

Reserved On : 29/10/2024
Pronounced On : 14/02/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4705 of 2023
With
R/FIRST APPEAL NO. 4706 of 2023
With
R/FIRST APPEAL NO. 4707 of 2023
With
R/FIRST APPEAL NO. 4708 of 2023
With
R/FIRST APPEAL NO. 4709 of 2023
With
R/FIRST APPEAL NO. 4712 of 2023
With
R/FIRST APPEAL NO. 4146 of 2024
With
R/FIRST APPEAL NO. 4147 of 2024
With
R/FIRST APPEAL NO. 4148 of 2024
With
R/FIRST APPEAL NO. 4149 of 2024
With
R/FIRST APPEAL NO. 4150 of 2024
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R/FIRST APPEAL NO. 4151 of 2024
With
R/FIRST APPEAL NO. 4152 of 2024
With
R/FIRST APPEAL NO. 4153 of 2024
With
R/FIRST APPEAL NO. 4154 of 2024
With
R/FIRST APPEAL NO. 4155 of 2024
With
R/FIRST APPEAL NO. 4156 of 2024
With
R/FIRST APPEAL NO. 4239 of 2024
With
R/FIRST APPEAL NO. 4458 of 2024
With
R/FIRST APPEAL NO. 4459 of 2024
With
R/FIRST APPEAL NO. 4460 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

**and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Approved for Reporting	Yes	No
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NATIONAL HIGHWAYS AUTHORITY OF INDIA

Versus

KISHORBHAI VALJIBHAI JETHANI & ORS.

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Appearance:

MR MAULIK NANAVATI with MR KISHAN PATEL & MANVI DAMLE,
NANAVATI & CO.(7105) for the Appellant(s) No. 1

MS HETAL PATEL for Respondent No.2 and 3

MR CHAITANYA J PATEL with MR RAHUL PATEL for the Defendant(s)

NOTICE SERVED BY DS for the Defendant(s) No. 2,3

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**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

**(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)**

1. We have heard Mr.Maulik G. Nanavati and Ms. Manvi Damle and Mr. Kishan Patel, learned advocates appearing for the appellant. Ms. Hetal Patel, learned Assistant Government Pleader appears for the State respondents and Mr. Rahul Patel with Mr. Chaitanya J. Patel, learned advocates appear for the private respondents/land holders.
2. The above set of appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short as 'the Act' 1996')are directed against orders of different dates passed by the Civil Court passed under Section 34 of the Act' 1996, rejecting the application of the National Highway Authority of India (NHAI), being beyond the limitation prescribed in Section 34(3) of the Act' 1996.
3. In the above noted set of appeals heard on different dates, i.e. 29.10.2024, 27.11.2024, 04.12.2024 and

16.12.2024, a common question for consideration was raised by the learned counsels for the parties.

4. The first set of appeals being First Appeal No. 4705 of 2023 was heard on 29.10.2024 and judgement was reserved. The pending other appeals raising the similar question were heard on different dates and judgements were reserved. With the consent of the learned counsels for the parties, all the appeals are being decided by this common judgement. For convenience, we are referring to the facts from the records of the First Appeal No.4705 of 2023.
5. The common issue raised for consideration in the above noted appeals is about the validity of the order passed by the Civil Court (on different dates) in dismissing the applications filed by the appellant National Highways Authority of India (NHAI) under Section 34 of the Act' 1996, on the ground of delay. The applications under Section 34 of the Act' 1996 filed by the NHAI were accompanied with applications filed under Section 34(3) of the Act' 1996, seeking for condonation of delay in challenging the awards passed under Section 3G(5) of the National Highways Act, 1956 of the learned Arbitrator, namely Collector, Bhavnagar, in different arbitration applications.
6. There is no doubt about the fact that there was a substantial delay of approximately 200-230 days in filing the applications under Section 34 of the Act' 1996 on the

part of the NHAI. However, it was sought to be argued by Mr. Maulik Nanavati, learned advocate appearing for the appellant NHAI that since the signed copy of the award was never received by the NHAI, there was no question of delay in challenging the awards. The contention is that the copy of the award of the learned Arbitrator received by the NHAI was signed by the Chitnis to the Collector. The result is that the period of limitation prescribed in sub-section (3) of Section 34 for making of an application under Section 34 for challenging the award, i.e. three (03) months from the date on which the party making that application had received the arbitral award, cannot be said to have commenced.

