summoning of the original Arbitration Proceedings from the office of learned Sole Arbitrator.

16. It is the case of the appellant that it was only after inspecting the Arbitral Record on 18.07.2024, the appellant for the first time discovered that one alleged copy of General Power of Attorney dated 14.12.2008 (hereinafter referred to as the 'Power of Attorney'), allegedly issued by the appellant, which was used by the appellant's mother-Smt. Indira Chopra in an application filed on 09.01.2009 under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') read with Section 40 of the A&C Act for seeking substitution of LRs in place of deceased Claimant no.1-Sh. N .K. Chopra, father of the appellant. The said application was allowed by the learned Sole Arbitrator on 20.03.2009.

17. It is asserted that, from the record it was discovered that the learned Arbitrator had not issued notice of the said application to the appellant.

18. The appellant asserts that the alleged Power of Attorney dated 14.12.2008 was having forged signatures of the appellant and the appellant had never executed the same. The original power of attorney was never filed before the learned Arbitrator. It is asserted that on 14.12.2008, Late Shri N.K. Arora had been cremated and, therefore, the Power of Attorney could not have been executed by the appellant on the said date.

Impugned Order:

19. The learned Trial Court, however, relying on the Letter dated 24.09.2019 issued by the mother of appellant- Smt. Indira Chopra, through her Counsel, and the reply dated 07.10.2019 addressed by the husband of the appellant on her behalf, observed that the appellant was aware about the passing of the Impugned Award. The learned Trial Court further observed that the appellant in the said communications, neither mentioned that she has not received the signed copy of the Impugned Award, nor made any effort thereafter to obtain the same, and therefore, the appellant had received a signed copy of the Impugned Award at least prior to the reply dated 07.10.2019. The learned Trial Court held that the Section 34 Petition preferred by the appellant is beyond the prescribed limitation and not maintainable.

Submissions of the learned Counsel for the Appellant:

20. The learned counsel for the appellant submits that the Arbitral record does not indicate that a copy of the Arbitral Award dated 03.06.2019 was ever served by the learned Arbitrator on the appellant.

He submits that, therefore, the limitation for filing of the objections under Section 34 (3) of the A&C Act had not commenced and the Section 34 Petition filed before the learned Trial Court was within the period of limitation. In support, he places reliance on the Judgment of this Court in Ministry of Health & Family Welfare & Anr. v. Hosmac Projects Division of Hosmac India (P) Ltd., 2023 SCC OnLine Del 8296.

21. He submits that the learned Trial Court has erred in placing reliance on the Letters dated 24.09.2019, 07.10.2019, 30.12.2019 and 06.01.2020 exchanged between the mother of appellant Smt. Indira Chopra, through her Counsel, and the appellant for drawing an inference that the appellant had been duly served and was aware of the Impugned Arbitral Award. He submits that the correspondence exchanged by the husband of the appellant with the counsel for the mother of appellant was 'without prejudice' and cannot be read as an admission of the appellant to the receipt of the copy of the Award from the learned Arbitrator.

22. He further submits that the appellant is also entitled to seek extension of the period of limitation in terms of the Orders passed by the Supreme Court in Suo Moto Writ Petition (C) No. 03/2020 and

also under Section 14 of the Limitation Act.

Submissions of the learned Counsel for the Respondent:

23. On the other hand, the learned counsel for the respondent, who appears on advance notice of this appeal, submits that from the correspondence exchanged between the parties, it would be apparent that the appellant was fully aware of the Impugned Arbitral Award dated 03.06.2009 passed by the learned Sole Arbitrator. She never demanded a copy of the same in spite of the correspondence calling upon her to execute documents in compliance with the said Award. Placing reliance on the Judgment dated 06.01.2020 of the High Court of Madras in Original Petition No. 549/2019 titled M/S Resurgent Power Project Ltd. v. M/s ABB India Ltd., he submits that in such a case, the limitation for filing of the petition under Section 34 of the A&C Act has rightly been held by the learned Trial Court to have expired.

24. He submits that the appellant was being represented by her mother before the learned Sole Arbitrator on basis of a power of attorney, which the appellant is now falsely claiming to be forged.

