

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.449 of 2025

1. The Union of India through Assistant General Manager Engineer (Civil) Airports Authority of India Gaya Airport, Gaya-923004 (Bihar).
2. Airport Authority of India, A Statutory Corporation incorporated under the Airports Authority of India Act, 1995, having its Head Office at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003.
3. The Chairman, Airports Authority of India Head Office at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003.
4. Member (Planning) Head of the Department of Engineering, Airports Authority of India, Head Office at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003.
5. Executive Director, Airports Authority of India, Head Office at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003.
6. General Manager, Engg. (c) Airports Authority of India, NSCBI Airport, Kolkata-700002.
7. Assistant General Manager, Engineer (civil) Airports Authority of India, Gaya Airport, Gaya-823004 (Bihar).

... .. Appellant/s

Versus

Brajesh Kumar Sinha son of Sri Bharat Sinha, Resident of behind H/150, Veer Kunwar Singh Colony, Hinoo, Ranchi, P.O.-Hinoo, P.S.-Doranda, District-Ranchi-834002.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dr. Pankaj, Advocate
For the Respondent/s : Mr. Saurabh Bishwambhar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 11-12-2025

Heard the parties.

2. The present application has been preferred against the **judgment dated 07/04/2025** passed by the **learned Principal District and Sessions Judge, Patna** in Arbitration Case No 18/2024. [*The Union of India Through Assistant*



General Manager, Engineer (Civil), Airports Authority of India, Gaya Airport, Gaya- 923004 Bihar vs. Brajesh Kumar Sinha] as also Award dated 31.05.2023 passed by the sole Arbitrator by which the case of the sole claimant-respondent was allowed and the appellants were directed to pay the Award amount within 90 days.

3. The matrix of facts giving rise to the present appeal is/are as follows:

4. Tenders were invited through the e-tendering portal by the **Assistant G.M. (E-C), AAI, Gaya Airport (Bid Manager) on behalf of Chairman, Airports Authority of India** (henceforth for short '**the AAI**'), on **07.11.2016** from the eligible contractors for the Construction of the Property Boundary Wall of '**the AAI**' land situated at Gaya Airport, Gaya at an estimated cost of **Rs.2,12,07,560.00** with the completion period of six months. The scope of work included RCC footing, RCC column, RCC Plinth beam, brick work etc. The last date and time of sale of tender document was 07.11.2016 while the last date for submission of e-bid was 17.12.2016.

5. The claimant-respondent thereafter submitted his application form along with other candidates within the stipulated period and time i.e. 02.12.2016 and after completion



of paraphernalia, the claimant respondent was selected for the above captioned work.

6. This followed the issuance of the Letter of Appointment on 04.01.2017 for the work mentioned above at the item rates quoted by him totaling to Rs.1,25,77,245/- (Rs. One Crore Twenty Five Lakhs Seventy Seven thousand Two hundred & Forty Five only) which was 40.69% below the estimated cost of tender of Rs. 2,12,07,560/- (Rupees Two Crores Twelve Lacs Seven Thousand Five Hundred & Sixty only). The claimant respondent was acknowledged about conversion of Earnest Money Amount of Rs. 4,24,152/- (Rupees Four Lakhs Twenty Four Thousand One Hundred Fifty Two only) into SECURITY DEPOSIT, as per condition number 15 of the contract document.

7. The further direction to the claimant respondent was to deposit the remaining amount of Security Deposit i.e. Rs. 8,33,573/- (Rupees Eight Lakhs Thirty Three Thousand Five Hundred & Seventy Three only) within ten days from the date of issue of the letter, failing which, the same will be deducted as per condition 13(iii) of the tender/contract document.

8. The claimant respondent was further asked to be present before the Assistant General Manager (E-C), of 'the



AAO' Gaya Airport, Gaya, the in-charge of the contract, to sign and complete the contract agreement on 15.01.2017.

9. Thereafter, the Contract Agreement No-AAI/GAYA/AGM/Engg(c) 03/2016-17 dated 19.01.2017 signed and executed between 'the AAI' and Brajesh Kumar Sinha, the claimant-respondent.

10. The contention is that there was no dispute on the proposed property regarding title and possession of said property of the Gaya Airport and the State Agencies demarcated the said property/premises which was proposed to be boundary walled.

11. The claimant respondent accordingly started construction work without any hindrance and being satisfied with the performance of the claimant-respondent, the appellants cleared the 1st Running Account Bill(R/A Bill) without any dispute for the work done up to 31.03.2017.