7. The argument is that the Civil Court rejecting the applications under Section 34 of the Act' 1996 have completely overlooked the statutory provisions under Section 31 of the Act' 1996 which provides the manner of making of the award. It was argued that sub-section (1) of Section 31 of the Act' 1996 requires the learned Arbitrator/ arbitral tribunal to make an award in writing by signing it. The Section obligates the learned Arbitrator to sign the award and further ensure that the signed copy of the award is delivered to each party, as prescribed in sub-section (5) of Section 31. It was vehemently argued that the period of limitation for making an application under Section 34 of the Act' 1996 for setting aside the arbitral award, is to be reckoned

from the date the copy of the signed award is received by the applicant.

8. Reliance is placed upon the decision of the Apex Court in ***State of Maharashtra and others vs. ARK Builders Private Limited, (2011) 4 SCC 616***, to argue that sub-section (3) of Section 34 which lays down the period of limitation for making the application under Section 34 cannot be read in isolation and it must be understood in the light of the provisions contained in Section 31(5), that requires a signed copy of the award to be delivered to each party. It was submitted that the Apex Court has held therein that conjoint reading of two provisions, namely Section 31(5) and Section 34(3) makes it clear that the limitation prescribed under Section 34(3) would commence only from the date the signed copy of the award is delivered to the party making the application for setting it aside.
9. It was vehemently argued that the Apex Court in ***Union of India vs. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239*** has held that the delivery of arbitral award under sub-section (5) of Section 35 is not mere formality, it is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act' 1996 arises. The delivery of the arbitral award to the party, to be effective, has to be 'received' by the party. This delivery by the arbitral tribunal and receipt by the party of the award sets in

motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1); application for setting aside an award under Section 34(3) and so on. It was held therein that as the delivery of the copy of the award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from the date, the delivery of the copy of award by the tribunal and receipt thereof by each party constitutes an important stage in the arbitral proceedings. [Reference Paragraph No.'8', page '243' of ***Union of India vs. Tecco Trichy Engineers & Contractors*** (supra)].

10. It was argued that the legal principles as laid down in ***Union of India vs. Tecco Trichy Engineers & Contractors*** (supra) leave no room for doubt that the period of limitation prescribed under Section 34(3) of the Act' 1996 would reckon only from the date the signed copy of the award is delivered/received by the party making the application for setting it aside under Section 34(1) of the Act' 1996. It was vehemently argued that if the law prescribes that the copy of the award/order is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets the period of limitation for challenging the order/award in question by the aggrieved party, within

the period of limitation, the period of limitation can only commence from the date on which the orders/ award was received by the party concerned in the manner prescribed by the law. [Reference ***Union of India vs. Tecco Trichy Engineers & Contractors*** (supra)].

11. The attention of the Court is invited to the recent decision of the Apex Court in ***Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private limited, (2021) 7 SCC 657***, to argue that the Apex Court had interpreted the need of signing of the arbitral award by giving a declaration that Section 31(3) is couched in mandatory terms and the award passed by the arbitrator/ arbitral tribunal is made only when the Arbitrator(s) finally express it/their decision in writing which is authenticated by it/their signatures. It was contended that the award takes legal effect only after it is signed by the Arbitrator(s) which gives it authentication. There can be no finality of the award, except after it is signed, since the signing of the award gives legal effect and validity to it.
12. The submission based on the aforesaid decisions of the Apex Court, in the crux, is that once the statute makes it obligatory for the Arbitrator to sign the award to make it a valid award, the non-delivery of the signed copy of the award to the party appellant herein would amount to not making of a valid award from any angle. The submission, thus, is that since the mandatory provisions of sub-section (5) of Section 31 of the Act' 1996 in making of a

valid award and delivery of signed copy to the appellant has not been adhered to, the period of limitation, as prescribed under sub-section (3) of Section 34, would not reckon at all. The application under Section 34 filed by the appellant challenging the arbitral award, therefore, could not have been rejected being beyond the limitation prescribed under Section 34(3) of the Act' 1996.