Analysis and Findings:

25. Section 34 (3) of the A&C Act prescribes the period of limitation within which an application under Section 34 (1) or Section 34 (2) of the A&C Act can be filed, as also the maximum period till which delay in filing of the same can be condoned. It 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."

26. In terms of Section 34(3) of the A&C Act, the limitation commences from the date of receipt of the Arbitral Award. Section 31(5) of the A&C Act obliges the Arbitral Tribunal to deliver a signed copy of the Arbitral Award to each of the party. Reading the two provisions together, the Supreme Court in Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239 has held that the delivery of an Arbitral Award under Section 31(5) of the A&C Act is not a matter of mere formality, and to be effective has to be 'received' by the party. It was held that the delivery of the Award triggers the limitation for filing of an application for setting aside of an Award under Section 34(3) of the A&C Act.

27. In *State of Maharashtra & Ors. v. ARK Builders (P) Ltd.*, (2011) 4 SCC 616, the Supreme Court further held that what is required under Section 31 (5) of the A&C Act was the delivery of a copy of the Award 'signed' by the Arbitral Tribunal and not 'any copy of the Award'. It was further held that the expression 'party making that application had received the Arbitral Award' cannot be read in isolation and it must be understood in light of Section 31(5) of the A&C Act that requires a signed copy of the Award to be delivered to each party. It held that from the reading of the two provisions together, it is quite clear that the limitation prescribed under Section 34(3) of the A&C Act would commence only from the date a signed copy of the Award is delivered to the party making the application for setting it aside. It was further held that the period of limitation can only commence from the date on which the Award was received by the party concerned.

28. In *Benarsi Krishna Committee & Ors. v. Karmyogi Shelters (P) Ltd.*, (2012) 9 SCC 496, the Supreme Court held that receipt of a copy of the Award by an Advocate cannot satisfy the provisions of Section 31(5) of the A&C Act.

29. In *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657, the Supreme Court reiterated that the period of limitation for filing the objection to the Award under Section 34 of the A&C Act commences from the date on which the party making the application has 'received' a signed copy of the Award as required by Section 31(5) of the Act.

30. This Court in *Ministry of Health & Family Welfare (supra)*, relying upon the above Judgments summarised the law applicable to Section 34(3) of the A&C Act as under:

"45. An analysis of the foregoing Judgments shows:

(i) A signed copy of Arbitral Award is to be delivered to each party;

(ii) The delivery should be to a party who is competent to take a decision as to whether or not the Award is to be challenged;

(iii) The expression 'party' does not include an agent or a lawyer of such party;

(iv) The limitation under Section 34(3) of the Act commences "when the party making the Application has received the Award";

(v) In the case of an Application for Correction of computational, clerical or typographical errors under Section 33 of the Act, the limitation is to be calculated from the date on which the Application is disposed off."

31. In the present case, therefore, we have to determine as to whether the appellant has 'received' a signed copy of the Arbitral Award from the Arbitrator.

32. From the above narration of facts, it would be evident that on the death of the original claimant no.1, Shri N. K. Arora, the father of the appellant, an application under Order XXII Rule 3 of the

CPC read with Section 40 of the A&C Act was filed by the mother of the appellant, Smt. Indira Chopra, claiming herself to be the Power of Attorney for the appellant as well. The said application was allowed by the learned Arbitrator and the appellant was substituted as one of the legal heirs of late Shri N. K. Arora. The Arbitral proceedings thereafter continued with Smt. Indira Chopra representing even the appellant.

33. It is not the case of any of the parties that Smt. Indira Chopra did not receive a signed copy of the Arbitral Award from the Arbitrator. A signed copy of the Award received by her would, therefore, be also for and on behalf of the appellant and a due compliance of Section 31 (5) of the A&C Act.

34. In similar circumstances in *Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel & Ors.*, (2018) 15 SCC 178, the Supreme Court held that service of the Arbitral Award on the person representing the party, would be considered to be a due service of the signed copy of the Award under Section 31 (5) of the A&C Act.

35. Though the appellant has challenged the Power of Attorney as being forged, this question and issue cannot be determined in a petition filed under Section 34 of the A&C Act against the Arbitral Award. We have not been informed of the appellant having instituted any independent proceedings challenging the said Power of Attorney till date.