12. On 03.04.2017, the claimant respondent reported to the Assistant G.M. (E-C) that on the previous day, 02.04.2017, a mob of around 250 people led by one Shri Bhism Narayan Rai reached at the site and threatened the Supervisor and the labourers to face consequences if they would not demolish the structure constructed at the site within 7-8 days.



13. On 04.04.2017, the claimant respondent/contractor lodged an FIR in Bodh Gaya P.S. Case No-207/17 u/s 147 149, 34, 323 & 504 IPC as the mob of about 75-100 persons came to the site and created hooliganism/quarrel/nuisance with his workmen. On 05.04.2017, the same was reported to 'the AAI' which followed the Director, AAI, Gaya Airport apprising the S.S.P., Gaya with a request to maintain the law and order on spot.

14. As the story further unfolds, on 14.04.2017, the claimant respondent approached the applicants with reference to letter dated 03.04.2017 & 05.04.2017 to take necessary steps for removal of hurdles caused by local people bringing the construction works at total stand still.

15. On 26.04.2017, the claimant respondent referring to the letters dated 03.04.2017; 05.04.2017 and 14.04.2017 claimed that though he tried to restart the construction of work at the site but due to agitation of the villagers, the work could not be started. The claimant respondent further recorded that he has suffered loss to the tune of Rupees 1,50,000/-(approx) towards the establishment and labours cost and further as there was no possibility of execution of work at the site.

16. In view of the representations/letters dated



03.04.2017; 05.04.2017; 14.04.2017 & 26.04.2017 as well as FIR dated 04.04.2017, the Airport Director, Gaya Airport, Gaya vide letter dated 05.05.2017 addressed to Sub-Divisional Officer, Sadar, Gaya requested for arrangements to ensure restarting of construction of Boundary Wall at 'the AAI' land at Techno Farm, which was stopped since 04.04.2017.

17. Further, after the meeting with the District Magistrate, Gaya, he directed vide letter dated 15.06.2017 to the Sub-Divisional Officer, Sadar, Gaya to ensure the construction work of the boundary wall of 'the AAI' land by providing police force at the site.

18. The contention is/was that while the appellants were taking steps to resume the construction work at the said site, the claimant-respondent was more interested in closure of the construction work and payment towards the work executed by him as would be evident from letters dated 03.06.2017 & 19.06.2017. The claimant respondent never co-operated with the appellants in order to resume the construction work on 'the AAI' land.

19. The case of the appellants is/was that the claimant-respondent for the reasons best known to him did not resume the construction work despite the best efforts extended



by the applicants and the local Administration. However it is pertinent to mention here that the applicants had granted several extension of contract for completion of the work under Clause-5 of Clauses of Contract starting with the first letter dated 13.07.2017 by which the contract got extended up to 10.08.2017 which was extended from time to time till 05.11.2018 when it was extended till 04.12.2018. However, the claimant-respondent chose not to resume work.

20. The claimant respondent submitted representation before the appellants on 06.09.2017 demanding the measurement of work done, preparation of bills as also payments and issuance of letter of foreclosure beside payment of Compensation and permission for withdrawal of men and machineries as well as different materials stocked at the site and further to refund the Security Deposit amount.

21. The AGM Engg.(C) thereafter vide letter dated 11.09.2017 asked the claimant respondent to submit the bill for construction work done in between 01.04.2017 and 03.04.2017 but the claimant respondent failed to comply.

22. In the aforesaid facts and circumstances, a joint meeting was held on 05.12.2017 between the claimant respondent and 'the AAI' in which the claimant respondent



assured construction work and the applicants had apprised him about the assurance given by the State Administration for extending security to the claimant respondent and his men as well as materials. The claimant respondent informed that he requires a week's time for mobilization and assured to intimate the date by 12.12.2017.

23. However, instead, the claimant respondent served a legal notice to the applicants vide Notice/378 dated 11.12.2017, which was promptly replied vide Reference no.-AAI/Gaya/Tekuna/B-Wall/Legal/ AGM/Engg.(C)/1617-22 dated 31.01.2018 by the AGM Engg. (C), Gaya Airport denying to each and every point.

24. This followed the notices to the Claimant respondent vide letters nos.-1643-46 dated 07.02.2018 & 1786-89 dated 06.03.2018. The claimant respondent again served a legal notice no.-58 dated 08.02.2018 which was also replied vide letter dated 22.02.2018.

