

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.34 of 2017

1. The State Of Bihar and Ors
2. The Engineer in Chief Road Construction Department, 'Vishwesharraiya Bhawan' Bailey Road, Patna.
3. The Chief Engineer N.H., Road Construction Department, 'Vishwesharraiya Bhawan' Bailey Road, Patna
4. The Superintending Engineer, Road Construction Department, N.H. Circle Dehri-on-Sone.
5. The Executive Engineer, Road Construction Department, Kochas at Mohania.

... .. Petitioner/s

Versus

M/s Dayanand Prd Sinha and Com Son of Sri H.B. Lal, Resident of Janta Path, Kankarbagh Road, Police Station Kankarbagh, District- Patna.

... .. Respondent/s

with

CIVIL REVISION No. 66 of 2017

1. The State Of Bihar and Ors null null
2. The Engineer in Chief, Road Construction Department 'Vishwesharraiya Bhawan' Bailey Road Patna.
3. The Chief Engineer N.H., Road Construction Department 'Vishwesharraiya Bhawan' Bailey Road Patna.
4. The Executive Engineer, Road Construction Department, N.H. Road Division, Gulzarbagh, Patna.

... .. Petitioner/s

Versus

M/s Dayanand Prasad Sinha And Co. S/o Shri H.B. Lal, R/o Janta Path, Kankarbagh, District- Patna.

... .. Respondent/s

with

CIVIL REVISION No. 112 of 2017

1. The State Of Bihar and Ors
2. The Engineer-in-Chief, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer South Bihar, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road,
4. The Superintending Engineer, Road Construction Department , Bhojpur Road Circle, Ara.



5. The Executive Engineer, Road Construction Department, Road Division,
Bhabhua.

... .. Petitioner/s

Versus

M/s Dayanand Prasad Sinha And Co. S/o Shri H.B. Lal R/o Janta Path,
Kankarbagh, District and Town Patna.

... .. Respondent/s

Appearance :

(In CIVIL REVISION No. 34 of 2017)

For the Petitioner/s	:	Mr. Ashok Kumar Dubey, Ac to AAG-XI
	:	Mr. Dinesh Maharaj, AC to AAG-XI
For the Respondent/s	:	Mr. Lal Babu Singh, Advocate
	:	Mr. Nilesh Kumar Pandey, Advocate

(In CIVIL REVISION No. 66 of 2017)

For the Petitioner/s	:	Mr. Ashok Kumar Dubey, Ac to AAG-XI
	:	Mr. Dinesh Maharaj, AC to AAG-XI
For the Respondent/s	:	Mr. Lal Babu Singh, Advocate
	:	Mr. Nilesh Kumar Pandey, Advocate

(In CIVIL REVISION No. 112 of 2017)

For the Petitioner/s	:	Mr. Ashok Kumar Dubey, Ac to AAG-XI
	:	Mr. Dinesh Maharaj, AC to AAG-XI
For the Respondent/s	:	Mr. Lal Babu Singh, Advocate
	:	Mr. Nilesh Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV ORDER

16 25-08-2025 Heard learned counsel for petitioners and
respondents.

2. All these revision applications have been filed
against the different Awards, passed by the Bihar Public Works
Contract Disputes Arbitration Tribunal in different Reference
Cases, along with the interlocutory applications for condonation
of delay.

3. These civil revision applications are barred by
limitation inasmuch it has been filed after more than ten months
from the date of the Award. The period of limitation, under the
Limitation Act, 1963, is of three months for filing of civil



revision application against an Award. The Act, however, does not prescribe any upper limit within which the civil revision application must be filed. The Limitation Act is, thus, being claimed to be applicable to the provisions of Bihar Public Works Contracts Disputes Arbitration Act, 2008 (hereinafter referred as 'BPWCDA Act').

