

A.F.R.

Case :- ARBITRATION APPEAL No. - 6 of 2019

Appellant :- National Authority Of India Thru. Project Director

Respondent :- Ram Niranjana & Others

Counsel for Appellant :- Lavkush Pratap Singh, M.V. Kini, Ms. Samidha, Stuti Mittal

Counsel for Respondent :- Mayank Sinha, Anita Tiwari, Girish Chandra Sinha

Hon'ble Jaspreet Singh, J.

1. The appellant, National Highway Authority of India has preferred the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") against the judgment dated 14.05.2019 passed by the District Judge, Pratapgarh in Case M.N.R. No.127 of 2018, whereby the application of the appellant purportedly under Section 34(3) of the Act of 1996 seeking condonation of delay in filing the petition under Section 34(1) of the Act of 1996 has been rejected.

2. Heard Shri Prashant Chandra, learned Senior Advocate assisted by Ms. Samidha, learned counsel for the appellant and Shri G.C. Sinha, learned counsel for the respondent No.1 as well as Ms. Anita Tiwari, learned counsel for the respondents No.2 to 9.

A. FACTUAL MATRIX

In order to appreciate the controversy involved in this appeal, the facts necessary for adjudication are being noted hereinafter.

3. A notification was issued for acquisition of land for the purposes of widening of National Highway 55 on the stretch of land 134.700 km. to 263.000 km., Sultanpur-Varansi Section. The land in question, under acquisition, fell in Village Sonpuri, Paragana & Tehsil Patti, District Pratapgarh. The said notification was issued

under the National Highways Act, 1956 (for short, "the Act of 1956").

4. A further notification under Section 3-A(1) was issued on 07.09.2012, which was followed by publication of notice in the daily newspaper. The subsequent notification under Section 3-D(1) was issued on 29.07.2013 and thereafter considering the objections received from the land-owners/persons interested, the Competent Authority passed an award dated 18.09.2015 under Section 3(G) of the Act of 1956 by which compensation was determined for the land acquired for widening of National Highway 56 in Sultanpur-Varansi Section.

5. The respondents herein, who were the land-owners had filed their objections against the award made by the Competent Authority, the same was registered as Case No.1 (Ram Niranjan and others vs. Union of India) and the same was decided by the Arbitrator by means of its award dated 03.03.2017.

6. The appellant, who was the respondent before the Arbitrator on 28.04.2017 made an application before the Arbitrator purportedly under Section 33 of the Act of 1996 on the premise that the award dated 03.03.2017 was ex-parte, hence, requested a fresh award be passed after considering the case as well as submissions of the appellant herein.

7. On the aforesaid application moved by the appellant, the Arbitrator issued notices to the land-owners, who filed their objections on 25.05.2017. The appellant submitted its reply thereof on 09.06.2017 and after hearing the parties, the Arbitrator

by means of his order dated 28.07.2017 rejected the application filed by the appellant and the award dated 03.03.2017 was maintained.

8. The appellant being aggrieved against the award dated 03.03.2017 and the order dated 28.07.2017, sought permission from its Department to assail the award and finding that it did not have a signed copy of the order dated 28.07.2017, it made an application to the Arbitrator, who provided a signed copy of the order dated 28.07.2017 on 28.11.2017 and soon thereafter on 02.12.2017, the petition under Section 34 of the Act of 1996 along with an application under Section 34(3) of the Act of 1996 was preferred before the District Judge, Pratapgarh which was registered as M.N.R. No.127 of 2018.

9. The land-owners filed their objections which was considered by the District Judge, Pratapgarh and by means of the impugned order dated 14.05.2019 the said application under Section 34(3) of the Act of 1996 was rejected. Consequently, the petition under Section 34 of the Act of 1996 also stood dismissed.

10. The District Judge, Pratapgarh considered the documents which were filed by the parties and came to the conclusion that since the appellant had acknowledged the receipt of the award dated 03.03.2017 and 28.07.2017 in its letter dated 18.10.2017 marked as Paper No.11-C/3. Thus, it held that in any case the award was available with the appellant at any point prior to 18.10.2017 and as Section 5 of the Limitation Act is not applicable, consequently, it held the petition to be time barred.

B. Submissions of learned counsel for the parties:-

11. Learned Senior counsel for the appellant while attacking the order dated 14.05.2019 submits that the District Judge, Pratapgarh has completely misdirected itself on the issue of consideration of condonation of delay. It is urged that from the perusal of the impugned order, it would indicate that the court below has been influenced with the fact that the appellant had implied knowledge of the impugned award. However, it has failed to take note of the fact that insofar as the limitation for filing a petition under Section 34 of the Act of 1996 is concerned, the same is to be reckoned by referring to the provisions of Section 31 read with Section 34(3) of the Act of 1996 as that would determine the date from which the period of limitation commences.