25. As the claimant respondent chose not to reply to the Show-Cause notices dated 07.02.2018 & 06.03.2018, instead served a Demand dated 10.03.2018 through his Advocate for the following:

*(i) measurement of the remaining
work executed after the measurement done*



under 1st on Account Bill,

(ii) preparation of Final Bill,

*(iii) payment of the amount under
the Final Bill and*

*(iv) compensation to compensate
the losses suffered by the contractor. 'The
AAI' through its lawyer sent an explanatory
reply of the said Notice of Demand on
10.04.2018.*

26. The contention is that the claimant respondent left the work without any sufficient reasons and estimated cost of leftover construction work to Rs. 1,96,08,019.00 and served an additional Notice of Demand on 30.04.2018 to the appellants.

27. The appellants had sanctioned the amount to the claimant respondent as per clause of payment in the work order dated 04.01.2017 in respect of 2nd RA Bill on 11.05.2018 which was transferred in the Bank account.

28. The claimant respondent thereafter sent legal notices vide no. 314 and 315 dated 21.09.2018/23.10.2018 as well as 05.01.2019 to the appellants requesting for appointment of Dispute Resolution Committee in terms of Clause-25(i) arising out of the Agreement dated 19.01.2017 for conciliation/adjudication of the dispute of the subject matter, which was received by the applicants on 25.10.2018.

29. The appellants took cognizance of the legal



notices dated 21.09.2018/23.10.2018 & 05.01.2019, which was served to Chairman, 'the AAI' for appointment of Dispute Resolution Committee(DRC) in terms of Clause-25(i) arising out of the said Agreement and Work Order bearing No-AAI/GAYA/B-WALL/AGM(Engg-C)/w.o-02/2016-17/1891-96 dated 04.01.2017 and referred the matter to RHQ-ER vide letter dated 30.11.2018. The order dated RHQ-ER constituted the DRC vide 22.12.2018 comprising three members namely:

1. Sh. K. K. Singh, GM, Project.

2. Sh. Nayak, DGM, Finance.

3. Sh. Gorai, DGM, Law.

The same information was given to all concerned vide letter dated 08.01.2019.

30. In the meantime, Sri. Gorai, one of the members of the DRC, was transferred and relieved from RHQ-ER. He was replaced with Sri. Amit Kumar, Manager, (Law) vide order dated 11.04.2019 of RHQ-ER and approved by the GM (Engg) on 12.04.2019. The proceedings of the DRC commenced on 16.05.2019. The appellants had submitted their reply on the same date which was duly signed on 30.04.2019.

31. The DRC adjourned the matter with the direction to the claimant respondent to go through the reply of the



appellants and submit rejoinder if any and observed that the next meeting would be fixed after submission of the claimant respondent's reply.

32. In the meanwhile, the appellants under Clause-3 of the agreement dated 19.01.2017 took action against the claimant respondent and terminated the Agreement vide letter no-1148-54 dated 26.12.2018 in view of apathy shown by the claimant respondent either in completion of work or in replying the issues raised in the show cause notices dated 07.02.2018 & 06.03.2018.

33. Thereafter, the appellants submitted their reply on 16.05.2019 which was duly signed on 30.04.2019. The DRC adjourned the matter with the direction to the claimant respondent to go through the reply of appellants and submit rejoinder if any and observed that the next meeting would be fixed after submission of the claimant respondent's reply.

34. In response to the reply submitted by the appellants, the claimant respondent vide a petition dated 10.06.2019 appeared before the Disputes Committee through his lawyer and intimated that the copy of reply of appellants is not legible. Hence, he requested to send a legible copy of the reply of the appellants with a request to postpone further proceedings



& extend the period of six weeks to submit the reply of the claimant respondent. He also raised the issue of appointment of DRC after the expiry of limitation period with respect to Clause-25(i) of the Agreement.

35. He further prayed for appointment of an Arbitrator by filing a **Request Case bearing Req. Case no. 44/2019** before the Hon'ble Patna High Court, which was disposed of vide an order dated **27.09.2019** passed by **Hon'ble the then Chief Justice** with the following observation:

"In view of the arbitration clause available and in view of the provisions of the Arbitration and Conciliation Act, 1996 and Appointment of Arbitrator by the Hon'ble Chief Justice of Patna High Court Scheme, 1996, I hereby appoint Hon'ble Mr. Justice V.N. Sinha (Retd.), as an Arbitrator to enter upon the dispute and render his award. The Registrar General to take steps accordingly for information as well as for sending the records to the Arbitrator."

