

**IN THE HIGH COURT AT CALCUTTA**  
**Ordinary Original Civil Jurisdiction**  
**ORIGINAL SIDE**  
**AP-COM/135/2024 (Old Case No.AP/698/2016)**  
**FUTURE MARKET NETWORKS LTD.**  
**VS**  
**LAXMI PAT SURANA & ANR.**

**Present: The Hon'ble JUSTICE SUBHENDU SAMANTA**

**Appearance:**

**Mr. Rishad Medora, Adv.**

**Ms. Arti Bhattacharyya, Adv.**

**Ms. Debomita Sadhu, Adv.**

**Mr. Naman Chowdhury, Adv.**

**...for the petitioner**

**Mr. L. P. Surana Adv. (In Person)**

**...for the respondent**

**Reserved on: 08.07.2024**

**Judgment on: 11.07.2024**

**Subhendu Samanta, J.**

1. This is an application u/s 34 of the Arbitration and Conciliation Act, 1996 for setting aside an arbitral award dated 19<sup>th</sup> May 2016 passed by the sole arbitrator Mr. Shyamaprasad Sarkar, bar at law, Senior Advocate, Calcutta.

2. Mr. Laxmi Pat Surana respondent No.1- in- person to this matter, has raised a point of limitation before this court by submitting that, the instant application u/s 34 of Arbitration and Conciliation Act, 1996, is barred by limitation according to the provision of Section 34(3) of the said Act 1996.

3. The contention of Mr. Surana is that, the award in question was passed and signed on 19<sup>th</sup> May 2016. The award was received on the same day i.e. on 19<sup>th</sup> May of 2016. He submits that the instant application u/s 34 of Limitation Act was filed on 17<sup>th</sup> August 2016. The date of filing of the instant application from the date of receiving of the award is calculated to be 91 days. Mr. Surana submits that Section 34(3) of Act 1996 specifically enumerated, an application for setting aside the award can only be filed within 90 days from the date of delivery of the award. The present petitioner has preferred this application on 91<sup>st</sup> day. Thus the instant application filed by the petitioner is barred by limitation and liable to be dismissed. In support of his contention Mr. Surana has referred the relevant authorities as follows:-

- 1. KMC Vs. Jain Infraprojects Ltd. (A.P. 411 of 2020)**
- 2. Simplex Infrastructure Ltd. Vs. Union of India 2019 (2) SCC 455**
- 3. Bhimshankar Sahakari Sakkare Karkhana Niyamita Vs. Walchandnagar Industries Ltd. (2023) 8 SCC 453**
- 4. Food Corporation of India Vs. AP State Warehousing Corporation (IA No. 1 of 2022 and CMA No. 157 of 2022)**
- 5. Government of Maharashtra Vs. Borse Engineers & Contractors P. Ltd. 2021 SCC OnLine SC 233**

**6. K. Chellamuthu & Co. Vs. Union of India and Anr. OP 410 of 2009**

**7. Mahindra & Mahindra Financial Vs. Mahesbhat Tinabhai Rathod (2022) 4 SCC 162**

**8. P. Radhabai & Ors. Vs. P. Ashok Kumar & Anr. (2019) 13 SCC 445**

**9. NHAI Vs. Subhas Bindlish & Ors. SLP (Civil) Diary No. 17812 of 2019**

**10. Chintel India Ltd. Vs. Bhayana Builders P. Ltd 2021 SCC OnLine SC 80**

4. Mr. Surana Argued that

(a) The coordinate bench of this Hon'ble Court in KMC v Jain Infraprojects Ltd. (A. P. 411 of 2020) has unambiguously considered three months, as stated Section 34(3), as 90 days. Paragraph 10 of the judgement states that "... since the petitioner received the impugned Award on 27th February, 2019, the prescribed period under section 34(3) of Act expired on 27th May, 2019. The application under section 34 was filed by the petitioner on 18th June, 2019 after 112 days from the date of receipt of the Award by the petitioner and hence after a delay of 22 days." It is stated that if the delay of 22 days, as contained in the Order, is deducted from 112 days (time taken to file the application), the prescribed period of limitation is strictly 90 days. The Hon'ble Court in stating that the prescribed period under section 34(3) of Act expired on 27th May, 2019 has computed the period as 90 days as 2 days of February, 31 days of March, 30 days of April and 27 days of May 90 days. It is humbly stated that this Hon'ble Court is bound by the decision of the Coordinate Bench. In case of any contrary view, the subject deserves to be referred to a larger bench.

