



ELP Arbitration Weekly Alert



SC: SECTION 14 OF THE LIMITATION ACT IS APPLICABLE TO AN APPLICATION UNDER SECTION 34 OF THE ARBITRATION ACT PROVIDED THE ORIGINAL APPLICATION FILED IN THE COURT WITHOUT JURISDICTION WAS WITHIN THE TIME PERIOD STIPULATED UNDER SECTION 34(3) OF THE ARBITRATION ACT AND WITHOUT ANY MALAFIDE

[Oriental Insurance Co. Ltd. v. M/s Tejparas Associates & Exports Pvt. Ltd.¹\(October 3, 2019\)](#)

Introduction

An application to set aside an arbitral award under section 34 of the Arbitration and Conciliation Act, 1996 (**the Act**) was filed before a court without jurisdiction. The appellant re-presented the petition in a court having jurisdiction after the expiry of the period of limitation to file an application under section 34 of the Act. In this backdrop, the issue which arose for consideration before the Supreme Court was whether the period of time spent in a court without jurisdiction can be excluded when the application under section 34 of the Act is re-presented in the court having jurisdiction.

Background of proceedings

In the matter of an arbitration between Oriental Insurance Co. Ltd. (**Appellant**) and Tejparas Associates & Exports Pvt. Ltd. (**Respondent**), the arbitral tribunal passed an award dated 28 June 2004 (**Award**). By and under the Award, majority members of the tribunal awarded the claims of the Respondent. On the same day i.e. 28 June 2004, the Appellant filed an application before the tribunal under section 33 of the Act seeking clarification of the Award and clarification of the venue of arbitration as provided in the Award. The tribunal dismissed the said application by an order dated 17 December 2004 (**Tribunal Order**).

Jaipur Court directs the Appellant to re-present the Section 34 Petition before the court at Jodhpur

Aggrieved by the Award and the Tribunal Order, the Appellant filed a petition under section 34 of the Act (**Petition**) before the Ld. District Judge, Jaipur (**Jaipur Court**) to set aside the Award. While the Respondent challenged the maintainability of the Application for want of jurisdiction, the Appellant submitted that the Award indicated that it was passed at Jaipur and the dissenting arbitrator in his order declared the venue to be Jaipur. By an Order dated 12 March 2008, the Jaipur Court held that the Petition was not maintainable before it. In exercise of its powers under Order 7 Rule 10 and Rule 10 A of the Civil Procedure Code, 1908 (**CPC**), the Jaipur Court returned the Petition to the Appellant with an express direction that the parties shall be present before the Ld. District Judge, Jodhpur (**Jodhpur Court**) on 2 April 2008 for presentation of the petition therein (**Order I**).

¹ Civil appeal Nos. 6524 of 2009

Appellant re-presents the Petition before the Jodhpur Court after the expiry of the time period under section 34 (3) of the Act

The Appellant re-presented the Petition before the Jodhpur Court on 10 April 2008 and the Petition was renumbered (**Petition II**). In the circumstances, the Respondent filed an application under section 3 of the Limitation Act, 1963 (**Limitation Act**) and sought rejection of the Petition II on the ground that it was barred by limitation (**Section 3 Application**).

Jodhpur Court holds that the Section 34 Petition is barred by limitation

On 3 May 2008, the Appellant filed an application under section 14 of the Limitation Act seeking exclusion of the time spent in the proceedings held before the Jaipur Court (**Section 14 Application**). By an Order dated 15 July 2008, the Jodhpur Court dismissed the Section 14 Application filed by the Appellant and allowed the Section 3 Application filed by the Respondent (**Order II**). Consequently, the Jodhpur Court also dismissed the Petition II (**Order III**).

Aggrieved by Order III, the Appellant filed an appeal under section 37 of the Act before the High Court of Rajasthan at Jodhpur (**High Court**). By an Order dated 6 February 2009, the High Court upheld Order III and dismissed the appeal (**Impugned Order**). In the circumstances, the Appellant filed a special leave petition (**SLP**) before the Supreme Court (**SC**).

Findings of the court

Original Petition was filed within the time frame under section 34 (3) of the Act

1. Upon perusing the facts leading up to the filing of the SLP, the SC observed that (i) the original Petition under section 34 of the Act was filed before the Jaipur Court within the time frame stipulated under section 34(3) of the Act and (ii) had the Appellant re-presented the Petition before the Jodhpur Court on 2 April 2008 as directed under Order II, the issue of delay would never have arisen.

Petition II cannot be termed as a fresh petition

2. Referring to *Joginder Tuli*², the SC observed that normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in the said case, since the evidence was already adduced by the parties, the matter was tried accordingly. Further, in *Joginder Tuli*, the court directed the parties to proceed from the stage at which the suit stood transferred.

