HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal (Civil) No. 4/2022

In

S.B. Arbitration Application No.117/2018

Continental Engineering Corporation Limited, Having Its Address At No. 95, Dun Hua South Road, Section 2, Taipei 106, Taiwan City And Having Registered Address At Flat No. 211, Pocket A/3, Sector-7, Rohini New Delhi - 110 085 And Project Site Office At Old Police Head Quarter, Near Jaleb Chowk, Infront Of City Palace, Near FRO Office, Badi Chouper, Jaipur, Rajasthan, Through Its Power Attorney Holder - (DGM-Contracts), Mr. Lilanand Chaudhary

----Appellant/Applicant-Company

Versus

Jaipur Metro Rail Corporation, Khanji Bhawan, Tilak Marg, C-Scheme, Jaipur 302 005.

----Respondent

For Appellant(s)	:	Mr. Anil Kher, Senior Advocate with Mr. Anant Kasliwal, Senior Advocate assisted by Mr. Shashank Kasliwal Mr. Raghav Krishnatri and Mr. Diwakar Kholdwa
For Respondent(s)	:	Mr. Rajendra Prasad, Advocate General, Senior Advocate assisted by Mr. Sandeep Pathak, Mr. Harshita Thakral, Ms. Dhriti Laddha and Mr. Tanay Goyal

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HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI

Judgment

RESERVED ON	**:**	**28/07/2025**
PRONOUNCED ON	**:**	**21/08/2025**

(PER SANJEEV PRAKASH SHARMA) J.

1. By way of this Special Appeal (Civil), preferred under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (for brevity, "the Act of 1996") read with Section 13(1A) of the Commercial Court Act, 2015, (for short, "the Act of 2015"), the appellant has challenged the order passed by the learned Single Judge dated 02.03.2022 whereby S.B. Arbitration Application No.117/2018 preferred by it under Section 34 of the Act of 1996 read with Section 10(1) of the Act of 2015 was dismissed by holding that there is no application under Section 34 of the Act of 1996 before him and the application moved under Section 10(1) of the Act of 2015 was not maintainable.

I. Factual Aspects:

2. The appellant is a company incorporated under the laws of Taiwan engaged in the business of civil construction, building construction and related works in various countries including India. On arising of a dispute between the appellant and the respondent Jaipur Metro Rail Corporation (for short, "JMRC"), arbitration proceedings were taken up by the Arbitral Tribunal comprising of Hon'ble Mr. Justice Vikramajit Sen (Retd.), Hon'ble Mr. Justice Mukul Mudgal (Retd.) and Mr. Pradeep K. Deb, IAS (Retd.). The Arbitral Tribunal by 2:1 majority turned down the claim of the appellant vide its Award dated 20.12.2017.

3. The appellant challenged the Award vide their petition under Section 34 of the Act of 1996 on 16.03.2018 before the Rajasthan State Commercial Court (District Level), Jaipur (hereinafter referred to as "the Commercial Court"). The respondent entered appearance and raised a preliminary objection by filing an application, primarily on the ground of jurisdiction of the Commercial Court as the dispute was covered under the international commercial arbitration. The Commercial Court, after hearing arguments of both the sides, vide order dated 22.11.2018 proceeded to hold that as per Section 10(1) of the Act of 2015, the application or appeal would lie before the High Court where there is an international commercial dispute and therefore, the petition filed by the appellant was returned to be filed before the competent court of jurisdiction in terms of Order 7 Rule 10 CPC.

4. Having received the application under Section 34 of the Act of 1996 filed in original on 06.12.2018, the appellant filed it before the Registry of this court on 06.12.2018 itself. However, the Registry refused to accept the petition in its existing form stating that the petition under Section 34 of the Act of 1996 cannot be directly filed. The appellant thereafter filed the application under Section 10(1) of the Act of 2015 in order to remove the defects pointed out by the Registry. The said application was listed before the Division Bench of this court and the petition was registered under Section 34 of the Act of 1996, numbered as D.B. Arbitration Application No.117/2018.