(b) The period of three months has once again been interpreted as 90 days by the Hon'ble Supreme Court in its judgement in Simplex Infrastructure Ltd. v. Union of India reported at 2019 (2) SCC 455, by stating that "Hence, even if the Respondent is given the benefit of the provision of Section 14 of the Limitation Act in respect of the period spent in pursuing the proceedings before the District Judge, Port Blair, the petition under Section 34 was filed much beyond the outer period of ninety days."

This important aspect of the judgement has not been contradicted by the Petitioner herein.

(c) The limitation period of 90 days has been fortified by another judgment delivered by the Hon'ble Supreme Court in *Bhimashankar Sahakari Sakkare Karkhana Niyamita vs Walchandnagar Industries Ltd.* reported at (2023) 8 SCC 453 by holding that "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." The plain and simple language contained in the judgement must not be misconstrued.

(d) In yet another judgement of *Food Corporation of India v. A.P. State Warehousing Corporation* (I.A. No. 1 of 2022 and C.M.A. No. 157 of 2022) delivered by the Hon'ble Telangana High Court, it has been held that "The Act prescribes 90 days period of limitation to avail such remedy with a grace period of 30 days." It is stated that such an important observation / interpretation by the Hon'ble High Court is in full consistence with the interpretation of Section 34(3) as laid down by the Hon'ble Supreme Court and cannot be treated as a stray observation as inappropriately submitted by the Petitioner.

(e) In *Government of Maharashtra vs Borse Brothers Engineers & Contractors P. Ltd.* reported at 2021 SCC OnLine SC 233, The Hon'ble Supreme Court in paragraph 42 of the judgement, has once again held three months in Section 34(3) as 90 days by stating - "Secondly, it is also correct to note that the period of 90 days plus 30 days and not thereafter mentioned in section 34(3) of the Arbitration Act cannot now apply, the limitation period for filing of appeals under the Commercial Courts Act being 60 days and not 90 days." In paragraph 47, it also states that "Given the 'lakshman rekha' laid down in this judgment, it is a little difficult to appreciate how a cap can be judicially engrafted onto a statutory provision which then bars condonation of delay by even one day beyond the cap so engrafted."

(f) K. Chellamuthu & Co. vs Union of India and Anr, O.P.No.410 of 2009 (Hon'ble Madras High Court judgement). In paragraph 32 of the judgement, the period for filing an application under Section 34 of Act, 1996 has been held to be 90 days stipulated under Section 34(3).

(g) The Hon'ble Supreme Court has reinforced its interpretation of Section 34(3) i.e. three months plus 30 days as 120 days, being the "outer boundary" in its following judgements:

(2022) 4 SCC 162-Mahindra & Mahindra Financial v. Maheshbhai Tinabhai Rathod (page 4-12th, 13 line)

(2019) 13 SCC 445-P. Radhabai & Ors v. P. Ashok Kumar & Anr (para 35(b))

SLP (Civil) Diary No. 17812 of 2019 - NHAI v. Subhas Bindlish & Ors

2021 SCC OnLine SC 80-Chintel India Ltd. v. Bhayana Builders P. Ltd. (paragraph 8, 33)

5. Mr. Mukherjee, Learned Advocate, appearing on behalf of the petitioner submits that the date of award is 19<sup>th</sup> May 2016. The date of filing petition u/s 34 of Arbitration and Conciliation Act 1996 is on 17<sup>th</sup> August 2017.