36. Coupled with the above, we would now take note of a few correspondence exchanged between the parties.

37. By a legal notice dated 24.09.2019, the counsel for Smt. Indira Chopra forwarded to the appellant a General Power of Attorney for her perusal and for its execution/registration in compliance with the Arbitral Award dated 03.06.2019. The said notice reads as under:

"In the captioned matter, the Ld. Arbitrator Sh. G.P. Thareja, Retd. ADJ passed the Award dated 03.06.2019. The said Award directs the claimants (which include the LR's of Late Sh. N.K. Chopra) to inter-alia execute transfer deed etc. in favour of the respondents therein.

In order to comply with the directions of the Ld. Arbitrator I have been instructed by Mrs. Indira Chopra W/o Late Sh. N.K. Chopra to forward the GPA for your perusal and its execution/registration before the concerned sub registrar. Accordingly the GPA is enclosed herewith for doing the needful in coordination with Mrs. Indira chopra."

38. The General Power of Attorney annexed with the said notice made a reference to the Arbitral proceedings, including the substitution of the appellant in the same on the death of late Shri N. K. Chopra, the Award dated 03.06.2019 passed by the learned Sole Arbitrator, and the directions passed therein.

39. The appellant, through her husband, Capt. B R Suran (Retd.) sent a reply dated 07.10.2019 to the above legal notice, wherein the appellant expressed no surprise to her being represented in the Arbitration proceedings by her mother or to the Arbitral Award being passed, and in fact, stated that the Arbitral Award needs to be implemented without undue delay. Importantly, though the appellant sought a copy of the death certificate of late Shri N. K. Chopra as also the unregistered/registered Will of late Shri N. K. Chopra or relevant Succession Certificate, she did not seek a copy of the Arbitral Award. We reproduce the response dated 07.10.2019 as under:

"with reference to letter ibid addressed to my wife Mrs Kiran Suran, and without prejudice to the Award by the Ld. Arbitrator, may I humbly request that as a starting point, an original / duly certified copy of each of the following documents be forwarded for perusal and record of my wife, Mrs Kiran Suran :-

(a) Death Certificate of (late) Shri NK Chopra.

(b) Unregistered/Registered WILL of (late) Shri NK Chopra or relevant Succession Certificate.

2. Notwithstanding the above, and without prejudice to the early compliance with the Award by the Ld Arbitrator, a Whats App message received by my wife Mrs Kiran Suran from Shri Manu Kumar Chopra on 12 August 2019, (19:04 IST) is reproduced below, for your information :-

"Why u have to call Kavita and ask about me there is simply no need."

3. From the above, it appears that the views of Shri Manu Kumar Chopra are widely divergent from the instructions of Mrs Indira Chopra regarding the GPA. It may, therefore, be necessary to brainstorm through fresh options now available, so that the implementation of the Award is not unduly delayed. Without prejudice, it is pertinent to mention that in any alternative viable solutions being considered now as a futuristic workable option, it will be essential to have adequate inbuilt systemic safeguards against emotional distress and/or financial exploitation of my wife, Mrs Kiran Suran, by her mother her siblings and their families.

During such (informal) deliberations, should my presence be desired at any of the addresses mentioned on the letterhead of the above mentioned letter, I shall be happy to participate."

40. Smt. Indira Chopra, through her counsel, sent a reply to the Letter dated 07.10.2019, vide notice dated 30.11.2019, inter alia, stating that the documents demanded by her can be shown so that the matter can proceed for the execution of the GPA and for the implementation of the Award dated 03.06.2019 passed by the learned Arbitrator.

41. The appellant again, through her husband, sent a reply dated 30.12.2019, wherein, interestingly, again there was no denial to the Arbitral Award. We reproduce the response dated 30.12.2019 as under:

"with reference to letter ibid addressed to my wife Mrs Kiran Suran and I, and without prejudice to the Award by the Ld.Arbitrator, may I humbly opine that your letter of 30 Nov 2019 has not only left unanswered the issues deliberated in my letter of 07 Oct 2019, but has raised a number of new/ fresh issues, not the least among which is whether a legal beneficiary needs to be provided with an original and/or duly certified copy of each of the following documents of the deceased:-

(a) Death Certificate.

(b) Unregistered / Registered WILL or relevant Succession Certificate.