5. Again the respondent raised a preliminary issue regarding maintainability of the petition under Section 34 of the Act of 1996 in the given form with following objections:

> *"a) No application under Section 34 of the Act has been filed before the High Court;*
>
> *b) Order passed by Commercial Court is incorrect as the application of Appellant under Section 34 should have been rejected and not transferred under Order 7 Rule 10 of CPC.*
>
> *c) Under sub-clause (a) of Rule 4 of the Rajasthan Arbitration Rules, 2003 a signed application has to be filed, verification of which is mandatory. The Respondent alleged that as per Rule 8, if the requirement is not fulfilled, application of Appellant be rejected without affording opportunity of hearing.*
>
> *d) As per Rule 125 of the Rajasthan High Court Rules, every application must carry a heading depicting the name of the High Court. However, the application under Section 34 of the Act, which was filed before the Commercial Court, has been annexed with the application under Section 10(1) of the Commercial Courts Act. Thus, the presentation itself is not in accordance with the Rajasthan High Court Rules; and*
>
> *e) Application of Appellant under Section 34 of the Act is barred by time."*

6. The appellant has submitted that as the Registry had refused to list the matter before the High Court and the appellant failed to get it listed, on being compelled, filed a fresh application on 14.02.2019 under Section 10(1) of the Act of 2015 alongwith original application under Section 34 of the Act of 1996 filed before the Commercial Court. The Division Bench issued notices on 11.04.2019 where after it held that the application has to be heard by the Single Bench it being under the Act of 1996. It would be noticed that the Single Judge had refused to hear the application on the ground that he had been designated to hear the

cases only relating to arbitration applications under Section 11 of the Act of 1996 and, therefore, the Registry of this court again listed the matter before the Division Bench, which vide order dated 04.09.2020 again directed the case to be listed before the Single Bench. On 27.01.2022, the Single Bench heard the case on preliminary objections regarding maintainability and the delay, and reserved the case for orders.

7. The learned senior counsel for the appellant has stated that written submissions were filed and by way of abundant caution, an application under Section 14 of the Limitation Act was also filed praying for condoning the period spent before the Commercial Court, however the Single Bench of this court, vide its judgment dated 02.03.2022, dismissed the application holding, inter alia, as under:

> *"(i) There being no application under Section 34 of the Act having been presented before a proper Officer of the Court in terms of Rajasthan Arbitration Rules, 2003;*
>
> *(ii) There being no application for condonation of delay; and*
>
> *(iii) There being no relief claimed in the application under Section 10(1) of Commercial Court Act, 2015 with regard to the arbitration application."*

8. Hence, this Special Appeal (Civil).

II. <u>Submissions advanced on behalf of the appellant</u>:

9. Shri Anil Kher, learned senior counsel appearing for the appellant, submits that the respondent's action was only to delay the proceedings one way or the other. They earlier raised

argument of maintainability of application before the concerned Commercial Court. After the application having been returned and filed before this Court, same kind of nature of objections were again raised by the respondent regarding maintainability of application before the High Court. The learned senior counsel further submits that heading of the application mentions the same to be under Section 10(1) of the Act of 2015 and the application mentions of the annexed application under Section 34 of the Act of 1996. Thus, at no given point of time the appellant can be said to have delayed in filing the application.

10. He further submits that an application under Section 14 of the Limitation Act, by way of abundant caution, had been filed alongwith written submissions. Learned senior counsel submits that, otherwise, the court can always consider the arguments which have been advanced before it. The delay was also liable to be condoned keeping in view the fact that principles of Section 14 of the Limitation Act are applicable. He further submits that strictly speaking, application under Section 14 of the Limitation act could not be maintainable as it was an oral plea which would suffice to condone the period spent elsewhere. Arbitration proceedings being non-formal in nature, approach to be adopted has to be different by the Arbitrator and the proceedings before the court here under Section 10(1) of the Act of 2015 read with Section 34 of the Act of 1996 by the Single Bench under the Act of 2015 was required to be pragmatic and it was expected of the learned Single Judge to have looked into the contents of the

application and decide the same on merits of the case. He submits that the learned Single Judge has erred in holding that the application under Section 10(1) of the Act of 2015 read with Section 34 of the Act of 1996 was not maintainable.

III. <u>Submissions made on behalf of the respondent</u>:

11. Per contra, Shri Rajendra Prasad, learned senior counsel appearing for the respondent has supported the order passed by the Single Judge. He submits that the claimant himself had never been serious in putting up its claim before the proper forum. Once an application has been moved raising objection regarding maintainability of the application before the Commercial Court, the appellant should have been diligent enough to withdraw their application and file the same before appropriate forum. He submits that after the order was passed by the Commercial Court dated 22.11.2018, the alleged application filed under Section 34 of the Act of 1996 before the High Court on 10.12.2018 was never pursued. The same was registered as a defective application and it was only on 14.02.2019 that the appellant filed a fresh application, attested on 31.01.2019, and it was mentioned therein that the fresh application is necessarily treated in view of the defects pointed out in earlier application.