4. Learned counsels submitted that the question of applicability of the provisions contained in Section 5 of the Limitation Act to the proceeding under Section 34 Clause 3 of the Arbitration and Conciliation Act, 1996. It is further submitted that the Act of 2008 shall follow the principle of Arbitration and Conciliation Act, 1996. It is also submitted that there are contradicted view of co-ordinate benches of this Court in similar matter wherein Civil Revision No. 9 of 2017 vide order dated 05.04.2023, co-ordinate bench of this Court dealing with similar issue held that:

“13. Under the provision of Section 13 of the Act of 2008, revision is provided to High Court Suo moto at any time or on an application made to it within three months from the date on which the Award is made. The High Court under the provision of Section 13 (1) may make such order in the case as it thinks fit. There is no prescribed period for Suo moto exercise of revisional jurisdiction, however, an aggrieved party



made by the Award or interim Award may file the revision. Under Section 13(1) nowhere expressly exclude the applicability of provisions of the limitation Act, 1963. The provisions of Section 5 are applicable to Section 13 as they are not expressly excluded by the provisions under the Act of 2008. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of Section 5 of the Limitation Act, 1963 are excluded. Provisions contained in Section 29(2) of the Limitation Act, 1963 would be extracted as there is no express exclusion or implication, in view of the provision of the Act of 2008. Moreover, Section 13(2) of the Act of 2008 for the purpose of exercising its power of revision under this Section, the High Court shall have the same power as it has, and as far as it may be, follow the same procedure as it follows, under the Civil Procedure code while exercising its power of revision under Section 115 of the Code and for that purpose the Tribunal shall be deemed to be a Court Subordinate to it.

16. In view of the decisions of the Hon'ble Supreme Court and submissions made by the parties, the provisions of Section 5 of the Limitation Act, 1963 is applicable to the revisional power of the High Court under Section 13 of the act of 2018."

4.i. Further, in Civil Revision No. 84 of 2018 vide order dated 15.04.2024, another co-ordinate bench of this Court in similar case (2024 (2) PLJR (496)) held that:

"16. Though the limitation for preferring a



revision application under section 13 of the Act of 2008 is three months, in view of the provisions of section 8 of the Act of 2008 read with proviso to section 34(3) of the Act of 1996, the delay in filing of the revision application may be condoned by the Court and the application for setting aside the award entertained up to a further period of 30 days, but not thereafter. As seen above, the Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinda & Ors. (supra) has held that in exercising powers under Article 142 of the Constitution in assessing the need to do complete justice to the parties, the Supreme Court will take note of the express prohibitions in any substantive statutory provision and regulate the exercise of its powers and discretion accordingly. It further held that what the Supreme Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, the High Court cannot take a different approach in the matter under Article 226 of the Constitution. Thus, in view of the categorical bar as provided in the proviso to section 34(3) of the Act of 1996 that the delayed application under section 34 may be entertained up to a further period of 30 days beyond the period of limitation but not thereafter, in the opinion of the Court, the delay in filing of the instant application which is of 3 years 3 months and 25 days cannot be condoned."

5. On plain reading of relevant provisions of both the acts and material available on record it is to be noticed that Arbitration and Conciliation Act, 1996, has been enacted to



consolidate and amend the laws relating to domestic arbitration, international commercial arbitration, and enforcement of foreign Arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. Further, it is evident that Section 8 of the BPWCDA Act, 2008 specifically states that in addition to and supplemental to Arbitration and Conciliation Act, 1996 and not in prerogative way. As there is no conflict in the present cases with regard to the delay of more than ten months according to the Arbitration and Conciliation Act, 1996 and Bihar Public Works Contracts Disputes Arbitration Act, 2008. Section 34 (3) of the Arbitration and Conciliation Act, 1996, read as follows:

“34. Application for setting aside Arbitral award: -

*(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.**”*



5.i. Section 8 of the BPWCDA Act, 2008 which reads as follows:

“Section 8 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008, declares that the provisions of the Act shall be in addition to and supplemental to Arbitration & Conciliation Act, 1996 and in case any of the provision contained herein is construed to be in conflict with the Arbitration Act, then the latter Act shall prevail to the extent of conflict.”