6. Mr. Mukherjee, argued that the submission by Mr. Surana is misconceived. Mr. Mukherjee submits that the application u/s 34 of Arbitration and Conciliation Act is very well within the period as prescribed u/s 34(3) of Arbitration and Conciliation Act 1996. He argued that u/s 34 (3) of the Arbitration and Conciliation Act, 1996, a petition u/s 34 can not be filed ***“after three months have elapsed from the date on which the party making the application as received the arbitral award”***. A further period of 30 days can be allowed by the court if sufficient cause is shown. He further submits for the purpose computation three months the

date of receipt of award has to be excluded on account of use of the expression “**from**” in Section 34(3). Mr. Mukherjee further argued, for the purpose of calculating three months, the rule is that the period would end on the corresponding date of the appropriate subsequent month irrespective of whether some months are longer than others.

7. Mr. Mukherjee further argued that therefore even if date of award i.e. on 19<sup>th</sup> May 2016 is considered as a date of receipt of award, three months should be calculated from 20<sup>th</sup> May 2016 and would expire on 19<sup>th</sup> August 2016. Thus the instant petition is within time.

8. Mr. Mukherjee argued that the Hon’ble Supreme in **State of Himachal Pradesh and ors. Vs. Himachal and Anr**, reported in **(2010) 12 Supreme Court cases 210** has specifically made the position very clear.

9. Mr. Mukherjee further argued that even if on plain calculation the date of filing i.e. 17<sup>th</sup> August 2016 is within 90 days from the date of receiving the impugned award i.e. on 19<sup>th</sup> May 2016. Mr. Mukherjee further argued that the point of limitation has not been raised in the affidavit in opposition filed by the respondent; the pleadings is silent. Thus it would be evident that respondent has only raised this issue to delay the instant proceeding.

10. Mr. Mukherjee on refuting the contention of the respondent in-person has distinguished citations placed by Mr. Surana and argued that:-

a) Judgment dated 22<sup>nd</sup> February, 2021 in Kolkata Municipal Corporation Vs. Jain Infraprojects Limited [AP NO. 411 of 2020]- In this case the computation of the

period of three months under Section 34(3) of Arbitration and Conciliation Act, 1996, was not in question (See paragraph 7). Furthermore, at paragraph 10 of the judgement, three months from 27th February, 2019 has been held to have expired on 27th May, 2019 i.e., the corresponding date of the subsequent month and not after 90 days. The period from 27th February, 2019 to 27th May, 2019 is a total of 89 days.

b) Judgment dated 27<sup>th</sup> April, 2022 in Food Corporation of India Vs. AP State Warehousing Corporation[ IA NO. 1 of 2022 and CMA No. 157 of 2022]- The question in the case was whether delay in filing a Section 37 appeal of 898 days could be condoned. The computation of the period under Section 34 of the Arbitration and Conciliation Act, 1996, was not in question. The observation in paragraph 5 of the judgment is contrary to Supreme Court decisions.

c) M/s. Simplex Infrastructure Ltd. Vs. Union of India, reported at (2019) 2 SCC 455- In this case the question was whether a delay of 514 days in filing a petition under Section 34 could be condoned taking recourse to Section 5 and Section 14 of the Limitation Act, 1963. The computation of the period under Section 34 of Arbitration and Conciliation Act, 1996, was not in question.

d) Mahindra and Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod, reported at (2022) 4 SCC 162- In this case there was delay of 185 days in filing the Section 34 petition and condonation under Section 5 of the Limitation Act, 1963, was sought. It was in that context that the Court refused to entertain the petition. (See paragraphs 4, 7, 10, 13). The manner of computation under Section 34 of Arbitration and Conciliation Act, 1996, was not in question.

11. In reply, Mr. Surana submits that

Any interpretation by the Hon'ble Supreme Court is done only after thoughtful and careful consideration of all relevant laws of the land. The outer boundary of 120 days is an interpretation of Section 34(3) by the Hon'ble Supreme Court which is binding on all the Courts in the country. In NHAI v. Subhas Bindlish & Ors it is clearly stated that "In our considered view, both these provisions stand on different footings. What is provided under Section 34(3) is the outer limit within which the application can be preferred for setting aside the arbitral award. The law laid down on the point by this Court is

very clear and in our view the subsequent amendment in 2015 would not change the character of the mandate under Section 34(3) of the Act". When the extended period of 30 days, as provided in the proviso of Section 34(3), is taken out of such 120 days outer boundary, it establishes that the period prescribed under Section 34(3) remains 90 days. The Petitioner herein has not contested such interpretation of Section 34(3) by the Hon'ble Supreme Court. Such interpretation of the Hon'ble Supreme Court is binding and therefore should not be ignored.