2. Notwithstanding the above, and without prejudice to the early compliance with the Award by the Ld Arbitrator, the views expressed in paras 2 & 3 of your letter ibid by your clientess Mrs Indira Chopra w/o late Shri NK Chopra, appear to be incompatible with the actions that are still pending since the demise of Shri NK Chopra on 13 Dec 2008.

and include the essential steps of informing and establishing 'whether Mrs Kiran Suran is a legal beneficiary from the WILL of late Shri NK Chopra or not ?' "

42. Further correspondence on similar lines was exchanged between the parties out of which we may only quote the relevant extracts from the Letter dated 29.02.2020, as under:

"vii. From the above, it is quite obvious that the delay in implementation of the award is on account of procrastination/ delays and inconsistencies, at your end. Eg. If it was known that it would not be possible to share the WILL with Mrs Kiran Suran, the same should have been so stated by 10 Oct. 2019, and no time would have been lost in progressing further. For reasons best known at your end, our time was wasted in the seemingly endless wait for some credible information from your end through October 2019, November 2019 and December 2019; thus utterly frustrating our bid to quickly put this event behind us."

43. From the above correspondence, it would be apparent that the appellant, in spite of the knowledge that she had been represented by Smt. Indira Chopra in the Arbitration proceedings and of the Award dated 03.06.2009 passed by the learned Sole Arbitrator, did not challenge either such representation or the Award. She even did not demand a copy of the Award and instead complained of delay in implementation of the same. This totally negates her stand that she did not know of the Award or did not have a copy of the same.

44. While it is true that Section 31(5) of the A&C Act requires the Arbitral Tribunal to deliver a signed copy of the Award to the party, however, if from the facts it is apparent that the party has a copy of the Award delivered through her Power of Attorney, further proof of such delivery need not be insisted upon. The delivery of a copy of the Award to the Power of Attorney holder, who has also represented the party in the arbitral proceedings, shall be a due compliance with Section 31(5) of the

A&C Act,

45. It must also be remembered that the whole object of the A&C Act is to ensure expeditious adjudication of the disputes between the parties through the alternate dispute resolution mechanism. The said object cannot be allowed to be defeated by a party raising a plea of non-receipt of a copy of the Award to seek endless extension of the period of limitation and to challenge the same at a later stage beyond the period of limitation.

46. As noted hereinabove, from the correspondence addressed by the appellant, it is evident that the appellant never protested on the implementation of the Award. She, in fact, complained of delay in its implementation. Though this correspondence states that it is 'without prejudice', this reservation cannot be read to mean a reservation of the appellant to the implementation of the Arbitral Award or as a right to later challenge the same. Having accepted the Award, the appellant cannot now be allowed to challenge the same belatedly or beyond the period prescribed under Section 34 (3) of the A&C Act, this would again defeat the very object of the A&C Act.

47. As far as the reliance of the learned counsel for the appellant on the orders passed by the Supreme Court extending the period of limitation is concerned, we again do not find any merit.

48. As would be evident from the above narration of facts, the Impugned Award is dated 03.06.2019. The period of limitation, including the maximum condonable period of delay, would, therefore, have passed long before the period of limitation was suspended by its orders passed by the Supreme Court and no benefit of the same can enure to the appellant.

49. Equally, the plea of the appellant for extension of benefit of Section 14 of the Limitation Act, cannot come to the aid of the appellant. For purposes of attracting Section 14 of the Limitation Act, the earlier proceedings must be filed within the period of limitation as it is only the period for which the said proceedings are bona fide prosecuted, that can be excluded. If the initial proceedings are itself filed beyond the period of limitation, Section 14 of the Limitation Act would not come to the aid of such a party as the subsequent proceedings, even after extending the period of limitation under Section 14 of the Limitation Act, shall still remain barred by limitation.

50. In the present case, the appellant is seeking the benefit of the pendency of the application filed by the appellant under Section 34 of the A&C Act in the Execution Petition. The same was filed on 04.10.2021, that is beyond the maximum condonable period of limitation prescribed under Section 34(3) of the A&C Act.

51. For the reasons stated hereinabove, therefore, we find no merit in the present appeal. The same is accordingly dismissed. There shall be no orders as to costs.

NAVIN CHAWLA, J RAVINDER DUDEJA, J APRIL 7, 2025/VS Click here to check corrigendum, if any