11.1 It is further urged that having knowledge of the award is wholly immaterial rather it is the date on which a signed copy of the award is received by a party which is material and this aspect of the matter has been completely ignored.

11.2 It is further urged that it was specifically pleaded that the appellant had not received the signed copy of the award from the Arbitrator. It is only when the said award was made available on 28.11.2017 that the appellant soon thereafter preferred a petition on 02.12.2017 which as per the law would be within limitation and this aspect has not been considered by the District Judge.

11.3 Even otherwise if at all there was a delay, the same ought to have been condoned whereas the learned District Judge, Pratapgarh ignoring the aforesaid aspect of the matter and relying upon certain

documents which could only indicate that the appellant had the knowledge of the award has based its reasons on the said letter by recording a finding that the appellant had implied knowledge and had acknowledged the receipt of the award dated 03.03.2017 and 28.07.2017 in its letter dated 18.10.2017.

11.4 Elaborating his submission, learned Senior Counsel further submitted that until and unless a signed copy of the award is not received by a party, the limitation to assail the award cannot commence. It then urged that the legal requirement of signing the arbitral award and delivering a copy to the parties is not an empty formality. Section 31(5) of the Act of 1996 enjoins upon the arbitrator to provide a signed copy of the arbitral award to the parties and this is of prime importance since from the date of receipt of the signed copy of the award the period of limitation for filing objections/petition under Section 34 of the Act of 1996 would commence.

11.5 It is further urged that in the instant case since the signed copy of the award dated 28.07.2017 was not provided to the appellant nor a signed copy of the award dated 03.03.2017 was provided hence it is when the appellant made an application to the arbitrator for providing a signed copy which was made available only on 28.11.2017, did the appellant prefer the petition under Section 34(1) of the Act of 1996 which otherwise was within time but in order to avoid any controversy as a matter of caution an application under Section 34(3) of the Act of 1996 was moved and in the circumstances as pleaded in the said application the delay

ought to have been condoned.

11.6 Learned Senior Counsel has relied upon the decisions of the Apex Court in the case of (i) ***State of Maharashtra and Ors. vs. Ark Builders Pvt. Ltd., (2011) 4 SCC Page 616***, and

(ii) ***Dakshin Haryana Bijli Vitran Nigam Ltd., vs. M/s. Navigant Technologies Pvt. Ltd., passed in Civil Appeal No.791 of 2021 decided on 02.03.2021.***

12. Per contra, Shri G.C. Sinha, learned counsel for the respondent No.1 has submitted that the facts as pleaded would indicate that the arbitrator had passed an award on 03.03.2017. Thereafter, the appellant had moved an application under Section 33 of the Act of 1996 which came to be decided on 28.07.2017 as a consequence the award dated 03.03.2017 was affirmed.

12.1 It is further urged by Shri Sinha that for the purpose of reckoning the period of limitation and the date of its commencement there is a difference, where an award is assailed straightaway under Section 34 of the Act of 1996 and in a case where an award is subjected to the provisions under Section 33 of the Act of 1996.

12.2 Insofar as an award which is subjected an application under Section 33 of the Act of 1996 is concerned, a different limitation is provided and in view thereof the petition filed by the appellant was apparently time barred as the provisions of Section 5 of the Limitation Act is not applicable. In view of Section 34(3) of the Act of 1996 once the time prescribed therein stood elapsed, the Court did not have powers to condone the delay and rightly the District

Judge, Pratapgarh rejected the application.

12.3 It has also been submitted by Shri Sinha that in the pleadings delivered before this Court it has nowhere been pleaded that the appellant did not receive a signed copy of the award dated 03.03.2017. The entire emphasis in this appeal is that the appellant did not receive the signed copy of the award dated 28.07.2017.

12.4 It has also been urged that in the given fact situation of the present case, it would indicate that there is no award dated 28.07.2017 rather the award is dated 03.03.2017 and it is the order of the rejection of the application under Section 33 of the Act of 1996 which is dated 28.07.2017.

12.5 It is also urged by Shri Sinha that what the learned Senior Counsel has urged that the limitation commences from the date a signed copy of the award is delivered to a party is in respect of those matters where an award is straightaway assailed under Section 34 of the Act of 1996 without preferring an application under Section 33 of the Act of 1996.

