

**In the High Court at Calcutta
Original Civil Jurisdiction
Commercial Division**

The Hon'ble Justice Sabyasachi Bhattacharyya

**AP-COM/304/2024
[Old case no. AP/250/2023
AP/262/2023]**

**SAJARUL RAHAMAN AND ANR.
VS
SREI EQUIPMENT FINANCE LIMITED AND ANR.**

With

AP-COM/305/2024

**SAJARUL RAHAMAN AND ANR.
VS
SREI EQUIPMENT FINANCE LIMITED AND ANR.**

With

AP-COM/314/2024

**ANAND KUMAR SINGH
VS
M/S. SREI EQUIPMENT FINANCE LIMITED**

With

AP-COM/319/2024

**ANAND KUMAR SINGH
VS
M/S. SREI EQUIPMENT FINANCE LTD.**

With

AP-COM/347/2024

**M/S KETAN CONSTRUCTIONS LTD AND ORS
VS
SREI EQUIPMENT FINANCE LTD**

With

AP-COM/348/2024

**M/S KETAN CONSTRUCTIONS LTD AND ORS
VS
SREI EQUIPMENT FINANCE LTD**

With

AP-COM/349/2024

**M/S KETAN CONSTRUCTIONS LTD AND ORS
VS
SREI EQUIPMENT FINANCE LTD**

With

AP-COM/350/2024

**M/S KETAN CONSTRUCTIONS LTD AND ORS
VS
SREI EQUIPMENT FINANCE LTD**

With

AP-COM/351/2024

**M/S KETAN CONSTRUCTIONS LTD AND ORS
VS
SREI EQUIPMENT FINANCE LTD**

For the Petitioner
in AP-COM/304/2024
& AP-COM/305/2024

: Mr. S.E. Huda, Adv.,
Mr. Himadri Roy, Adv.,
Mr. Sk Aptabuddin, Adv.

For the respondent in
all the petitions

: Mr. Swatarup Banerjee, Adv.,
Mr. Sariful Haque, Adv.,
Mr. Saubhik Chowdhury, Adv.,
Ms. Prarthana Singha Roy, Adv.

For the respondent in
in AP-COM/304/2024
& AP-COM/305/2024

: Mr. Swatarup Banerjee, Adv.,
Mr. Sariful Haque, Adv.,
Mr. Rajib Mullick, Adv.,
Ms. Sonia Mukherjee, Adv.

For the respondent in

AP-COM/314/2024

& AP-COM/319/2024 : Mr. Swatarup Banerjee, Adv.,
Mr. Sariful Haque, Adv.,
Mr. Avishek Guha, Adv.,
Ms. Enakshi Saha, Adv.

Hearing concluded on : 19.08.2024

Judgment on : 27.08.2024

Sabyasachi Bhattacharyya, J:-

1. The matters are taken up for deciding the objection raised by the respondent to the effect that the application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, the “Arbitration Act”), having been filed with deficit Court Fees, is barred by limitation.
2. Learned counsel for the respondent argues that the court-fee payable on an application under Section 34 of the 1996 Act is governed by Serial no. 1(10) of Schedule II of the West Bengal Court Fees Act, 1970 (hereinafter referred to as “the Court Fees Act), which stipulates the court-fee to be Rs.5,000/- for a case as the present one.
3. It is contended that as per Section 34(3) of the Arbitration Act, the limitation for preferring an application under Section 34 is three months after the date on which the applicant receives the arbitral award. A further period of thirty days is stipulated in the proviso to the said sub-section, during which, subject to satisfaction of the court that the applicant was prevented by sufficient cause from making the application within three months, the court has the power to accept

such an application. Although the instant application under Section 34 was filed within such time, the outer limit of limitation stipulated in Section 34(3) and its proviso has long lapsed. Thus, the application ought to be dismissed as time-barred.

4. The award in the present case was received by the petitioner on December 31, 2022. The period of three months thereafter expired on March 31, 2023. A further period of thirty days expired on April 30, 2023. The application under Section 34 was filed with court fees of Rs.130/- on April 27, 2023. Court fees of Rs. 5,000/- has admittedly not been paid till date, let alone within April 30, 2023.
5. Learned counsel for the respondent relies on Section 4 of the Court Fees Act, which stipulates that no document which is chargeable with fee under the said Act shall be filed, exhibited or recorded in, or be acted on or furnished by any court including the High Court unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under the said Act.
6. Section 4(2), which provides that a court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid subject to the condition that the plaint or memorandum shall be rejected unless the plaintiff or appellant, as the case may be, pays to the court within a time to be fixed by the court such reasonable sum on account of court fees as the court may direct, is applicable only to plaints or memoranda of appeal. Section 34 does not envisage either a plaint or a memorandum and, as such, the

relaxation provided under sub-section (2) of Section 4 of the Court Fees Act is not applicable to such an application.