13. Dealing with the above submission, suffice is to note that the above noted ground seeking for condonation of delay in making the application under Section 34 challenging the arbitral award, beyond approx. 200 days, was, admittedly, not raised before the Civil Court and the submissions in that regard are being made for the first time in the instant appeal filed under Section 37 of the Arbitration Act' 1996. The statement that the duly signed copy of the award had not been delivered upon the applicant NHAI in accordance with the provisions of sub-section (5) of Section 31 of the Act' 1996 is a factual statement which was required to be brought before the Court at the first instance, dealing with the application under Section 34. No such plea was raised and, hence, there was no question of dealing with the same, in the impugned orders.
14. Apart from the above, pertinent is to note the facts stated/disclosed by the appellant in the application under Section 34 of the Act' 1996 filed in the month of January, 2020; a copy whereof is at Page No.'52' of the

paper book (First Appeal No. 4705 of 2023). A perusal of the first paragraph of the said application indicates that there is a categorical statement that the award passed by the Arbitrator and Collector, Bhavnagar in Arbitration Application No.123 of 2018 dated 20.02.2019 was received by the applicant/NHAI on 28.02.2019. There is an admission of the applicant NHAI in paragraph No.'10' of the application under Section 34 that upon receipt of the impugned award from the office of the Arbitrator and Collector, Bhavnagar, the applicant/NHAI had preferred an application under Section 33(1) of the Act' 1996, seeking clarification and interpretation and on the date of filing of the application under Section 34, the application under Section 33(1) was pending.

15. In paragraph No.'13' of the application under Section 34 of the Act' 1996, the appellant NHAI sought to explain the delay in filing the application under Section 34 in the following manner:-

“13. The copy of the award was passed on dt.20.02.2019 and received on the Applicant on dt.28.02.2019 and thereafter the Applicant has preferred an application u/s.33(1) of the arbitration & Conciliation Act on dt.16.09.2019 with the learned Arbitrator seeking some clarification *interpretation and the said application is still pending with the office of the Arbitrator. It is submitted that in view of pendency of the said application us 33(1) this application is filed within limitation, however the Applicant has*

preferred separate application for condonation of delay to avoid any controversy in future in abundant caution. The applicant is a government authority and has internal procedures regarding approvals, therefore it took some time to take approval then the matter was referred to panel advocate at Ahmedabad and it took some time for studying and preparing the documents and hence delay in filing of this application, if any, may kindly be condoned in the interest of justice.”

16. The only explanation offered by the applicant NHAI before the Civil Court under Section 34 seeking for condonation was the pendency of the application under Section 33(1) of the Act’ 1996. The further contention of the NHAI that the delay had occurred due to the internal procedure regarding approvals and the application under Section 34 be treated as being filed within the limitation in view of the pendency of application under Section 33(1). The said grounds taken have been dealt with by the Civil Court in the orders impugned and no infirmity could be pointed out by the learned counsel for the appellant in the order of rejection of the application under Section 34, while dealing with the aforesaid pleas of the applicant/appellant herein.
17. A novel plea has been taken for the first time without any substantial basis on the factual aspects about the non-delivery of the copy of the award by the Arbitrator to the NHAI, in the present Appeal under Section 37 of the Act’ 1996, which cannot be appreciated within the limited scope of Section 37. Suffice it to say that if the

applicant/ NHAI was aware of the fact that the provisions of Section 31(5) had not been complied with and signed copy of the award had not been delivered to the NHAI, it was required to make the said plea before the Court by making a declaration of the fact about the non-delivery or improper delivery of the award in the application under Section 34, itself. As this has not been done, we do not find any reason to permit the NHAI to undertake this plea in the present appeal, which is nothing but an afterthought.

18. From the above noted factual statement made in the application under Section 34 of the Act' 1996 filed by the appellant, it is clear that the appellant was having due knowledge of the making of the award and also the content of the award and for the reasons best known to it, did not raise any issue about the alleged non-delivery of the signed copy of the award.
19. this scenario, the contention of the learned counsel for the appellant NHAI that the limitation would not reckon from the date of receipt of the award by the NHAI which is admittedly 28.02.2019 as per the statement of NHAI, cannot be appreciated. All pleas based on the reading of the provisions of Section 31(5) to assail the correctness of the order passed by the Civil Court under Section 34, holding the applications being barred by the limitation prescribed under Section 34(3) of the Act' 1996, are liable to be turned down. The sole ground to challenge the validity of the orders passed by the Civil

Court in dismissing the applications under Section 34 on the ground of delay is found to be misconceived. The present set of appeals consequently are dismissed being devoid of merits. No order as to costs.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

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