12.6 However, in the present case, since, the appellant moved an application under Section 33 of the Act of 1996 then the limitation would commence from the date of disposal of the application under Section 33 by the Tribunal and not from the date a signed copy of the award is received by the appellant as would be evident from Section 34(3) of the Act of 1996.

12.7 In the present case admittedly the said request was disposed of on 28.07.2017, thus, that would be the point of time which will

be taken to be the point of commencement of limitation and admittedly three months and 30 days expired in the month of November, 2017 and the petition was filed on 02.12.2017, which apparently was time barred.

12.8 Once the Legislature has intentionally not conferred upon the Court, the power to condone the delay beyond a particular period and Section 5 of the Limitation Act not being applicable in such circumstances the dismissal of the application seeking condonation of delay and consequent rejection of the petition under Section 34 of the Act of 1996 is absolutely appropriate and proper which requires no interference from this Court.

13. Ms. Anita Tiwari learned counsel for the respondents No.2 to 9 has also adopted the submissions of Shri G.C. Shina.

C. DISCUSSION & ANALYSIS

14. The Court has considered the rival submissions and also perused the record. However, in order to appreciate the submission of the learned counsel for the respective parties, the provisions of the Act of 1996 as applicable to the present controversy needs to be noticed.

"31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms under Section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978 (14 of 1978).]

[(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31-A.]"

"33. Correction and interpretation of award; additional award.—*(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—*

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type

referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

"34. Application for setting aside arbitral award.-(1)

(2) *****

(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."

15. It will also be relevant to notice the dictum of the Apex Court in the case of **Ark Builders Pvt. Ltd.,** (supra) and **Dakshin Haryana Bijli Vitran Nigam Ltd.** (supra) as cited by the learned Senior Advocate for the appellant.

16. In the case of **Ark Builders Pvt. Ltd.,** (supra) the Apex Court noticing the provisions of Section 34(3) as well as Section 31(5) of the Act of 1996 held that the limitation prescribed under

Section 34(3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting aside the award.

17. In the case of ***Dakshin Haryana Bijli Vitran Nigam Ltd.*** (supra) the Apex Court again had the opportunity to consider the issue regarding limitation and noticing the earlier decision including that of ***Ark Builders Pvt. Ltd.,*** (supra) it opined that there is only one date recognized by the law i.e. the date on which a signed copy of the final award is received by the parties from which the period of limitation for filing petition would commence.

18. It further held that the date on which the signed copy is provided to the parties is the crucial date in arbitration proceedings under the Act of 1996. It is from this date that the period of 30 days commences for filing an application under Section 33 for correction and interpretation of the award or additional award. From the said date the arbitral proceedings would stand terminated as provided under Section 32(1) of the Act of 1996. The said date would also be the date of commencement of the period of limitation for filing a petition to set aside the award under Section 34 of the Act of 1996.

19. Learned Senior Counsel for the appellant relying upon the aforesaid decisions has emphasized that since the period of limitation commences only when a signed copy of the award is made available which as pleaded by the appellant, the signed copy of the award dated 28.07.2017 was made available only on 28.11.2017, hence, the petition filed by the appellant on

02.12.2017 was within time and in any case was within the period as provided under Section 34(3) of the Act of 1996. Thus, the impugned order is bad.

20. Apparently, the submission of the learned Senior Counsel may sound attractive on the first blush, however, upon deeper consideration, the same is fallacious.

21. In the instant case what this Court finds is, that upon perusal of the material in the entire pleadings, there is no statement made by the appellant that it did not receive a signed copy of the award dated 03.03.2017. The entire thrust of the submission of the learned Senior Counsel for the appellant is that it did not receive a signed copy of the award dated 28.07.2017, which although is an order by which the application under Section 33 of the Act of 1996 filed by the appellant was rejected.

22. For the purposes of setting aside an award, the law provides for the limitation in Section 34(3) of the Act of 1996 which has been noted hereinabove first. Even Section 33 of the Act of 1996 provides certain time lines as mentioned in the Section itself which has also been noted hereinabove first.

23. From the conjoint reading of the aforesaid sections namely Sections 31, 33 and 34(3) of the Act of 1996, it would indicate that the form and contents of an arbitral award is provided under Section 31 of the Act of 1996. Section 31(5) of the Act of 1996 enjoins the responsibility on the arbitrator to deliver the signed copy of the award to each of the parties.

