

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 2507 of 2017**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2017
In R/FIRST APPEAL NO. 2507 of 2017

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YASH TEXTILES
Versus
VINAYAK FASHIONS

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Appearance:

MS.DILBUR CONTRACTOR(6388) for the Appellant(s) No. 1
MR DAKSHESH MEHTA(2430) for the Defendant(s) No. 1
MR. RUSHANG D MEHTA(6989) for the Defendant(s) No. 1

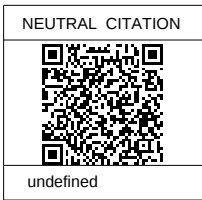
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CORAM:HONOURABLE THE CHIEF JUSTICE MRS.
JUSTICE SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 11/06/2025**ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)**

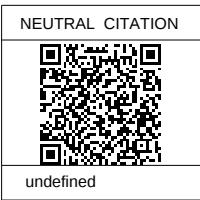
1. Heard learned counsel for the parties and perused the record.

2. This is an appeal filed under Section-37 of the Arbitration and Conciliation Act, 1996, challenging the judgment and order dated 17.06.2017 passed by the learned 5th Additional District Judge, Surat in Misc. Civil (Arbitration) Application No.149 of 2007 under Section-34 of the



Arbitration and Conciliation Act, 1996 (for short, the Act, 1996). It is pertinent to note that the application under Section-34 was filed challenging the award dated 12.06.2006 passed by the Arbitrators appointed by Surat Adatiya Kapda Association in Arbitration Case No.SAKA/ARB/L-14/06.

3. Ms. Dilbur Contractor, learned counsel appearing for the appellant would challenge the order passed by the Court under Section-34 in setting aside the arbitral award on various grounds including the ground that the award was void, ab-initio. The submission is with regard to the maintainability of the application under Section-34 of the Act, 1996. The contention of the learned counsel for the appellant is that the signed copy of the award dated 12.06.2006 was sent to the parties after the witnesses had signed the award on 25.08.2006. The award was received by the appellant on 31.08.2006, whereas, the respondent, who was avoiding the receiving, had ultimately received the signed copy of the award on 08.09.2006. When no steps were taken by the respondent to challenge the award, which was passed in favour of the appellant herein, an execution case under Section -36 was filed on 28.03.2007, which was registered as



Execution Petition No.04 of 2007 and is pending as on date.

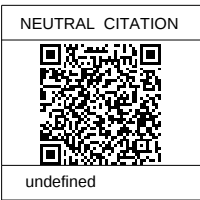
4. However, the application under Section-34 challenging the award dated 12.06.2006 was filed on 14.08.2007 by the respondent herein. The date of filing of the application under Section-34 is not disputed by the learned counsel for the respondent. The learned counsel for the appellant has further placed the provisions of Section-34(3) of the Act, 1996 to submit that the District Court, when the application was filed under Section-34, had no jurisdiction to entertain the application beyond the time period prescribed in Sub-section (3) of Section-34 read with the proviso to Sub-section (3) there. The maximum period within which the application under Section-34 could have been moved by the respondent was 03 months plus 30 days = 120 days. The reliance is placed on the decisions of the Apex Court, which are:-

(1) 2010 (12) SCC 210

State of Himachal Pradesh & Anr. Vs. Himachal Techno Engineers & Anr.

(2) 2012 (2) SCC 624

Assam Urban Water Supply & Sew Board Vs. Subhash Projects & Marketing Ltd.



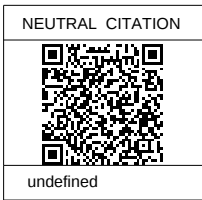
(3) 2018 (15) SCC 178

Anilkumar Jinabhai Patel (D) Thr. LRs. Vs.
Pravinchandra Jinabhai And Ors.

(4) 2019 (13) SCC 445

P. Radha Bai and Ors. Vs. P. Ashok Kumar and Anr.

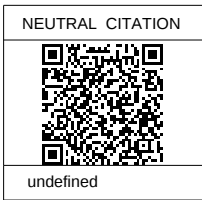
It was argued that in-elastic period for moving an application under Section-34 has been provided in Sub-section (3) of Section-34 with the language employed in the proviso thereto, which prohibits the Court to extend the period prescribed under Sub-section (3) beyond the period of 30 days. It was submitted that the proviso to Section-34(3) though enables a Court to entertain an application to challenge an award after the 03 months period is expired, but only within an additional period of 30 days, but not thereafter. The use of the phrase “but not thereafter” shows that 120 days period is the outer boundary for challenging the award. The submission, thus, is that the Court where the application was moved under Section-34 had no jurisdiction to entertain the same being time barred application and further had no jurisdiction to condone the delay.



5. Referring to the decision of the Apex Court in the case of *Union of India Vs. Popular Construction Co., reported in 2001 (8) SCC 470*, it was submitted that to hold that the Court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. Such an interpretation would lead to absurdity. All these arguments raised by the learned counsel for the appellant could not be disputed by the learned counsel for the respondent.

6. It is settled principle of law that the provisions of the Limitation Act do not apply in the proceedings under Section-34 and the period prescribed under Section-34(3) of the Arbitration Act, 1996 cannot be extended beyond the time period prescribed in the proviso to Sub-section (3) of Section-34, in case an application is filed beyond the period of 03 months.

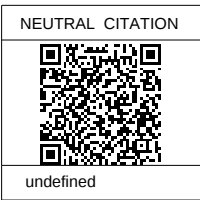
7. The submission of the learned counsel for the respondent are only to the effect that the learned Court found the award being nullity as there was no arbitration agreement. The arbitrator was appointed unilaterally by the



Association namely, Surat Adatiya Kapda Association. The appointment of the Arbitrator was an arbitrary action as no consent was given by the respondent for such an appointment. All these arguments on the merits of the award on the ground that the appointment of the Arbitrator itself was void ab-initio, cannot be looked into, inasmuch as the application under Section-34 where validity of the award was challenged, itself was time barred.

8. In our considered opinion, once the Court did not have jurisdiction to entertain the application under Section-34, having been filed beyond the period prescribed in Sub-section (3) of Section-34 read with proviso thereto, any deliberation on the validity of the award holding it void ab-initio, would be wholly without jurisdiction. The learned Court has committed a grave error of law in entertaining the application under Section-34, which was a time barred application.

9. In view of the above, all arguments raised by the learned counsel for the respondent to defend the order passed by the Court in setting aside the award on the ground stated in the impugned order, cannot be accepted.



10. Accepting the submission of the learned counsel for the appellant that the Court under Section-34 was not empowered to entertain the application beyond the period prescribed in Section-34(3) read with the proviso thereto, the judgment and order dated 17.06.2017 passed by the learned 5th Additional District Judge, Surat in Misc. Civil (Arbitration) Application No.149 of 2007 is hereby set aside, being without jurisdiction. The appeal stands allowed. No order as to cost.

Consequently, the connected Civil Application stands disposed of.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

A. B. VAGHELA