

Misc. Arb (Com) – 18/2026

Present: Ishani Chakravarty Banerjee (J.O Code.WB00890)
Judge, Commercial Court at Rajarhat,
North 24 Parganas

CNR: WBNP19-000046-2026

Motilal Madhogarhia

.... *Petitioner*

Vs.

M/s. Wellington Hardware Stores & Ors.

.... *Respondents*

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21.07.2026

1. The learned Advocate for the petitioner appears and files hazira along with a copy of the Order dated 10.07.2026 passed by the Hon'ble High Court at Calcutta in C.O. No. 1977 of 2026.

2. The learned Advocate for the respondent no. 7 appears and files hazira, a written objection to the application under Sections 36(2) and 36(3) of the Arbitration and Conciliation Act, 1996, and a separate petition praying for time to file a written objection to the application under Section 34 of the said Act.

3. The learned Advocate for the petitioner also files, by way of firisti, a copy of the Minutes of the 33rd Sitting held by the learned Arbitrator on 30.03.2026.

4. The record is taken up for hearing of the application under Section 5 of the Limitation Act, 1963, in terms of the Order dated 10.07.2026 passed by the Hon'ble High Court at Calcutta in C.O. No. 1977 of 2026, whereby this Court was requested to take up the hearing of the application for condonation of delay on the next date fixed, if the matter was otherwise ready for hearing.

5. Perused the record.

6. Heard both the learned Advocates.

7. The learned Advocate for the petitioner submitted that the petitioner had filed an application under Section 31(6) of the Arbitration and Conciliation Act, 1996 before the learned Sole Arbitrator seeking an interim award in the nature of a preliminary decree for dissolution of M/s. Wellington Hardware Stores and ap-

pointment of a registered valuer/Chartered Accountant for determination of the accounts and respective shares of the parties. It was contended that by the impugned order/interim award dated 09.12.2025, the learned Sole Arbitrator rejected the application and, in the process, decided substantive issues which were reserved for final adjudication in the arbitral proceedings.

8. The learned Advocate for the petitioner further submitted that the impugned interim award was served on 09.12.2025, whereupon limitation under Section 34(3) of the Act commenced from 10.12.2025. It was urged that though the statutory period of 90 days expired on 10.03.2026, the present application was filed within the further condonable period of 30 days, with a delay of only approximately 23 days.

9. It was further submitted that the delay was occasioned by bona fide settlement negotiations between the parties, evidenced by the joint adjournment letter dated 05.01.2026, adjournments of the arbitral proceedings on 08.01.2026, 16.02.2026 and 30.03.2026, exchange of e-mails between the advocates, and extension of the arbitral proceedings till 27.04.2026 to facilitate settlement. It was contended that the delay was neither deliberate nor intentional, caused no prejudice to the respondents, and sufficient cause having been shown, the delay of approximately 23 days deserved to be condoned in the interest of justice.

10. The learned Advocate for the respondent contested the application by filing written objection and submitted that the applicant has approached the Court by suppressing material facts and making false and fabricated statements with the intention to obtain undue advantage and harass the respondent. It was contended that the arbitration proceeding has been continuing since 2022 and the present application is merely an afterthought, filed with the object of delaying and frustrating the pending arbitration proceeding. It was submitted that where a case has been presented beyond limitation, it is the duty of the petitioner to explain as to what was the 'sufficient cause' which prevented him to approach the Court within limitation. In support of his contention, the learned Advocate for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh v. Ramkumar Choudhary, reported in 2025 (1) ICC 753 (SC)**.

11. The learned Advocate for the respondent further argued that the present application is a mala fide attempt to stall the arbitration proceeding, particularly when the evidence of the petitioner is already in progress. It was submitted that the petitioner had earlier accepted the order dated 09.12.2025 and thereafter approached the respondents for settlement, but such settlement efforts were only a device to delay the arbitration proceeding. It was further contended that the plea of the applicant regarding delay is incorrect, as the actual delay is more than the period stated by the applicant. Therefore, the application for condonation of delay is not maintainable.

12. Upon consideration of the submissions made by the learned Advocates for the respective parties and the materials placed on record, it appears that the petitioner has challenged the interim award dated 09.12.2025 passed by the learned Sole Arbitrator by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 along with an application for condonation of delay. It is apparent from the crux of the submission placed by the learned Advocate for the petitioner that the delay in filing the application occurred due to ongoing settlement discussions between the parties.

13. The documents annexed with records reveal that the parties were engaged in settlement efforts after passing of the impugned order. The joint adjournment letter dated 05.01.2026 indicates that settlement discussions were being explored between the parties. The minutes of proceedings dated 08.01.2026 before the learned Arbitrator also reflect that talks of settlement were continuing. Further, the order/proceeding dated 16.02.2026 and the subsequent correspondence exchanged between the parties demonstrate that attempts were being made for an amicable resolution of the dispute. The e-mail dated 28.03.2026 also reflects that the settlement process was a joint effort between the parties and not a unilateral act of the petitioner.

14. The explanation offered by the petitioner for the delay appears to be bona fide and supported by contemporaneous documents. The delay which falls within the further period permissible under the proviso to Section 34(3) of the Ar-

bitration and Conciliation Act, 1996. The Court is satisfied that the petitioner has shown sufficient cause for not filing the application within the initial period of limitation and that the delay was not deliberate or intentional.

15. The objection raised by the respondent that the application has been filed only to delay the arbitration proceeding cannot, at this stage, override the documentary evidence showing that both parties were engaged in settlement discussions during the relevant period. The Court also finds that condonation of such delay would not cause any prejudice to the respondent, whereas refusal to condone the delay may result in denial of an opportunity to the petitioner to have the challenge under Section 34 of the Act adjudicated on merits.

16. Accordingly, considering the facts and circumstances of the case, the explanation furnished by the petitioner, the materials showing settlement efforts between the parties, and in the interest of justice, the delay in filing the application under Section 34 of the Arbitration and Conciliation Act, 1996 is hereby condoned.

17. Fix 28.08.2026 hearing of the application under Section 34 of the Arbitration & Conciliation Act, 1996.

18. Written objection against the application under Section 34 of the Arbitration & Conciliation Act, 1996, to be filed in the meantime.

Dictated & Corrected by me

Sd/- Ishani Chakravarty Banerjee
Judge
Commercial Court, Rajarhat
North 24 Parganas

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Judge
Commercial Court, Rajarhat,
North 24 Parganas