24. Section 33 of the Act of 1996 which relates to correction,

interpretation or for passing of an additional award provides for a limitation of 30 days from the date of receipt of arbitral award or making the said application unless a contrary time period has been agreed by the parties. The said section also provides that the Arbitrator after hearing the parties shall correct the clerical or typographical error in the award within 30 days from the date of receipt of such request as provided under Section 33(2) of the Act of 1996.

25. Where the arbitral tribunal corrects an error which has been referred to in Clause (9) of sub-section (1) of Section 33, it can do so on its own initiative within 30 days from the date of arbitral award, however, where a request has been made for an additional award, in terms of sub-section (4) of Section 33, the same can be done within 60 days from the date of receipt of such request as provided in sub-section (5) of Section 33 of the Act of 1996.

26. The arbitral tribunal also has powers to extend the said time lines as provided under sub-section (2) and (5) of Section 33 as shall be evident from sub-section (6).

27. Section 34(3) specifically states that an application for setting aside may not be made after three months have lapsed from the date of which the party making an application had received the arbitral award or, if a request has been made under Section 33 of the Act of 1996, from the date of which the request has been disposed of by the arbitral tribunal.

28. It is relevant to notice the language used by the Legislature while engrafting sub-section (3) of Section 34 of the Act of 1996.

The aforesaid sub-section provides for two situations; (i) where an award has been passed and is challenged straightaway in terms of Section 34(1) then the same can be done within three months from the date on which the party making an application for setting aside the award has received the arbitral award. (referred by this Court as first situation)

29. The other situation relates to a challenge under Section 34(1) of the Act of 1996 where a party first makes a request in terms of Section 33 of the Act of 1996 and thereafter challenges the award then in such a case the limitation for assailing an award commences from the date when such request under Section 33 of the Act of 1996 has been disposed of by the arbitral tribunal. (referred by this Court as second situation)

30. Noticing this contrast in the language of the section and upon meaningful reading of the decision of the Apex Court in the case of ***Dakshin Haryana Bijli Vitran Nigam Ltd.*** (supra) as referred above, it would reveal that in such cases covered by the first situation, where the date on which the signed copy of the award is received by a party assumes significance. Since, no party can challenge an award unless it receives a signed copy, consequently, it becomes a crucial date.

31. It will also be relevant to notice that a proviso has been appended to Section 34(3) of the Act of 1996 which confers the Court with powers to condone the delay of 30 days beyond 3 months from the date of receipt of the arbitral award and not thereafter. Thus, it can be seen that in any case the power to

condone the delay as conferred upon the Court in terms of Section 34(3) of the Act of 1996 is limited and provisions of Section 5 of the Limitation Act does not apply. This has also been settled by the Apex Court in the case of ***Union of India vs. M/s. Popular Construction Company, (2001) 8 SCC 470.***

32. Thus, applying the aforesaid provisions and the principles as extracted above, it would indicate that in the present case, the limitation would be governed by (the second situation) of Section 34(3). Admittedly, after the award dated 03.03.2017 was passed, the appellant had moved an application under Section 33 of the Act of 1996 before the Arbitrator. Admittedly, the said application was duly contested and after hearing the appellant it came to be decided on 28.07.2017. Thus, once the award sought to be challenged had been put through the request under Section 33 of the Act of 1996 then the limitation as provided in the (second situation) of Section 34(3) will apply and the limitation will commence from the date of disposal of the application under Section 33 of the Act of 1996.

33. Once the appellant had made a request under Section 33 of the Act of 1996 for seeking correction / interpretation in the award dated 03.03.2017 and the said application came to be decided on 28.07.2017, thereafter the appellant cannot revert back to seek the benefit of limitation as prescribed in respect of such an award which is sought to be challenged straightaway without making a request in terms of Section 33 of the Act of 1996. The appellant cannot be permitted to take a vacillating stand in law.

34. This Court is fortified in its view in light of the decision of the Apex Court in the case of ***P. Radha Bai & Ors. vs. P. Ashok Kumar & Ors., (2019) 13 SCC 445*** and the relevant portion reads as under:-

"32. Section 34(3) deserves careful scrutiny and its characteristics must be highlighted:

***32.1.** Section 34 is the only remedy for challenging an award passed under Part I of the Arbitration Act. Section 34(3) is a limitation provision, which is inbuilt into the remedy provision. One does not have to look at the Limitation Act or any other provision for identifying the limitation period for challenging an award passed under Part I of the Arbitration Act.*

***32.2.** The time-limit for commencement of limitation period is also provided in Section 34(3) i.e. the time from which a party making an application "had received the arbitral award" or disposal of a request under Section 33 for corrections and interpretation of the award.*