7. A co-ordinate Bench judgment in *Tata Iron & Steel Co. Ltd V. Durgapur Project Ltd.* reported at (2005) 4 CHN 501 has been cited by the petitioner. However, it is argued that the finding in the said judgment that Entry No. 1(10)(iii) of Schedule II of the Court Fees Act, is not very happily worded and the correct provision which needs to be looked into for payment of Court Fees in respect of an application under Section 34 should be Entry No.17(iv) and Entry No.2(c), is *per incuriam* in nature.
8. It is argued that the use of the punctuation mark comma after the expression "Application under Section 12 or Section 34 of the Arbitration Act", is disjunctive, separating the rest of the clause from the earlier part. In such context, learned counsel relies on the *LAW LEXICON* by P. RAMANATHA AIYAR (RE-PRINT EDITION 1992). Learned counsel also cites *Khengarbhai Lakhabhai Dambhala v. State of Gujrat* reported at 2024 SCC OnLine SC 512 to argue that the Supreme Court has defined the word „comma“, but in view of the relevant provision under the Court Fees Act being completely explainable, the judgment does not have much application herein as the said Act is very clear in wording and intent with regard to the Arbitration Act.
9. It is argued that the Court Fees Act has been subsequently amended by the West Bengal Court Fees (Amendment) Act, 2006 by a Notification dated August 4, 2006 wherein the court fees under Entry

No.1(10)(iii) was amended with the words “five thousand rupees” instead of “five thousand rupees or one-and-half per centum of the award whichever is more”. The amendment was notified in the Official Gazette of the State of West Bengal and was given effect to from October 19, 2006 by the Kolkata Gazette dated October 11, 2006. Thus, the court fee required to be paid was Rs. 5,000/- and not Rs. 130/-.

- 10.** It is argued by the respondent that this Court loses its jurisdiction under Section 34(3) of the Arbitration Act to exercise any discretion with regard to payment of deficit court fees in view of the language of Section 4 of the Court Fees Act.
- 11.** A similar situation and/or provision of law also exists in the State of Tamil Nadu wherein the Tamil Nadu Court Fees and Suits Valuation Act, 1965 has similar provisions as the Court Fees Act of West Bengal whereby Section 34 applications need to be filed with court fees of Rs.5,000/-.
- 12.** In such context, learned counsel appearing for the respondent cites a decision of the Madras High Court in *General Manager v. Veeyar Engineers & Contractors*, reported at (2019) SCC Online Mad 5586, which view was reiterated by a Division Bench of the same High Court in *Waaree Energies Limited Mumbai v. Sahasradhara Energy Pvt Ltd Chennai*, reported at AIR OnLine 2021 MAD 2445, where it was made clear that if an application under Section 34 of the Arbitration Act is filed with deficit court-fee after the mandatory period of 120 days gets

expired, as envisaged under Section 34(3) of the Act, the court thereafter has no jurisdiction and becomes *coram non judice* and cannot exercise any further jurisdiction to pass orders for deposit of deficit Court Fees as one can do under Section 149 of the Code of Civil Procedure, 1908.

13. In *Orbit Projects Pvt. Ltd. v. Alankar Financial Services Pvt. Ltd and Ors.*, reported at *MANU/WB/1819/2022*, a Division Bench of this Court made it abundantly clear that the burden is upon the petitioner to prove as to why there has been a non-compliance of the statutory provision of law and the same cannot be shifted upon the Registry or the Stamp Reporter of this Court.
14. Thus, the petitioners' argument to the effect that they were guided by the Stamp Reporter's report with regard to the court fees is not tenable in the eye of law.
15. Learned counsel for the petitioner controverts the arguments of the respondent and submits that the present application under Section 34 had been filed within time with the prescribed court fees of Rs.130/- as assessed by the Stamp Reporter of this Court. Thus, there was no error or mistake on the part of the petitioner in paying the requisite court fees. The petitioner relies on the maxim *Actus Curiae Neminem Gravabit* in that regard and relies on the judgments of *Bhupinder Singh v. Unitech Limited*, reported at *(2023) SCC OnLine SC 321* and *Odisha Forest Development Corpn. Ltd. v. Anupam Traders*, reported at *(2020) 15 SCC 146*.

