

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	AA No. 58/2019
Parties Name	M/S Sar Parivahan Pvt. Ltd. vs. Hindustan Copper Ltd.
Date of Judgment	04/12/2021
Judgment delivered by	Justice Vishal Dhagat, J.
Whether approved for reporting	Yes
Name of counsels for parties	Petitioner: Ms. C. Veda Rao, Advocate. Respondents: Shri R.K. Sanghi, Advocate.
Law laid down	<p>9. Word "dispose off" has been described in Oxford English Dictionary as "to throw away or sell, to get rid of substance that you do not want." In legal sense word "dispose" means that final order has been passed in a case. Word "dispose" is different from word "dismiss" which means "to reject a case". If a case is disposed off then it means it is either allowed or rejected or partly allowed but final order has been passed in a case by which case is over and has come to end.</p> <p>12. Dismissal of application under Section 34 of Act of 1996 on ground of limitation will come within the purview of refusing to set aside an arbitration award, therefore, appeal</p>

	under Section 37 will be maintainable if application under Section 34 is dismissed on ground of limitation.
Significant paragraph numbers	09 and 12.

(J U D G M E N T)
04.12.2021

Appellant has filed this appeal challenging impugned order dated 25.06.2019 passed by First Additional District Judge, Balaghat (MP) in MJC No.127/2017 by which application under Section 34 of the Arbitration and Conciliation Act, 1996 was dismissed.

2. Learned Court below held that limitation for filing application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act, 1996") shall be counted from date of passing of award dated 22.06.2017. Application filed for modification of award under Section 33 of Act of 1996 will not have any bearing as said application was filed on merits of award and not on grounds under Section 33(1)(a)(b). Application under Section 34 ought to have been filed within period of three months i.e. by 22.09.2017 but no application was filed in said time frame. No application was filed for condonation of delay neither any reason for delay was given in application under Section 34 of Act of 1996. In reply to application filed by non-applicant under Order 7 Rule 11 of CPC, no reason explaining delay was mentioned. In

view of aforesaid circumstances of the case, First Additional District Judge, Balaghat (MP) dismissed the application under Section 34 of Act of 1996.

3. Learned counsel appearing for appellant submitted that appellant ought to have been given benefit of Section 33 of Act of 1996. Running of limitation ought to have been considered from date of rejection of application under Section 33 of the Act 1996 and not from date of passing of award. Learned Court below committed an error of law in not granting the said benefit to the appellant.

4. Per contra, counsel appearing for respondent submitted that application filed by the appellant under Section 33 was dismissed and award was not modified, therefore, running of limitation is to be counted from date of passing of award. It is further submitted that appeal under Section 37 of the Act 1996 is not maintainable as no decision was passed on merits and application has been dismissed on technical ground of limitation.

5. Heard the counsel for appellant as well as respondent.

6. Relevant provisions for consideration before this Court are as under:-

"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 subsection (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-

(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."

7. Section 34(3) of Act of 1996 prescribed limitation of three months for filing an application. Court is given discretion to entertain application within further period of 30 days after lapse of 90 days, if it is found that applicant was prevented by sufficient cause from making the application. If request is made under Section 33 of Act of 1996 for modification then period of three month is to be counted from the date when request under Section 33 is disposed off by arbitral tribunal.

8. Learned counsel appearing for respondents had submitted that application filed under Section 33 is not disposed off but has been dismissed and same is not filed within scope of Section 33, therefore, running of time will start from date of passing of award and not from the date of dismissal of the application.

9. Word "dispose off" has been described in Oxford English Dictionary as "to throw away or sell, to get rid of substance that you do not want." In legal sense word "dispose" means that final order has been passed in a case. Word "dispose" is different from word "dismiss" which means "to reject a case". If a case is disposed off then it means it is either

allowed or rejected or partly allowed but final order has been passed in a case by which case is over and has come to end.

10. Considering said meaning of the word "dispose" it will be said that by not allowing an application under Section 33 of Act of 1996, application is disposed off and final order is passed on application, therefore, benefit of Section 33 will be available to the appellant.

11. Respondent has also raised second objection that since application for setting aside arbitral award has been dismissed on the ground of limitation, therefore, application is rejected on technical ground only and order is not passed on merits to refuse to set aside arbitral award, therefore, appeal under Section 37 would not lie.

12. Dismissal of application under Section 34 of Act of 1996 on ground of limitation will come within the purview of refusing to set aside an arbitration award, therefore, appeal under Section 37 will be maintainable if application under Section 34 is dismissed on ground of limitation.

13. In view of aforesaid, it is found that application for modification of award under Section 33 of Act of 1996 was considered and decided on 21.08.2017 and, therefore, limitation will start running from day when application under Section 33 was disposed off and Court has wrongly not given the benefit of Section 33 of the Arbitration and Conciliation Act, 1996 to the appellant.

14. In view of same, impugned order dated 25.06.2019 is set aside. It is held that limitation will start running from 21.08.2017 the date on which application under Section 33 of the Arbitration and Conciliation Act, 1996 was disposed off and application is held to be filed within period of limitation. Court below is directed to consider and decide the issue on its merits.

15. With aforesaid, arbitration appeal filed by appellant is *allowed*.

(VISHAL DHAGAT)

JUDGE