(emphasis added)

36. The sole Arbitrator thereafter took up the matter and passed the AWARD on **26.04.2022** in which he propounded/allowed the claim of the claimants while dismissing the stand taken by 'the AAI'.



37. Thereafter the claimant respondent filed a petition **u/s 33 of Arbitration & Conciliation Act, 1996** (henceforth for short 'the Act') on 30.05.2022 which was rejected vide an order dated **31.05.2023** with the following observations:

"In the circumstances, there is also no substance in the other prayer made by the claimant in the application to adjudicate claims no. 19, 21,23 & 24 and to publish additional award. The application under section 33 (1) (a) and (b) is accordingly rejected."

The Award dated 26.04.2022 passed by the learned Sole Arbitrator attained finality on 31.05.2023 with the passing of Additional Award on petition u/s 33 of the Arbitration & Conciliation Act 1996.

38. Thereafter, the **Arbitration Case No-18/2024** was filed **u/s 34 of Arbitration & Conciliation Act, 1996** on behalf of appellants for setting aside the arbitral award dated **26.04.2022**, which attained finality on **31.05.2023** after passing of the arbitral award u/s 33 of Arbitration & Conciliation Act 1996 passed in Arbitration proceedings arising out of Request Case No-44/2019 by the sole Arbitrator. It was filed on



14.03.2024 along with application for condonation of delay
Upon scrutiny of the instant application, 'Sheristedar' reported
that there is a delay of 197 days in filing the application.

39. The contention is/was that the delay in filing the
petition u/s 34 of 'the Act' has to be attributed to the
organization such as processing of the case through proper
channels and after obtaining the order dated 31.05.2023 passed
by the Arbitrator. Thereafter, the Award as a whole was analyzed
which followed a decision to challenge it by way of filing the
petition u/s 34 of 'the Act'.

40. The **Arbitration Case No. 18 of 2024 (The
Union of India & Ors. vs. Brajesh Kumar Sinha)** was heard
by the learned Principal District Judge, Patna and dismissed on
07.04.2025. The conclusion arrived at have been incorporated in
paragraph nos. 17 and 18 which read as follows:

*17. Thus, applying the aforesaid
provision and proposition to the present case, it
unfolds that award has been passed on 26th April,
2022 which attained finality on 31 May, 2023
after passing of the additional award under
Section 33 of Arbitration and Conciliation Act,
1996, whereas, the present application has been
filed on 14th March, 2024, ie., after a period of
197 days. Proviso to Section 34(3) provides that
even 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 can entertain the application only within a further period of thirty days, and not thereafter. Therefore, in this case under no event, this Court can entertain the application of the applicants beyond 28th September, 2023 whereas, the present application under Section 34 Arbitration Act has been filed on 14th March, 2024.

18. Therefore, in view of the foregoing discussions, this Miscellaneous (Arbitration) case under Section 34 of the Arbitration Act, being time barred under sub-section (3) of Section 34 of the Arbitration Act, stands dismissed.

(emphasis added)

41. Aggrieved, the present appeal.

42. Learned counsel for the appellants submit that in view of the fact that it is an organization, they took some time to come to a decision to file an application under Section 34 of 'the Act'. This must have been taken into account while deciding the case. The further submission is that though there has been delay of 197 days as pointed out, every delay does not reflect malafide or dilatory attitude of the litigant to delay proceeding and it is the circumstance governing each case that has to be tested on its merit.

43. Further, in the case of the State or an organization,



various factors including the functioning of the Government which is not individual but institutional involving decision making process at various levels should also have been taken into consideration.

44. The submission is that unfortunately, this was not taken into account when the case was dismissed on the ground of delay in filing of the petition under Section 34(3) of 'the Act' and thus it needs interference.

45. This Court has taken note of the facts of the case, the submissions of the appellants as recorded above as also the order passed by the learned **Principal District Judge, Patna in Arbitration Case No. 18 of 2024 (the Union of India & Ors. vs. Brajesh Kumar Sinha) dated 07.04.2025.**

46. The admitted position is that the Award came to be passed on **26.04.2022**. Subsequently, a petition under **Section 33** of '**the Act**' was preferred which was dismissed on **31.05.2023**. The application under **Section 34** of '**the Act**' was filed on **14.03.2024**. The appellants thus took 197 (195 days?) more days than what is mandated in 'the Act'.