(8) The Petitioner while referring to a judgement rendered in State of Himachal Pradesh & Anr vs Himachal Techno Engineers & Anr reported at (2010) 12 SCC 210, stated that Section 9 of General Clauses Act, 1897 and Section 12(1) of Limitation Act, 1963 are applicable for the purpose of "commencement and termination of time". Having considered the applicability of the said sections, the Hon'ble Supreme Court held in the aforesaid judgement that the "date of receipt of the Award" shall be excluded for the purpose of commencement of time required for filing of objections under Section 34 of the Act, 1996.

This aspect was considered and squarely overturned by a subsequent judgement rendered in Dakshin Haryana Bijli Vitran Nigam Ltd. us Navigant Technologies Pvt. Ltd., reported at 2021 SCC OnLine SC 157 stating that "We are of the considered opinion that the period of limitation for filing objections would have to be reckoned from the date on which the signed copy of the award was made available to the parties." Needless to mention (2010) 12 SCC 210 judgement was duly considered and distinguished in 2021 SCC OnLine SC 157. As such Section 9 of General Clauses Act, 1897 and Section 12(1) of Limitation Act, 1963 would have no application as far as the date of commencement of the limitation period of 90 days is concerned. The Arbitration and Conciliation Act, 1996 is a self-contained code.

12. Having heard the respondent-in person as well as Mr. Mukherjee, it appears, to determine the issues in hand, I have to concentrate about the **Rule of Interpretation of Statute**, as well as **Rule of Precedence**. The golden rule of Interpretation of statute is that, it has to be read and interpreted in its plain meaning for determining the exact intention of the



legislature. Under this Rule the Court has to consider what the statute actually says, rather than what it might mean. Thus court will give the words in the statute a literal meaning, i.e., their plain ordinary everyday meaning; even if the fact of this is to produce what might be considered as otherwise unjust or undesirable outcome. The Rule of Interpretation of Statute says that the intention of parliament is best found in the ordinary and natural meaning of the words used. As the legislative democratic part of the state, parliament must be taken to want to fact exactly what it says in its laws. If courts are permitted to give obvious or non-literary meaning of the words of parliamentary law then, the will of parliament, and thereby the people, is being contradicted.

13. In this case to understand the exact meaning of Section 34(3) of Arbitration and Conciliation Act the proviso is set out exactly as follows:

**(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.**

14. It is true and apparent from Section 34(3) of Act 1996, an application for setting aside of the award may not made after three months have elapsed from the date on which the party making the application had received the arbitral award.

15. The proviso says further period of 30 days may be granted after the court is satisfied on a specific application that the applicant was prevented by sufficient cause. The interpretation of Section 34(3) of the Act 1996 makes it clear that without filing any application for condonation of delay, the application for setting aside an award has to be filed within three months from the date of receiving of the arbitral award.

16. Mr. Surana argued that, through the pronouncement of Hon'ble Supreme Court in different cited cases, the outer limit of Section 34(3) of the Act, 1996 has been mentioned as 120 days; in other cases also it has been mentioned by the Hon'ble Supreme Court that 90 days is the boundary within which an application for setting aside of the award can be filed without any prayer for condonation of delay. It is the conscious argument on behalf of Mr. Surana that though Section 34(3) stated the outer limit of filing application for setting aside as three months but the same was interpreted by the Supreme Court as 90 days. It is also the argument of Mr. Surana that the interpretation of Hon'ble Supreme Court is a precedent. Thus, the Court has to adopt the same. It is the further argument of Mr. Surana, that the Arbitration and Conciliation Act of 1996 is a self contained code; thus, General Clauses Act, 1897 or The Limitation Act 1963 is not at all applicable.

