

In The High Court at Calcutta

**Civil Appellate Jurisdiction
Commercial Appellate Division
Appellate Side**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Aryak Dutt

AO-COM 62 of 2025

IA NO: CAN/4/2026

State of West Bengal & Anr.

vs.

M/S. Saha Construction & Company

For the Appellants	:	Mr. Dibasish Basu, Ld. A.G.P. Ms. Sneha Dutta, Advocate Mr. Purnendu Das, Advocate
For the Respondent	:	Mr. Rabindra Kr. Jaiswal, Advocate Ms. Manjula Paul, Advocate Mr. Raju Bhattacharyya, Advocate
Heard on	:	14.09.2026
Judgment on	:	14.09.2026

DEANGSU BASAK, J.:-

1. Appeal is at the behest of the State of West Bengal and its functionary and directed against order dated August 5, 2026, passed by the learned Judge, Commercial Court, Siliguri in Misc.Arbitration (Commercial) Case No.07 of 2022.

2. By the impugned order, learned Judge dismissed the application under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the appellants on the ground of limitation under Section 34(3) of the Act of 1996.
3. Learned advocate for the appellants submits that, the issue as to whether the petition under Section 34 of the Act of 1996 was barred under Section 34(3) of the Act of 1996 or not was raised by the respondent which resulted in an order dated November 7, 2016.
4. Learned advocate for the appellants submits that, by the order dated November 7, 2016, learned District Judge, held that the petition under Section 34 of the Act of 1996 was not barred by limitation under Section 34(3) of the Act of 1996. He points out that, the respondent herein preferred a revisional application under Article 227 of the Constitution of India directed against the order dated November 7, 2016. Such revisional application was subsequently dismissed for default.
5. Learned advocate appearing for the appellants submits that, once, the issue of limitation being decided in favour of the appellants, learned trial Judge, erred in reopening such issue and deciding as against the appellants by the impugned order. He submits that, the learned Judge failed to appreciate that the issue of limitation attained finality by reason of the order dated November 7, 2016.
6. Learned advocate appearing for the respondent submits that, by the impugned order, the learned Judge held that, the Court delivering the order dated

November 7, 2016 was without requisite jurisdiction to do so. He submits that, there cannot be any estoppel against statute. Issue of limitation was required to be decided and was therefore, correctly decided in the impugned order, notwithstanding the earlier decision dated November 7, 2016.

7. Learned advocate for the respondent in response to the query of the Court as to whether or not, the learned District Judge passing the order dated November 7, 2016 did not possess requisite jurisdiction, submits that he is not in a position to draw our attention to any material to suggest that the learned District Judge was without the requisite jurisdiction.
8. To the query of Court as to whether, principles of *res judicata* applies in the facts and circumstances of the present case or not, learned advocate for the respondent is unable to respond thereto.
9. Learned advocate appearing for the respondent draws attention of the Court to the application being IA NO: CAN/4/2026. He submits that, by such application, the respondent seeks to bring on record certain evidence which, the appellants failed to produce. In particular, he draws the attention of the Court to the fact that, the receipt of the award made by the appellants was on September 28, 2011. He submits that, since, the petition under Section 34 of the Act of 1996 was filed on February 23, 2012, therefore, the petition under Section 34 of the Act of 1996 was barred by limitation as prescribed under Section 34(3) of the Act of 1996.

10. Appellants herein invited tender for reconstruction of Well Foundation Bridge at river 'Malangijhora' in the district of Jalpaiguri under notice inviting contract No.21/A of 1995-96. Respondent participated in such tender process and became successful therein.
11. A formal agreement was entered into between the parties with regard to such tender process.
12. It appears from the materials made available on record that, the respondent commenced work under such agreement. From time to time, respondent raised running account bills for the work done. However, disputes and differences arose between the parties. Such disputes and differences were referred to the arbitration of a retired Judge of this Hon'ble Court in terms of an order passed in a proceeding filed under the Act of 1996 before this Hon'ble Court.
13. Before the learned Arbitrator, the respondent as the claimant filed statement of claim while appellants before us as the respondents therein filed statement of defence. On contested hearing, learned Arbitrator passed an award dated August 30, 2011.
14. Receipt of the award dated August 30, 2011 is disputed on behalf of the appellants. Appellants claim that only photocopy of such award was made available to the appellants. In IA NO: CAN/4/2026, there is a receipt of which acknowledges that, the appellants received a photocopy of the award dated August 30, 2011 on September 28, 2011.

15. Appellants filed a petition under Section 34 of the Act of 1996 on February 23, 2011. Date of the award as also the filing date of the petition under Section 34 of the Act of 1996 are admitted.
16. The records establish that, the respondent filed a petition before the Court in seisin of the petition under Section 34 of the Act of 1996 seeking dismissal of the petition under Section 34 of the Act of 1996 on the ground of limitation. This petition was disposed of by order No.40 dated November 7, 2016 by the Court in seisin of the proceeding under Section 34 of the Act of 1996. Court held that the parties under Section 34 of the Act of 1996 was not barred by limitation and gave reasons for the same.
17. The order dated November 7, 2016 in the first paragraph records that, the respondent raised the issue with regard to the period of limitation and the petitioner under Section 34 of the Act of 1996 being filed beyond the prescribed period of limitation. In fact, the paragraphs 2nd, 3rd, 4th and 5th of the order dated November 7, 2016 deals with the allegation of the petition under Section 34 of the Act of 1996 being barred by limitation as prescribed under Section 34(3) of the Act of 1996.
18. The respondent herein had filed a revisional application directed against order No.40 dated November 7, 2016 before the Hon'ble High Court at Calcutta. Such revisional application was allowed to be dismissed for default on May 4, 2017.

19. In our view, the issue of limitation under Section 34(3) of the Act of 1996 in filing the petition under Section 34 of the Act of 1996 by the appellants was raised and conclusively decided by the order dated November 7, 2016. Such issue now cannot be reopened at least between the parties given the fact that, the issue was finally decided by the order dated November 7, 2016 and the revisional application was allowed to be dismissed for default by the respondent.
20. The principle applicable in the facts and circumstances of the present case is one of *res judicata* and not estoppel against statute. In the facts and circumstances of the present case, the issue of limitation was raised at the behest of the respondent and finally decided as against the respondent. The parties, therefore, cannot be allowed to reagitate the same from point at the same level.
21. The petition under Section 34 of the Act of 1996 was pending subsequent to the order dated November 7, 2016. It came to be disposed of by the impugned order. By the impugned order, learned Judge, revisited the issue of limitation under Section 34(3) of the Act of 1996 in filing the petition under Section 34 thereof.
22. Learned Judge passing the impugned order erred in reopening and finally decided the issue between the same parties at the same stage.
23. In such circumstances, the impugned order cannot be sustained. The impugned order dated August 5, 2025 is set aside. Misc.Arbitration

(Commercial) Case No.07 of 2022 is remanded to the Commercial Court at Siliguri for decision on merits.

24. **AO-COM/62 of 2025** along with connected application being **IA NO: CAN/4/2026** is **disposed of** without any order as to costs.
25. At this stage, learned advocate for the respondent seeks direction for expeditious disposal of the petition under Section 34 of the Act of 1996. We remind ourselves that, Hon'ble Supreme Court is requesting us not to issue such mandatory direction upon the learned Trial Court.
26. In such circumstances, we do not find it appropriate to issue such direction as prayed for on behalf of the respondent.

(Debangsu Basak, J.)

27. I agree.

(Aryak Dutt, J.)