

## No Extension In Limitation For Court Vacations When Arbitral Award Is Challenged After Three Months: Supreme Court

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### Introduction

In a recent decision in *State of West Bengal v. Rajpath Contractors & Engineers Ltd.*, the Supreme Court of India has held that the three-month limitation period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") to challenge an arbitral award shall not be extended beyond the 30-day timeline on account of intervening closure of Courts or vacation. In this article, we navigate through the facts of the matter and examine the decision rendered by the Supreme Court.

### Brief Background

The impugned arbitral award in the instant case came to be rendered on 30.06.2022. Subsequently, the High Court of Calcutta ("**Calcutta High Court**") was closed on account of intervening vacations from 01.10.2022 to 30.10.2022.

On 31.10.2022, the appellants filed a petition under Section 34 of the Arbitration Act to challenge the award. By way of the impugned order dated 04.05.2023, the Calcutta High Court dismissed the petition under Section 34 of the Arbitration Act on grounds of limitation. The Calcutta High Court held that the period of limitation for filing a petition under Section 34 expired on 30.09.2022. Thus, the appellants were not entitled to the benefit of Section 4 of the Limitation Act, 1963 ("**Limitation Act**").

Being aggrieved by the view taken by the High Court, the appellants filed the appeal before the Supreme Court. The High Court granted a certificate to prefer an appeal before the Supreme Court by exercising powers under Articles 133(1) and 134(A)(a) of the Constitution of India.

### Submissions of the Parties

The appellants argued that the limitation period for filing a petition under Section 34 of the Arbitration Act ought to have been computed from 01.07.2022. Accordingly, as per the appellants, the prescribed period of limitation ended on 01.10.2022 which was the first day of the pooja vacation. Thus, the petition under Section 34 of the Arbitration Act, filed immediately upon the re-opening of the Calcutta High Court on 31.10.2022 was within limitation.

As per the appellants, the petition under Section 34 of the Arbitration Act could not be e-filed in the vacation as the relevant e-filing notification provided for e-filing of only urgent matters during the vacations. To support their contentions, the appellants relied on *State of Himachal Pradesh v. Himachal Techno Engineers*<sup>1</sup>.

The respondent supported the findings recorded by the High Court and submitted that in any case, the benefit of Section 4 of the Limitation Act would be available only if the

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<sup>1</sup> (2010) 12 SCC 210.

proceedings are filed within the prescribed period of limitation, which would be three months in the instant case. To support its contention, the Respondent placed reliance on the decision in **Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd.**<sup>2</sup>

The Respondent also referred to the decision in **Union of India v. Popular Construction Company**<sup>3</sup> to argue that the applicability of Section 5 of the Limitation Act is excluded in view of the language used in the proviso to Section 34(3).

## Decision of the Supreme Court

At the outset, the Supreme Court observed that it was undisputed that the impugned award was served upon the appellant on 30.06.2022. The Calcutta High Court was closed between 01.10.2022 to 30.10.2022 (both days inclusive). The petition under Section 34 was filed on 31.10.2022.

The Supreme Court first read through the provisions under Section 34(3) of the Arbitration Act and Section 12(1) of the Limitation Act. The Supreme Court then observed that the period of limitation for filing a petition under Section 34 will be reckoned from 30.06.2022 when the appellants received the award.

Further, in view of Section 12(1) of the Limitation Act, 30.06.2022 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 01.06.2022.

As regards the period of limitation, the Supreme Court observed that the period of limitation is of three months and not ninety days. Therefore, from the starting point of 01.06.2022, the last day of the period of three months would be 30.09.2022.

The Supreme Court observed that Section 43 of the Arbitration Act stipulates that the Limitation Act shall apply to arbitrations in the same manner as it applies to Court proceedings. The Apex Court held that, based on the consistent judicial interpretation starting from the decision in **Union of India v. Popular Construction Company**<sup>4</sup>, the language used in the proviso to Section 34(3) of the Arbitration Act excludes the applicability of Section 5 of the Limitation Act to petitions filed under Section 34 of the Arbitration Act.

On whether or not the appellants would be entitled to the benefit provided under Section 4 of the Limitation Act, the Supreme Court opined that the meaning of the phrase "prescribed period" used in Section 4 was no longer debatable. The Apex Court reiterated that the period prescribed for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso to Section 34(3) is not the period of limitation. Thus, the discretionary period of 30 days beyond the three-month limitation would not constitute the "prescribed period" under Section 4 of the Limitation Act.

In the facts of the case, the three months provided by way of limitation expired on 30.09.2022. Therefore, the appellants were held not to be entitled to take the benefit of

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<sup>2</sup> (2012) 2 SCC 624.

<sup>3</sup> (2001) 8 SCC 470.

<sup>4</sup> (2001) 8 SCC 470.

Section 4 of the Limitation Act. As per the proviso to Section 34(3), the period of limitation could have been extended by a maximum period of 30 days. This 30-day period expired on 30.10.2022. As noted earlier, the petition under Section 34 was filed on 31.10.2022.

Thus, the Supreme Court did not find any error in the decision of the High Court. Accordingly, the appeal was dismissed.

## Comment

The decision of the Supreme Court reiterates the strict interpretation of the limitation period under Section 34(3) of the Arbitration Act. By affirming that the three-month limitation period cannot be extended due to intervening Court vacations or closures, the Supreme Court has emphasised on the importance of timely filing of challenges under Section 34 of the Arbitration Act. The ruling reinforces that the additional 30-day period allowed under the proviso to Section 34(3) is discretionary and does not effect the "*prescribed period*" under Section 4 of the Limitation Act.

## Contact

For any query, help or assistance, please reach out at [info@trinitychambers.in](mailto:info@trinitychambers.in) or visit us at [www.trinitychambers.in](http://www.trinitychambers.in).

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