***32.3.** Section 34(3) prohibits the filing of an application for setting aside of an award after three months have elapsed from the date of receipt of award or disposal of a request under Section 33. Section 34(3) uses the phrase "an application for setting aside may not be made after three months have elapsed". The phrase "may not be made" is from the UNCITRAL Model Law ["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 award or, if a request had been made under Article 33, from the date on which that request had been disposed of by the Arbitral Tribunal".] and has been understood to mean "cannot be made". The High Court of Singapore in *ABC Co. Ltd. v. XYZ Co. Ltd.* [*ABC Co. Ltd. v. XYZ Co. Ltd., 2003 SGHC 107*] held:*

"The starting point of this discussion must be the model law itself. On the aspect of time, Article 34(3) is brief. All it says is that the application may not be made after the lapse of three months from a specified date. Although the words used are 'may not', these must be interpreted as 'cannot' as it is clear that the intention is to limit the time during which an award may be challenged. This interpretation is supported by material relating to the discussions amongst the drafters of the Model Law. It appears to me that the court would not be able to entertain any application lodged after the expiry of the three months' period as Article 34 has been drafted as the all-encompassing, and only, basis for challenging an award in court. It does not provide for any extension of the time period and, as the court derives its jurisdiction to

hear the application from the Article alone, the absence of such a provision means the court has not been conferred with the power to extend time."

(emphasis supplied)

32.4. *The limitation provision in Section 34(3) also provides for condonation of delay. Unlike Section 5 of the Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause. The crucial phrase "but not thereafter" reveals the legislative intent to fix an outer boundary period for challenging an award.*

32.5. *Once the time-limit or extended time-limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase "where the time for making an application to set aside the arbitral award under Section 34 has expired".["**36. Enforcement.**—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."](emphasis supplied)] There is an integral nexus between the period prescribed under Section 34(3) to challenge the award and the commencement of the enforcement period under Section 36 to execute the award."*

35. The Apex Court in the case of **Dakshin Haryana Bijli Vitran Nigam Ltd.** (supra) has categorically held as under:-

"(xvi) There is only one date recognised by law i.e. the date on which a signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award.

(xvii) The date on which the signed award is provided to the parties is a crucial date in arbitration proceedings under the Indian Arbitration and Conciliation Act, 1996. It is from this date that : (a) the period of 30 days' for filing

an application under Section 33 for correction and interpretation of the award, or additional award may be filed; (b) the arbitral proceedings would terminate as provided by Section 32(1) of the Act; (c) the period of limitation for filing objections to the award under Section 34 commences."

36. Thus, what can be discerned from the decision of the Apex Court is that the limitation would commence from the date of receipt of the signed copy of the award, for three purposes as mentioned in the paragraph extracted above.

37. Admittedly, in the present case, the award was passed on 03.03.2017 and the application under Section 33 was preferred on 28.04.2017. This categorically changes the complexion of the submissions of the learned Senior Counsel for the appellant inasmuch as the award is now governed by the part of Section 34(3) providing commencement of the limitation from the date of the disposal of the request under Section 33 of the Act of 1996.

38. The application as noticed above was decided on 28.07.2017, hence, the limitation would commence from the said date and the period of three months would expire on 28.10.2017 and had the application under Section 34 of the Act of 1996 been filed beyond the aforesaid period but within 30 days thereafter, the said delay could be condoned by the Court concerned. However, admittedly, the application came to be filed on 02.12.2017 i.e. beyond the period of three months and 30 days as prescribed, hence, the Court did not have the power to condone the delay in view of the

law of the Apex Court in the case of ***Popular Constructions (supra)***.

CONCLUSION

39. From the aforesaid discussions as well as considering the relevant legal provisions and the law laid down by the Apex Court, if the impugned order passed by the District Judge, Pratapgarh is seen, it is true that the manner in which the issue regarding determination of limitation has been noticed and decided by the District Judge, Pratapgarh may not be in consonance with the settled provisions. However, this Court in exercise of appellate powers after delving into the matter and having taken a re-look on the issue of limitation, in view of the discussion aforesaid comes to the finding and conclusion that the petition filed by the appellant under Section 34 of the Act of 1996 is beyond three months and 30 days and consequently the delay could not have been condoned and for the said reason, this Court refrains from interfering in the order dated 14.05.2019 passed by the District Judge, Pratapgarh in M.N.R. No.127 of 2018.

40. For the reasons recorded, the appeal fails and is accordingly dismissed. However, in the facts and circumstance, there shall be no order as to costs.

Order Date :- 18th March, 2021
Rakesh/-