

Misc. Arbitration Case No. 60 of 2023
CNR No. WBJP01-002535-2023

Order No. 19, dated – 19.07.2025,

1. Petitioner is represented through learned advocate.
2. The application u/s.36(2) of the Arbitration and Conciliation Act, 1996 (the said Act) filed by the petitioner seeking stay of operation of the arbitral award dated 27.05.2019 is taken up for hearing.
3. The fact of the case, in short, is that –
 - (i) The petitioner received a communication in connection with Money Execution (Arbitration) Case No. 02 of 2021, which included a notice dated 09.03.2023 and an application dated 24.10.2019 filed by the opposite party (O.P) before the District and Sessions Judge, Saket Court, Delhi. The said execution case, originally instituted in Saket Court, Delhi, was subsequently transferred to this Court as the immovable property, which is the subject matter of the arbitral dispute, falls within jurisdiction of this Court. For the first time, on 16.03.2023 the petitioner received a photocopy of the arbitral award dated 27.05.2019 along with the above-mentioned notice and application.
 - (ii) According to the petitioner, no communication was received under Section 31(5) of the Act after passing of the arbitral award by the Arbitrator, rather, the purported notice in connection with Money Execution (Arbitration) Case No. 02 of 2021 was received, which enclosed the ex-parte arbitral award.
 - (iii) Since the petitioner was unaware of the arbitral award, she could not prefer an application under Section 34(3) of the Act for setting it aside. No signed copy of the arbitral award dated 27.05.2019 was ever delivered to the petitioner. The petitioner asserts that she never participated in the arbitral proceedings initiated by the O.P. It was only upon receiving the notice on 16.03.2023 that she became aware of the arbitral proceedings. Due to the lack of delivery of the signed copy of arbitral award, the petitioner could not invoke Section 34 within the statutory time frame. It is submitted in support of the stay application that an execution proceeding being Money Execution (Arbitration) Case No. 05 of 2024 has been initiated before the learned Civil Judge (Senior Division), Jalpaiguri wherein in the absence of any stay order, the learned executing court has directed the decree-holder to file writ for executing the arbitral award.

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- (iv) Though objection has been raised by the present petitioner before the Executing Court but the same has been rejected in absence of any specific stay order of the arbitral award. To that effect, order no.31 dated 17.06.2025 has been referred.
- (v) The petitioner states that there was an agreement dated 18.12.2015 between the parties, wherein the petitioner was the alleged seller of the schedule property. As per the agreement, the O.P. had purportedly paid an advance of Rs.25 lakhs, with the balance to be paid at the time of registration of the property, which was to be completed within three months from the date of execution of agreement. A dispute subsequently arose between the parties. Clause 10 of the said agreement provides that any dispute relating to the schedule flat would be resolved through arbitration by an arbitrator jointly appointed by both parties.
- (vi) According to the petitioner, a notice dated 29.09.2018 under Section 11 of the Act was issued by the advocate for the O.P., proposing the names of two advocates for appointment as sole arbitrator, on the ground that the sale transaction did not take place despite payment of the advance amount in respect of the said flat.
4. It is contended by the learned counsel for the petitioner that the petitioner did not respond to the notice. Nonetheless, the O.P. unilaterally appointed Mr. Anil Kumar, Advocate (Tis Hazari Courts, Delhi), as the sole arbitrator. The said arbitrator assumed charge of the arbitral proceeding and proceeded ex-parte. The learned counsel submits that under Section 11(5) of the Act, if the parties fail to agree on an arbitrator within thirty days from receipt of a request by one party from the other party, the appointment of arbitrator shall be made in accordance with the provision under sub-Section (4) of Section 11 of the Act, which suggests that in case of arbitration other than international commercial arbitration, appointment shall be made on the application of the party by the High Court. Furthermore, there was no agreement as per sub-Section (2) of Section 11 of the Act for appointment of sole arbitrator.
5. The assumption of charge by the sole arbitrator Anil Kumar at the instance of O.P is de horsing the law and the entire ex-parte arbitral proceeding is itself bad in law. It is further contended that since the notice of service of arbitral award was not served in accordance with Section 31 of the Act, the petitioner had no opportunity to file an application under Section 34 earlier

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seeking setting aside of ex-parte arbitral proceeding. It is also stated that the agreement dated 18.12.2015 is an unregistered document where stamp duty has not been paid and the same is unexecutable.

6. The ex-parte award of the arbitrator dated 27.05.2019 has already been challenged u/s.34 of the Act and unless execution proceeding pending before the learned Civil Judge (Senior Division), Jalpaiguri is stayed, the petitioner will suffer irreparable loss and injury, which cannot be compensated by money value.
7. At the time of hearing, learned counsel has referred the following decision of the Hon'ble Apex Court in the case of :
 - (i) State of Maharashtra and Ors. Vs. ARK Builders Pvt. Ltd. (2011) 4 SCC 616;
 - (ii) SMS Tea Estates Pvt. Ltd. V/s Chandmari Tea Company Private Ltd. (2011) 14 SCC 66.
8. Heard the learned counsel appearing for the petitioner.
9. Perused the materials on record.
10. It appears from the materials on record that the petitioner for the first time appeared before the executing Court and prayed for time to challenge the ex-parte arbitral award before this Court by invoking section 34 of the said Act. It further appears that as of now, petitioner has not received any signed or certified copy of the ex-parte arbitral award from the sole arbitrator, which is mandatory requirement under the law. Once there is a specific averment in the petition supported by an affidavit by the petitioner regarding non-receipt of the signed copy of the impugned ex-parte arbitral award, *prima facie* it can be presumed that the delivery of the signed copy of the impugned arbitral award upon the petitioner has not been effected.
11. In the case of ARK Builders Pvt. Ltd. (supra), it has been held that period of limitation prescribed u/s.34 (3) of the said Act, would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the said Act.
12. In the case of SMS Tea Estates Pvt. Ltd. (supra), it has been held that if an agreement is not properly stamped, the Court can act upon the said document or enforce arbitration clause contained therein only after deficit Court fee is paid, once the said defect is cured.

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13. Having considered the submission of the learned counsel for the petitioner and in consideration of the materials on record, it appears that there is sufficient materials on record wherefrom it can be transpired that the impugned ex-parte arbitral award, which is not at all served – either signed or certified copy – upon the petitioner and for reasons mentioned herein-above, a *prima facie* case is made out by the petitioner for grant of ad-interim stay of execution of the arbitral ex-parte award dated 27.05.2019 for a period of six weeks.
14. Therefore, the Money Execution (Arbitration) Case No. 05 of 2024 pending before the learned Civil Judge (Senior Division), Jalpaiguri is hereby stayed from further proceeding, for a period of six weeks from the date of passing of this order, in as much as, order No. 31 dated 17.06.2025 passed in the said execution case shall also remain stayed for the said period.
15. Petitioner is directed to put in requisites at once.
16. Server copy of the order be served upon the O.P-respondent along with notice of the stay application and file the affidavit of service on the next date of hearing.
17. Let a copy of this order be sent to the learned Civil Judge (Senior Division), Jalpaiguri for information.
18. To **04.09.2025** for S/R, appearance of the respondent, written objection to the stay application, if any, and further hearing.

Dictated & corrected,

District Judge, Jalpaiguri

District Judge, Jalpaiguri