5.ii. Section 17 of the BPWCDA Act, 2008, which reads as follows:

“17. Application Of Sections 4 And 12 Of The Limitation Act 1963:- In computing the period of limitation laid down in sub-section (1) of Section 8, and sub-section (2) of Section 11 and sub-section (1) of Section 12, the provisions of Sections 4 and 12 of the Limitation Act, 1963, shall, so far as may be, apply.”

6. The question involved while exercising revisional power under Section 13 of the BPWCDA Act, 2008 contained the delay in case as the revision is under Section 13 of the BPWCDA Act, 2008 if filed beyond 90 days from the date on which the Award or interim Award is made or reviewed under this Act or it excludes the applicability of Section 29 of the Limitation Act, 1963 and in-consequent of Section 5 of the



Limitation Act, 1963. Section 13 of the BPWCDA Act, which reads as follows:

*“13. Revision: - (1) The High Court may, Suo moto at any time or on an application made to it **within three months from the date on which the award or interim award is made or reviewed under this Act**, by any party aggrieved by the award or interim award so made or reviewed, call for the record of any case in which an award or interim award has been made or as the case may be reviewed and if the Tribunal appears-*

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

(2) For the purpose of exercising its powers of revision under this section, the High Court shall have the same powers as it has, and as far as may be, follow the same procedure as it follows, under the Code of Civil Procedure, 1908 while exercising its powers of revision under Section 115 of the Code and for that purpose the Tribunal shall be deemed to be a Court subordinate to it.”

6.i. The provisions contained in Section 29

Clause 2 of the Limitation Act, 1963 deals with Savings, which



is extracted, here-under:

“29. *Savings: -*

(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provision of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provision contained in Section 4 to 24 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law”

7. In the case of ***State of Madhya Pradesh and others Vs Anshuman Shukla*** reported in ***(2014) 10 SCC 814***, Hon’ble Supreme Court has held that even if the amendment of Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 was made in 2009 as the Court had the power to take Suo moto cognizance and call for record of an Award at any time, there was no legislative intent to exclude the applicability of Section 5 of the Limitation Act, 1963. Apart from that, the Hon’ble Supreme Court has observed that Section 19 of the Act of the 1983 did not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of prescribed limitation there under.



The provisions of Section 29(2) of Indian Limitation Act are applicable in absence of such rider and delay in filing the revision was condoned.

8. In the case of *My Preferred Transformation and Hospitality Private Limited and Anr. v. Faridabad Implements Private Limited* reported in (2025) 6 Supreme Court Cases 481, Hon'ble Supreme Court referring to the judgment *Union of India vs. Popular Construction Co. [(2001) 8 SCC 470]* has held that:

“19. In my personal opinion, the statutes ought not to provide different period of limitation for instituting suit, preferring appeal and making an application, rather all statutes should stick to a uniform period of limitation say 90 days for preferring Special Leave Petition/Appeal to the Supreme Court of India. The courts should also be empowered to condone the delay if sufficient cause is shown for not filing it within the time prescribed rather than restricting the condonable period to a fix period of 15 days or 30 days as provided in some of the statutes.

20. This deviation and restriction create confusion and ordinarily even a lawyer at times fails to notice that a different period of limitation has been prescribed for preferring an appeal under a particular statute. Moreover, there may be genuine cases where the litigant may not be able to approach the court in time for cogent



reasons beyond his control. For example, in arbitration matters where an award is passed on a particular date and a copy of it is also served upon the litigating party but that party happens to be seriously ill and hospitalized for months together and as such is unable to prefer a petition under Section 34 within the period of limitation prescribed. If the delay in challenging the award is not condoned beyond the period of 30 days, he would suffer great prejudice and may lose the remedy on a technical ground even though he may be having a good case on merit. There may also be a situation where a litigant is facing proceedings by the law enforcement agencies like the Enforcement Directorate, Central Bureau of Investigation, etc., and is taken into custody and as such is unable to take the legal remedy within the period of limitation prescribed. He avails the remedy only after he is out of custody; months after the service of the order. In such circumstances, in my opinion, the legislature ought not to confine condoning the delay only for a prescribed period and not beyond it. Rather it should follow the principle of condoning the delay as enshrined under Section 5 of the Limitation Act. This would not only avoid a good case to be thrown out on the ground of limitation but at the same time would bring about uniformity in law.