17. In this present case statute says, an application for setting aside of the arbitral award has to be filed within three months. It is true that the observation of Hon'ble Supreme Court in different judgments construed 'three months' as 90 days. To understand the true purport and meaning and

direction of a judgment of Hon'ble Supreme Court there are some Rule which can be considered as Rule of Precedence.

18. **The Rule of Precedence** has been adopted from English jurisprudence into Indian Constitution. Article 141 of the Constitution stipulates that **“the law declared by the Supreme Court shall be binding on all courts within the territory of India”**. To understand the context of the term “the law declared by Supreme Court” in a specific case there are some acceptable views of Hon'ble Apex Court. It is the basic rule that, if the facts are similar then a similar law shall govern.

19. In **State of Rajasthan Vs. Ganeshilal** reported in **AIR 2008 Supreme Court 690**, the Hon'ble Supreme Court has held that

**14. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.**

**15. The following words of Lord Denning in the matter of applying precedents have become locus classicus:**

**"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case 'falls, the broad resemblance to another case is not at all decisive."**

**\*\*\*\*\* "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches.**

**My plea is to keep the path to justice clear of obstructions which could impede it."**

20. The law decided in a particular case in a particular manner in a particular nature of facts and circumstances is called *ratio decidendi* of the case; the other opinion of Court which not actually connected with the merit of the case is considered as *obiter dicta*.

21. To understand what would be the *ratio decidendi* and *obiter dicta* of a judgment and what is binding upon the other courts has been specifically clarified by the Hon'ble Supreme Court in a Recent Special Leave petition No. 7455 and 7456 of 2023 on 23<sup>rd</sup> January 2023 in **Carrier Institute Educational Society Vs. Om Srithakurji Educational Society**.

**It is apparent from the aforementioned paragraphs in Vidya Drolia (supra) that reference to the decision in Garware Wall Ropes Limited (supra) was made to interpret the word 'existence', and whether an 'invalid' arbitration agreement, can be said to exist? This examination was to decide "who decides existence of an arbitration agreement" in the context of Sections 8 and 11 of the Arbitration and Conciliation Act, 1996.**

**The distinction between obiter dicta and ratio decidendi in a judgment, as a proposition of law, has been examined by several judgments of this Court, but we would like to refer to two, namely, State of Gujarat & Ors. vs. Utility Users' Welfare Association & Ors. and Jayant Verma & Ors. vs. Union of India & Ors..**

**The first judgment in State of Gujarat (supra) applies, what is called, "the inversion test" to identify what is ratio decidendi in a judgment. To test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inverted, i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case.**

**In Jayant Verma (supra), this Court has referred to an earlier decision of this Court in Dalbir Singh & Ors. vs. State of Punjab to state that it is not the findings of**

**material facts, direct and inferential, but the statements of the principles of law applicable to the legal problems disclosed by the facts, which is the vital element in the decision and operates as a precedent. Even the conclusion does not operate as a precedent, albeit operates as res judicata. Thus, it is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding as a legal precedent is the principle upon which the case is decided and, for this reason, it is important to analyse a decision and isolate from it the obiter dicta.**

22. It is clear from the above observation of Hon'ble Supreme Court that the *ratio* of a judgment has to be looked into to decide whether it is *obiter dicta* or *ratio decidandi*. The observations of Hon'ble Supreme Court as cited by Mr. Surana are not actually *ratio* of that judgment, the issues involved in those cases are different. Thus the observations of Hon'ble Apex Court regarding the interpretation of "three months" in section 34(3) of Act 1996 as 90 days is not *ratio-decidandi* of those judgment laws; rather the particular *ratio* has been considered and decided by the Hon'ble Apex Court in **State of Himachal Pradesh (supra)**.

23. In State of Himachal Pradesh the issue was involved whether the term "three months" mentioned in Section 34(3) of Act 1996 can be construed as 90 days or clear three calendar months. The Hon'ble Supreme Court in **State of Himachal Pradesh (supra)** has decided the issue as follows:-

**6. This leads us to the question whether the petition was filed beyond three months plus thirty days. There is no dispute that if the petition had been filed within a period of three months plus thirty days, the delay has to be condoned as sufficient cause was shown by the appellant for condonation of the delay. But the High Court has accepted the contention of the**

respondent that the period of three months plus thirty days expired on 10-3-2008 and, therefore, the petition filed on 11-3-2008 was barred.