The SC held that in the present case, although the Appellant never sought a direction from the Jaipur Court to re-present the Petition, the Jaipur Court considered the application of the Respondent under Order 7 Rule 11 of CPC and directed the Appellant to re-present the Petition on 2 April 2008 before the Jodhpur Court. Therefore, the SC held that the proceedings before the Jaipur Court did not reach an abrupt end such and therefore, the next filing cannot be considered as a fresh petition.

Applicability of section 14 of the Limitation Act

3. The SC observed that if the Appellant was unable to remain present before the Jodhpur Court on 2 April 2008 in terms of Order I, the Appellant ought to have filed an application under section 148 of CPC before the Jaipur Court seeking extension of time. In any event, since the Appellant did not seek an extension, it should have filed an application for condonation of delay along with Petition II. However, since the Appellant failed to do so, the Respondent filed the Section 3 Application.
4. The SC observed that although the Appellant filed the Section 14 Application, the averments therein were in the nature of an application seeking condonation of delay of 8 days in re-presenting the Petition II.
5. The SC observed that in *Popular Construction*³ and in *Simplex Infrastructure*⁴ it held that it held that section 5 of the Limitation Act is not applicable to the proceedings under section 34 of the Act, 1996 for setting aside the arbitral award. The SC added that *Simplex Infrastructure*⁵ “would however indicate that Section 14 of the Limitation Act is applicable to an application submitted

² *Joginder Tuli vs. S.L. Bhatia and Anr.*, (1997) 1 SCC 502

³ *Union of India vs. Popular Construction Company*, (2001) 8 SCC 470

⁴ *Simplex Infrastructure Ltd. v. Union of India*, (2019) 2 SCC 455

⁵ The relevant extract of *Simplex Infrastructure*, is reproduced here for ready reference:

13. Section 14 of the Limitation Act deals with the “exclusion of time of proceeding bona fide” in a court without jurisdiction, subject to satisfaction of certain conditions. The question whether Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the 1996 Act has been answered by this Court in *Consolidated Engg. Enterprises v. Irrigation Deptt.* [*Consolidated Engg. Enterprises v. Irrigation Deptt.*, (2008) 7 SCC 169] This Court observed thus: (SCC pp. 181-82, para 23)

“23. At this stage it would be relevant to ascertain whether there is any express provision in the 1996 Act, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the 1996 Act, this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the

under Section 34 of the Act, 1996 seeking for exclusion of certain period if the application under Section 34 of the Act, 1996 is at the first instance filed within the limitation period provided under Section 34(3) of the Act, 1996.”

6. Applying the judicial precedents to the present facts, the SC concluded that the instant case is not for condonation of delay in filing the Petition for the first time but for condonation in re-presenting the Petition beyond the date fixed after it was returned under Order 7 Rule 10 of CPC.

Proceeding bona fide in the court without jurisdiction

7. While the Appellant relied upon *Consolidated Engineering*⁶ to contend that section 14 of the Limitation Act applies to arbitration proceedings under section 34 of the Act, the Respondent submitted that the exclusion of time is only permissible if the proceedings were *bona fide* initiated in a court without jurisdiction. The Respondent submitted that in the present case the Appellant deliberately initiated the proceedings at Jaipur despite the cause of action having arisen in Jodhpur.
8. The SC noted that the Jaipur Court had not held that the proceedings before it i.e. the Petition had been initiated *mala fide*. Further, the SC held that considering that the Petition was filed within the period of limitation at the first instance and that the delay was only for 8 days, it would not be justified to re-examine the matter to determine whether the Appellant proceeded *bona fide* in the court without jurisdiction and to consequently deny consideration under section 34 of the Act.

Conclusion and analysis

Based on the above findings, the SC set aside Order II and the Impugned Order. The SC restored the proceedings in Petition II before the Jodhpur Court and directed the parties to appear before the Jodhpur Court on 15 October 2019. In the interest of time, the SC directed that the proceedings before the Jodhpur Court shall be considered on merits in an expeditious manner.

In the present case, the SC has applied its findings in *Simplex Infrastructure* and concluded that section 14 of the Limitation Act applies to applications under section 34 of the Act. The SC recognized that the time period spent in a court without jurisdiction can be excluded when the application under section 34 of the Act is re-presented in the court having jurisdiction only if the proceeding was *bona fide* in the court without jurisdiction. However, in the present case, seemingly, since the order of the Jaipur Court does not record any *mala fide* on the part of the Appellant and the delay under consideration was merely for 8 days weighed in on the court, the SC did not re-examine the Respondent’s contention that the Appellant *mala fide* filed the Petition before the Jaipur Court. It remains to be seen if the courts will adopt a different approach in different circumstances.

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said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings.The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the 1996 Act would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the 1996 Act, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the 1996 Act for setting aside an arbitral award.”

[Emphasis Supplied]

⁶ *M/s Consolidated Engineering Enterprises vs. The Principal Secretary, Irrigation Department & Ors.*, (2008) 7 SCC 169