21. I, therefore, suggest to the law makers to keep this in mind while enacting new Acts and ensure that uniform system is applied in all enactments, be it present or future.”



9. Further the Hon'ble Supreme Court in the case of *Union of India vs. Popular Construction Co. [(2001) 8 SCC 470]* held as follows:

“16. Furthermore, Section 34(1) itself provides that 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). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that subsection. Consequently, by virtue of Section 34(1), recourse to the court against an Arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that

“where the time for making an application to set aside the Arbitral award under Section 34 has expired... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court”.

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to “proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow” (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any



residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act”

10. From reading the provision, it is clear that an application to set aside an Arbitral award under Section 34 must be within 3 months from the receipt of the award or the date of disposal of a request under Section 33. Further, the Court may exercise discretion to entertain the application, within a further period of 30 days, if sufficient cause is shown, but not thereafter. As per Section 29(2) of the Limitation Act, the effect of there being a different limitation period under Section 34(3) is that, Section 3 of the Limitation Act applies to proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 as if the 3-month limitation period is the period prescribed in the Schedule to the Limitation Act.

11. Further, Sections 4 to 24 of the Limitation Act apply to determine whether the application is within the period of limitation, “insofar as, and to the extent to which, they are not expressly excluded”. There are two aspects necessary for our consideration at this point: first, the interpretation of "express exclusion"; and second, the extent of such exclusion. The mere prescription of a period of limitation that is different



from the Limitation Act, even if mandatory and compulsory, is not sufficient to displace the applicability of the Limitation Act's provisions. However, an exclusion of the Limitation Act's provisions can be inferred if the nature and language of the provisions, and the scheme of the special law necessarily exclude the applicability of one or more of the provisions contained in Sections 4 to 24 of the Limitation Act. Section 34 (3) of the Arbitration and Conciliation Act, 1996 clearly states that the application may be entertain within a period of 3 months extended by thirty days *but not thereafter* whereas Section 13 of the BPWCDA Act, 2008 states that application made to it within three months and it does not clearly exclude the same as it is in addition to and supplemental to Arbitration and Conciliation Act, 1996. Thus, as per settled case law, an express reference to an exclusion is not essential and the court can examine the language of the special law and its scheme to arrive at a conclusion that certain provisions of the Limitation Act are impliedly excluded. In my opinion the provisions of Section 5 of the Limitation Act, 1963 is applicable to the revisional power of the High Court under Section 13 of the BPWDCA Act, 2008.

12. As there is conflicting view upon the same by



co-ordinate benches, in such circumstances this Court is of the view that the issue should be examined by a larger bench for deciding as to whether Section 5 of the Limitation Act shall have an application for condoning delay in a proceeding under Section 13 of the BPWCDA Act, 2008, or the condition of delay as laid down under Section 34 of the Arbitration and Conciliation Act, 1996 shall be applicable, in view of Section 8 of the BPWCDA Act, 2008, which contemplates that- *“the provisions, under the Act, are in addition to and supplementary to the Arbitration and Conciliation Act, 1996 and in case of any provision contained therein is in conflict with the Arbitration Act, the latter Act shall prevail.”*

13. Accordingly, let the records of these cases be placed before the Hon’ble Chief Justice, Patna High Court for considering the desirability of referring them to an appropriate larger bench as to which act shall be applicable for the purpose of limitation.

(Ramesh Chand Malviya, J)

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