12. It is further submitted by the learned senior counsel for the respondent that the appellant was required to cure the defects in the pending application, but he chose to abandon the other application and filed a fresh application and thus, delay cannot be

condoned. He submits that the application which was filed on 14.02.2019 was the one on which the Court issued notices and the respondent accepted notice. He also submits that the learned Single Judge has rightly held that the application filed under Section 10(1) of the Act of 2015 was clearly not maintainable and also the same was not maintainable before the Commercial Appellate Division and it should have been filed under Section 34 of the Act of 1996. Neither Section 10(1) of the Act of 2015 nor the order of the Commercial Court nor the provisions of Section 34 of the Act of 1996 provide for adjudication on merits on an application submitted before a Court having no jurisdiction in its then existing form as being sought by the applicant. Thus, the application was absolutely frivolous and supported by no provision of law and therefore, deserves rejection at the outset. The Provisions of Section 10(1) of the Act of 2015 only provides that where the subject matter of an arbitration is commercial dispute of specified value and if the arbitration is an international commercial Division where such commercial Division has been constituted in such High Court. Learned senior counsel for the respondent also submits that as per Section 2(1)(e)(ii) of the Act of 1996, the application would lie before High Court in the event of its being international commercial arbitration. Thus, an application under the Act of 1996 has to be filed before the Hon'ble High Court and a request to decide the application filed before Court having no jurisdiction in its existing form is completely misconceived.

13. He further submits that for filing such application as per Rule 4(1) itself have to be in writing duly signed by the applicant and verified by the applicant in the manner prescribed by Order VI Rule 14 and 15 of CPC. Neither the Application No.117/2018 was verified nor the application filed before the wrong Court was verified. Application filed on 10.12.2018 was not even signed by the party what to say about its verification by it. It was not even supported by affidavit. That is why the application was abandoned.

14. It is further submitted that from a bare perusal of the Rajasthan High Court Rules, 1952 (for short, "the Rules of 1952"), it would be clear that a petition under Section 34 shall have to be presented before the Hon'ble High Court addressed to it in the manner provided under Rule 125 and 126 of the Rules of 1952 and on such presentation shall have to be instituted under Rule 155 and after such institution and if a defective application is received the defects shall have to be removed under proviso to Rule 145 and if the defects are not removed, the same shall have to be listed before the Hon'ble Court for rejection. Rule 157 clearly postulates fixation of time for objecting to the office report or for removal of the defects and in case the report is not contested or no objections are filed or objections were rejected by the Registrar, the defects shall have to be removed and in case of non-removal of defects the same shall have to be listed for rejection before the Hon'ble Court and the same shall be rejected as per Rule 157(3) unless Court on a written application supported

by an affidavit grants further time for removal of defects but no such order passed by the Court shall be deemed to extend the period of limitation as per proviso to Rule 157(3).

IV. <u>Legal provisions and relevant law precedents</u>:

15. Section 34 of the Act of 1996 reads as under:

> *"**34. Application for setting aside arbitral award.**—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if--*
> *(a) the party making the application establishes on the basis of the record of the arbitral tribunal that-*
> *(i) a party was under some incapacity; or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*
> *Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
> *(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*
> *(b) the Court finds that—*
> *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

[Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

16. Section 10(1) of the Act of 2015 provides as under:

> "*10. Jurisdiction in respect of arbitration matters.—*
>
> *Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and––*
>
> *(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*"

17. In **M.P. Steel Corporation Vs. Commissioner of Central Excise: (2015) 7 SCC 58**, relied upon by the learned senior counsel for the appellant, it is stated as under:

> "*43. Merely because Parson Tools also dealt with a provision in a tax statute does not make the ratio of the said decision apply to a completely differently worded tax statute with a much shorter period of limitation- Section 128 of the Customs Act. Also, the principle of Section 14 would apply not merely in condoning delay within the outer period prescribed for condonation but would apply dehors such period for the reason pointed out in Consolidated Engineering above, being the difference between exclusion of a certain period altogether under Section 14 principles and condoning delay. As has been pointed out in the said judgment, when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case*"

In Para49, it was again held as under:

> "*49. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same*

position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant – appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."