Therefore, the following questions arise for our consideration:

- (i) What is the date of commencement of limitation?
- (ii) Whether the period of three months can be counted as 90 days?
- (iii) Whether only three months plus twenty-eight days had expired when the petition was filed as contended by the appellant, or whether petition was filed beyond three months plus thirty days, as contended by the respondent?

7. Sub-section (3) of Section 34 of the Act provides that:

"[a]n application for setting aside an award may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award".

11. In this case, it is not disputed that though the cover containing the award was delivered to the beldar in the Office of the Executive Engineer on 10-11-2007 which was a holiday, the Executive Engineer received the award on 12-11-2007 (Monday), which was the next working day. Therefore we hold that the date of delivery of the award on a holiday (10-11-2007) could not be construed as "receipt" of the award by the appellant. The date of receipt therefore should be taken as 12-11-2007 and not 10 -11-2007.

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.

13. Section 9 of the General Clauses Act, 1897 provides that in any Central Act, when the word "from" is used to refer to commencement of time, the first of the days in the period of time shall be excluded. Therefore the period of "three months from date on which the party making that application had received the arbitral award" shall the period computed from 13-11-2007.

14. The High Court has held that three months mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A "month" does not refer the period of thirty days but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty nine days or twenty-eight days depending upon whether it is a leap year or not.

15. Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as "three months" and "one month" respectively or by describing the periods as "ninety days" and "thirty days" respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

16. Section 3(35) of the General Clauses Act, 1897 defines a "month month reckoned according to the British calendar.

17. In *Dodds v. Walker* the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in *Bibi Salma Khatoun v. State of Bihar*.

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.

24. Mr. Surana further argued that the Section 9 of General Clauses Act as well as Section 12 of Limitation Act is not applicable in construing the provision enumerated under the Arbitration and Conciliation Act 1996. Section 9 of General Clauses Act has specifically enumerated that Section 9 shall apply to all Central Acts made after the commencement of the General Clauses Act. Section 12 of the Limitation Act has enumerated the provision of exclusion of time in every legal proceeding. Thus, it is not quite justifiable to hold that General Clauses Act or Limitation Act are not applicable in construing the provision of Arbitration and Conciliation Act, 1996. In a recent decision the Hon'ble Apex Court in **State of West Bengal represented through Secretary and ors. Vs. Rajpath contractors and Engineers Limited in Civil Appeal No. 7426 of 2023 (dated July 08, 2024)** has decided the similar issues as raised in this case.

**7. 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 30th June 2022, when the appellants received the award. In view of Section 12(1) of the Limitation Act, 30th June 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 July 2022. The period of limitation is of three months and not ninety days. Therefore, from the starting point of 1st July 2022, the last day of the period of three months would be 30th September 2022. As noted earlier, the pooja vacation started on 1st October 2022.**

25. after considering the entire observations and after considering the arguments on behalf of the parties it appears to me that the instant application u/s 34 of Arbitration and Conciliation Act which was filed on



17<sup>th</sup> August, 2016 for setting aside an arbitral award dated 19<sup>th</sup> May 2016 may very well be filed without any application for condonation of delay on or before 19<sup>th</sup> August 2016, i.e. within 3(three) English calendar month after excluding the date of receipt of the award.

26. The instant application was filed on 17<sup>th</sup> August 2016 thus the application u/s 34 of Arbitration and Conciliation Act 1996 is within statutory period of limitation. The objection raised by the respondent regarding the point of limitation is considered and turned down.

27. It appears to me that the execution as well as the applications u/s 34 of Arbitration and Conciliation Act, 1996 is pending before this court. For the sake of convenience of the entire matter, it would be appropriate to take up the application u/s 34 of Act 1996.

**(Subhendu Samanta, J.)**