- 16.** Learned counsel for the petitioner places reliance on the judgment rendered by a co-ordinate Bench of this Court in the matter of *Tata Iron & Steel Co. Ltd (supra)* in support of his contention that Entry No. 1(10) of Schedule II of the Court Fees Act is not applicable to a Section 34 application at all. Learned counsel for the petitioner also places reliance on Sections 28, 42 and 46 of the Court Fees Act, which confer power on the court to enlarge the time for deposit of court fees, including cases where a document has been received with deficit court fee through mistake or inadvertence.
- 17.** Heard learned counsel for the parties.
- 18.** In order to decide the issues involved, four Entries in Schedule II of the Court Fees Act acquire relevance.
- 19.** In Entry No. 2(c), it is stipulated that an original petition not otherwise provided for, filed before the High Court, is chargeable with court fees of Rs. 120/-. The said residuary clause is applicable only in the event there is no other provision governing the relevant application.
- 20.** Entry No. 14 stipulates court fees for memoranda of appeal under Sections 37 and 50 of the Arbitration Act. However, since an application under Section 34 is not a memorandum of appeal under either of the said sections, the said Entry does not govern the instant case.
- 21.** Again, Entry No. 17 (iv) of Schedule II stipulates the court fees for a plaint or memorandum of appeal to set aside an award *other than an arbitral award as defined in Clause (c) of sub-section (1) of Section 2 of*

the Arbitration Act. Thus, by specific exclusion, challenges to arbitral awards are left out of the purview of the said Entry. Hence, there cannot be any doubt that neither Entry No. 14 nor Entry No. 17(iv) are applicable in the present context.

22. The other relevant provision, on which elaborate arguments have been advanced by the parties, is Entry No. 1(10). The said Entry is set out below in its entirety:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Fees</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1. <i>Application or petition.</i>	<i>(10) Application under Section 12 or Section 34 of the Arbitration and Conciliation Act, 1996 (26 of 1996), for a direction for filing an award or for an order for filing an agreement and application for enforcing foreign awards—</i>	
	<i>(a) when presented to a Court of Civil Judge (Junior Division);</i>	<i>One hundred rupees.</i>
	<i>(b) when presented to the City Civil Court, Calcutta or a Court of the Civil Judge (Senior Division) or a District Court or the High Court—</i>	
	<i>(i) if the value of the subject-matter of the award does not exceed Rs. 10,000;</i>	<i>Five hundred rupees.</i>
	<i>(ii) if such value exceeds Rs.10,000 but does not exceed Rs. 50,000;</i>	<i>One thousand rupees.</i>
	<i>(iii) if such value exceeds Rs. 50,000.</i>	<i>Five thousand rupees</i>

23. After the Court Fees Act amendment relied on by the respondent, the court fees payable under the above Entry for disputes as the present case is Rs. 5,000/-. The question which arises is whether the said

provision is applicable at all in respect of an application under Section 34 of the Arbitration Act challenging an arbitral award.

- 24.** A careful perusal of the first part of sub-clause (10) reveals that the expression “Application under Section 12 or Section 34 of the Arbitration and Conciliation Act, 1996” is suffixed by a „comma“. Thereafter, the provision continues as follows: “for a direction for filing an award or for an order for filing an agreement ...”.
- 25.** Thereafter, divided by a disjunctive conjunction “and”, the provision proceeds to mention applications for enforcing foreign awards.
- 26.** Hence, conspicuously, whereas the expression “under Section 12 or Section 34 of the Arbitration and Conciliation Act, 1996” as well as the expression “application for enforcing of foreign awards” are prefixed by the word “application”, the said word is not used before “for a direction for filing an award or for an order for filing an agreement”. The intention of the Legislature is clear. Where an independent application is intended to be qualified by the succeeding phrase, the word “application” has been used to prefix the same. Seen from such perspective, there is no such prefix regarding the expression “for a direction for filing an award or for an order for filing an agreement”. Hence, the argument of the respondent cannot be accepted to the effect that applications under Section 12 or Section 34 of the Arbitration Act and applications for a direction for filing an award or an order for filing an agreement have been intended to be segregated as different categories in sub-clause (10). If it were to be so, the word

“application” would have specifically been used also to qualify applications for a direction for filing an award or for an order for filing an agreement, independently of applications under Sections 12 and 34 of the Arbitration Act.

- 27.** The respondent has taken pains to argue that a „comma“ divides two parts of a sentence. However, a „comma“ need not always segregate two parts of a sentence carrying unique and independent ideas. A „comma“ merely introduces a pause between two parts of a sentence, which parts may carry independent and isolated ideas but may also carry the some general idea, divided into sub-parts.
- 28.** Thus, in Entry No. 1(10), the Legislature has deliberately qualified applications under Sections 12 and 34 by the rider that those have to be for a direction for filing an award or for an order for filing an agreement. Hence, it is not the principal application under Section 34 of the Arbitration Act which is intended to be referred to, but an application under Section 12 or Section 34 which prays for a direction for filing of an award or for an order for filing of an agreement.
- 29.** The said general idea is isolated and segregated from the next part, dealing with applications for enforcing foreign awards, since the word “application” is again specifically used to prefix foreign awards.
- 30.** The respondent has argued that Section 34 does not contemplate any separate direction for filing an award or for an order for filing an agreement. However, by the same logic, Section 12 does not contemplate any application at all. Again, the Arbitration Act does not

contemplate, under any provision, any application for direction for filing an award or for an order for filing an agreement.