Further, in Para-52 it was observed as under:

"*52. As has been already noticed, Sarathy's case i.e. (2000) 5 SCC 355 has also held that the court referred to in Section 14 would include a quasi-judicial tribunal. There appears to be no reason for limiting the reach of the expression "prosecuting with due diligence" to*

institution of a proceeding alone and not to the date on which the cause of action for such proceeding might arise in the case of appellate or revisional proceedings from original proceedings which prove to be abortive. Explanation (a) to Section 14 was only meant to clarify that the day on which a proceeding is instituted and the day on which it ends are also to be counted for the purposes of Section 14. This does not lead to the conclusion that the period from the cause of action to the institution of such proceeding should be left out. In fact, as has been noticed above, the explanation expands the scope of Section 14 by liberalizing it. Thus, under explanation (b) a person resisting an appeal is also deemed to be prosecuting a proceeding. But for explanation (b), on a literal reading of Section 14, if a person has won in the first round of litigation and an appeal is filed by his opponent, the period of such appeal would not be liable to be excluded under the Section, leading to an absurd result. That is why a plaintiff or an applicant resisting an appeal filed by a defendant shall also be deemed to prosecute a proceeding so that the time taken in the appeal can also be the subject matter of exclusion under Section 14. Equally, explanation (c) which deems misjoinder of parties or a cause of action to be a cause of a like nature with defect of jurisdiction, expands the scope of the section. We have already noticed that the India Electric Works Ltd. judgment has held that strictly speaking misjoinder of parties or of causes of action can hardly be regarded as a defect of jurisdiction or something similar to it. Therefore properly construed, Explanation (a) also confers a benefit and does not by a side wind seek to take away any other benefit that a purposive reading of Section 14 might give. We, therefore, agree with the decision of the Madhya Pradesh High Court that the period from the cause of action till the institution of appellate or revisional proceedings from original proceedings which prove to be abortive are also liable to exclusion under the Section. The view of the Andhra Pradesh High Court is too broadly stated. The period prior to institution of the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 does not enable a litigant to get a benefit beyond what is contemplated by the Section - that is to put the litigant in the same position as if the abortive proceeding had never taken place."

V. <u>Our Analysis and Findings</u>:

18. Firstly, we will examine the findings arrived at by the learned Single Judge as to whether there was any application moved under Section 34 of the Act of 1996 or not. Secondly, whether

there was a delay which was sufficient to dismiss the application and thirdly, whether the benefit of Section 14 of the Limitation Act could be given to the appellant.

19. It is settled law that merely mentioning a wrong heading of provision on the application would not defeat the cause of justice. The contents of the application are required to be seen and not the provision mentioned on it. The court can understand by a bare reading of the application as to under which provision the same has been filed and what the litigant (here, the appellant) means to plead before the court. From a perusal of the application moved by the appellant it is apparent that the application filed by the appellant was of the nature of raising objections against dismissal of the award by the Tribunal. Thus, the Single Judge who had been assigned specially to hear the application on merits by the Division Bench ought to have considered the merits of the case.

20. We also notice that it is a case where the respondent has attempted to delay adjudication of the application under Section 34 of the Act of 1996 by one reason or the other on technical grounds. Before the Commercial Court, the respondents themselves have raised the question of jurisdiction and their application was accepted by the concerned Commercial Court, the course adopted by the appellant cannot be faulted in filing the same application which was returned to them by the concerned State Commercial Court. The contents of the said application clearly reveal it being objections under Section 34 of the Act of 1996 which were originally filed before the Commercial Court. The

learned Single Judge, therefore, ought to have looked into the contents thereto. We are, therefore, unable to accept the findings arrived at by the learned Single Judge that there was no application moved under Section 34 of the Act of 1996 by the appellant and we, therefore, do not confirm the same.

21. As regards delay in filing of the application, we have considered the law as laid down in **M.P. Steel Corporation (supra)**, taking into consideration the fact that while Arbitral Tribunal may not be the court in strict sense, but the principle of law with regard to the appellant prosecuting with due diligence need to be looked into as per Explanation (a) to Section 14 of the Limitation Act. Therefore, it is apparent that the time spent by the appellant in pursuing the wrong forum needs to be condoned. Accordingly, we find that there were sufficient reasons to ignore the delay which has occurred in filing the application before this court. The forum was wrongly chosen or legally advised and once there were written submissions alongwith the application under Section 14 of the Limitation Act was on record, the course which should have been adopted was to hear on the application instead ignoring the same. We are, therefore, left with no option but to set aside the findings arrived at by the learned Single Judge and allow this appeal and set aside the order dated 02.03.2022 passed by the learned Single Judge.

22. Consequently, the appeal is allowed and the order dated 02.03.2022 passed by the learned Single Judge is set aside. We

remand the matter back to the learned Single Judge hearing arbitration cases to decide the application on merits.

23. Both the parties shall be free to address and take their submissions on merits of the case before the learned Single Judge independent of our aforesaid observations.

24. Registry is directed to list the case before the Single Bench having roster of hearing arbitration matters. Parties shall, accordingly, appear before the learned Single Judge on the said date.

25. All pending application(s) stand disposed of.

(CHANDRA PRAKASH SHRIMALI),J (SANJEEV PRAKASH SHARMA),J

Govind/Gaurav