47. At this stage, it would be appropriate to incorporate **Section 34(3) of 'the Act'** which read as follows:

34(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.

48. The language of Section 34(3) of 'the 1996 Act' is very clear. After the lapse of three months, if the Court is satisfied that sufficient cause is there and the reasons have been explained which prevented them to file a petition within the said period, it can entertain the application for further period of thirty days **but not thereafter**. Thus, 'the Act' completely bars entertaining any petition after lapse of thirty days.

49. This Court is further guided by the order passed by the **Hon'ble Apex Court in the case of Union of India vs. Popular Construction Company reported in (2001) 8 SCC 470. Paragraphs 12, 14 and 16** of the said order read as follows:



12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. 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. No principle of interpretation would justify such a result.

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process". This objective has found expression in the Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

*"5. Extent of judicial intervention.
Notwithstanding anything contained in any*



other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

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 sub-section. 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 emphasised by the provisions of Section 36 which provide that

"where the time for making an application to set aside the arbitral award the award shall be enforced under the Code under Section 34 has expired 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 a 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.

50. Hon'ble Apex Court made it clear that one of the main objective of 'the Act' is "to minimise the Supervisory role of the Courts in the arbitral process."

51. The Hon'ble Apex Court further took note of Section 36 of 'the Act' and recorded that once the time under Section 34 of 'the Act' expires, the award immediately becomes enforceable without any futher act of the Court.

52. There is a recent judgment of the **Hon'ble Apex Court** in the case of **State of West Bengal represented through the Secretary & ors. vs. Rajpath Contractors and**



Engineers Limited reported in (2024) 7 SCC 257 wherein paragraph nos. **8 and 9** recorded as follows:

8. As per Section 12(1) of the Limitation Act, the day from which the limitation period is to be reckoned must be excluded. In this case, the period of limitation for filing a petition under Section 34 will have to be reckoned from 30-6-2022, when the appellants received the award. In view of Section 12(1) of the Limitation Act, 30-6-2022 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 1-7-2022. The period of limitation is of three months and not ninety days. Therefore, from the starting point of 1-7-2022, the last day of the period of three months would be 30-9-2022. As noted earlier, the pooja vacation started on 1-10-2022.

*9. We may note here that Section 43 of the Arbitration Act provides that the Limitation Act shall apply to the arbitrations as it applies to proceedings in the Court. We may note here that the consistent view taken by this Court right from the decision in **Union of India v. Popular Construction Co.** is that given the language used in the proviso to sub-section (3) of Section 34 of*



the Arbitration Act, the applicability of Section 5 of the Limitation Act to the petition under Section 34 of the Arbitration Act has been excluded.

(emphasis added)

53. As observed above, the admitted position is that the award/order came to be passed on **26.04.2022**, the petition under **Section 33 of 'the Act'** filed thereafter too was rejected on **31.05.2023**. The three months period ended on **31.08.2023** by which an application under **Section 34 of 'the Act'** should have been filed by the appellants. Further, alongwith the sufficient reason explaining the delay, the petition could have been filed upto **30.09.2023 and not thereafter**. However, the petition was filed only on **14.03.2024**. Section 34(3) of 'the Act' records three months and not 90 days and as such, there was delay of 195 days in filing the petition. The award became enforceable after the period under Section 34(3) of 'the Act' came to an end.

54. In that background, the learned Principal District Judge, Patna was fully justified in coming to the conclusion that under no circumstances, it can entertain the application of the appellants beyond the period mandated under Section 34(3) of 'the Act'. The well reasoned order dated 07.04.2025 passed in Arbitration Case No. 18 of 2024 need no interference.



55. M.A. No. 449 of 2025 stands dismissed.

56. Before parting, this Court must record its disappointment in the manner, the Gaya International Airport is being manned. People across the world specially those following the teachings of Gautam Buddha take this Airport route to visit Bodh Gaya, the place of Lord Buddha's enlightenment. The moment they board the plane from their respective countries, are in a pious mood thinking of visiting their most revered place. After alighting from the plane, they touch the revered ground of Lord Buddha and as such, the Airport authorities are duty-bound to respect their sentiments and extend best services in line with the purpose of their visit and not in an unprofessional manner by treating them just as normal passengers. It not only affects the prestige of the nation, it hurts the sentiments of the devotees too. The Director, Gaya Airport is expected to look into the matter and do the needful.

(Rajiv Roy, J)

Vijay Singh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.12.2025
Transmission Date	