- 31.** Thus, the view taken by the co-ordinate Bench of this Court in *Tata Iron & Steel Co. Ltd. (supra)* is the only plausible and acceptable view which can be taken, since Entry No. 1(10) does not carry any meaning, seen from any perspective whatsoever. On the one hand, Section 12 does not envisage any application at all but has been clubbed with Section 34 and on the other, only those applications under Section 34 which are for a direction for filing an award or for an order for filing an agreement have been intended to be included, which also does not carry any meaning as such.
- 32.** The very absurdity of Entry No. 1(10) vitiates the same.
- 33.** Even if taken on face value, the said provision does not cover a principal application under Section 34 of the Arbitration Act, challenging an arbitral award.
- 34.** Thus, by the process of elimination, the only relevant Entry which can be said to be applicable to a challenge under Section 34 of the Arbitration Act is Entry No. 2(c) of Schedule II of the Court Fees Act, which is the residuary provision stipulating court fees of Rs. 120/- for original applications before the High Court not otherwise provided for in Schedule II.
- 35.** Insofar as the judgments of the Madras High Court are concerned, those pertain to the Tamil Nadu Act. Even in the said judgments, the power of the court to condone the delay in case of insufficiently

stamped documents inadvertently received was not considered. Section 5 of the Tamil Nadu Court Fees Act permits, if a document is received by mistake or inadvertence, for the defect to be cured by the court upon subsequent payment of the deficit court fees.

- 36.** It is to be noted that the bar regarding deficit court fees does not emanate from the Arbitration Act, which is a special statute in respect of arbitration and conciliation, but from the Court Fees Act, which is a special statute regarding payment of court fees.
- 37.** The special statute governing the field of court fees in the State of West Bengal is the West Bengal Court Fees Act, 1970. Hence, it cannot be said that the requirement of payment of full court fees arises from the Arbitration Act. Rather, it is the Court Fees Act which is required to be looked into for such purpose.
- 38.** Looking into the provisions of the said Act, Section 4 stipulates that no document chargeable with fee shall be received unless the court fees of an amount not less than that indicated under the Act is paid. However, Section 4 is circumscribed and diluted by the provisions of Sections 42 and 46 of the self-same Act. Section 46 empowers the court, in its discretion, from time to time to enlarge the period fixed for doing any act under the said Act, *even though the period originally fixed or granted may have expired.*
- 39.** On the other hand, Section 42 contemplates a situation where any document is received through mistake or inadvertence, without being properly stamped, in which case the High Court may, if it thinks fit,

order that such document be stamped as per such direction, upon which the defect is cured. Hence, the very statute which creates the bar under Section 4 also empowers the court under Sections 42 and 46 to enlarge the time and cure the defect.

- 40.** In the present case, since the Stamp Reporter assessed the court fees which was paid by the petitioner, the situation would be governed by Section 42 even if there was a deficit court fee scenario. That apart, Section 46 also empowers the court to condone such delay.
- 41.** Hence, even if there was a deficit in the court fees paid, the bar under Section 4 of the Court Fees Act is not absolute and the court has ample power to cure such defect, under Section 42 and/or under Section 46 of the said Act. Since the defect is curable, it is subject to the discretion of the court to accept or not to accept the same upon directing the deficit court fees to be paid later. Hence, it is not a legally tenable argument that the application, if filed with deficit court fee, is absolutely time-barred under Section 34(3) of the Arbitration Act or the proviso thereto.
- 42.** In any event, as observed earlier, the petitioners paid full court fees as required under Entry No. 2 (c) of Schedule II of the Court Fees Act at the time of filing of the application.
- 43.** Since the petitioners have furnished sufficient justification for filing the applications beyond three months but within thirty days from receipt of the award, the said delay is hereby condoned and the applications are accepted as filed in time.

44. Hence, the objection as to maintainability on the ground of deficit court-fees is declined, thereby holding that the present applications of the petitioners under Section 34 of the Arbitration Act are maintainable and the court fees paid therewith are sufficient in terms of the West Bengal Court Fees Act, 1970.
45. The application under Section 34 and the connected applications shall be placed in the list for hearing under the regular heading tomorrow, that is, on August 28, 2024.

(Sabyasachi Bhattacharyya, J.)

