

GAHC010196982025



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./3/2025

UNION OF INDIA AND ANR
REPRESENTED BY THE COMMANDER WORKS ENGINEER (AF) BORJHAR,
P.O. AIRPORT, BARJHAR, GUWAHATI, ASSAM, PIN 781015

2: GARRISION ENGINEER (AIR FORCE)
TEZPUR
P.O SALONIBARI P.S. TEZPUR
DISTRICT- SONITPUR (ASSAM) -78410

VERSUS

SMTI KRISHNA DEVI @ SABITRI DEVI
W/O LATE SUKHRAM DHIMAN, C/O GHANSHYAM DAS DHIMAN, M/S S R
ENGINEERING CONSTRUCTION, VILL. HALESWAR, PO. HALESWAR, P.S.
TEZPUR, DIST. SONITPUR, ASSAM, PIN 784104

Advocate for the Petitioner : MRS. A GAYAN,

Advocate for the Respondent : MR. S SAHU, FOR CAVEATOR, MS A ROY

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the appellants : Ms. A. Gayan
Advocate for the respondent : Mr. S. Sahu

Date on which judgment is reserved : 11.09.2025.

Date of pronouncement of Judgment : 11.12.2025.

Whether the pronouncement is of
the operative part of the judgment? :

Whether the full judgment has been
pronounced? : Yes

JUDGMENT AND ORDER(CAV)

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1. Heard learned counsel Ms. A. Gayan for the appellants and learned counsel Mr. S. Sahu for the respondent.

2. The appellants in this case are the Union of India represented by the Commander Works Engineer (AF) Borjhar and Garrison Engineer (Air Force) Tezpur whereas, the respondent is Smt. Krishna Devi @Sabitri Devi, representing M/S SR Engineering Construction.

3. It is submitted on behalf of the appellants that the respondent's father, Sukhram Dhiman (since deceased), a proprietor of a concern namely, S.R. Engineering Construction entered into a contract with the appellants for construction of the permanent armament section under Garrison Engineer (AF), Tezpur and accordingly secured Work order vide CA No. CWE/TEZ/08 of 87-88. On completion of work, the respondent received payment of bill raised on 18.01.1993, certifying an endorsement of 'no further claim'.

4. The appellant submits that the dispute pertaining to the contract had already been raised by the respondent to the appellant vide Letter No.

SREC/TEZ/08/351 dated 11.12.1992, to resolve the issue by appointing an arbitrator under Clause-70 of the IAFW-2249 (General Conditions of Contract) of the arbitration agreement under the contract. This request was withdrawn by the respondent vide Letter No. SREC/TEZ/08/352 dated 11.01.1993. The respondent preferred an appeal under Section 20 of the Arbitration Act, 1940, before the Court of Delhi, and the application was registered as T.S. Case No. 170/94, which was dismissed for lack of jurisdiction. Against the order, the respondent preferred an appeal, which was also dismissed, requiring the Lower Court to return the petition for filing at the proper forum, and accordingly, the learned Additional District Judge, Delhi, vide order dated 17.12.1999, returned the petition to the respondent for presentation in the proper Court with jurisdiction.

5. It is further submitted that the respondent preferred an application under Section 20 of the Arbitration Act, 1940, in the Court of the District Judge, Sonitpur numbered as T.S. (Arbitration) No. 19/2003, and the said suit was dismissed vide judgment and order dated 10.05.2004, against which the respondent preferred an appeal before this Court being Arbitration Appeal No.01/2005. This court vide judgment and order dated 21.09.2018, dismissed the appeal and remanded the matter back to the Court of the District Judge, Sonitpur for appropriate adjudication of the application made by the respondent under Section 20 of the Arbitration Act, 1940, on its own merit and in accordance with law.

6. It is submitted that the District Judge, Sonitpur, allowed the respondent's case vide judgment and order dated 26.08.2019. Accordingly, the matter was referred to Arbitration, and an arbitrator was appointed violating Clause 6(b) of the Tender agreement bearing CA No. CWE/TEZ/08 of 87-88. The Court in T.S.

Arbitration Case No. 19/2003, as per judgment and award dated 26.08.2019, appointed Mrs. Momita Borah, Advocate of Gauhati High Court, as sole arbitrator for resolving the dispute between the parties pertaining to CA No. CWE/TEZ/08 of 1987-88. The sole arbitrator entered into reference to decide the dispute between the parties in Arbitration Case No. 01/2009. Meanwhile, the arbitration proceeding commenced and both the parties were heard and an award dated 31.05.2022 was passed. Being aggrieved by the judgment, the appellants preferred an application under Section 30 of the Arbitration Act, 1940.

7. It is submitted that after receipt of notice, objection against Arbitration Case No. 01/2019 was filed on 16.12.2022, which was registered on 19.12.2022 as Misc. Arbitration Case No. 01/2022. The respondents also filed Misc(J) Case No. 61/2022 under Section 17 of the Arbitration Act, 1940. According to the respondents, the statutory period of filing objection, if any, commenced from the date of order on 21.09.2022 and this expired on 20.10.2022. Since no objection was filed against the award, there is a bar for filing objection under Article 119/158 of the Limitation Act of 1963, (The Limitation Act).

8. The learned District Judge, Sonitpur vide order dated 23.11.2022, dismissed the Misc(J) Case No. 61/2022. It is further submitted that the respondent filed another Misc(J) case which was registered as Misc(J) Case No. 01/2023 under Section 14(2) and Section 17 of the Arbitration Act of 1940, with the plea that the Court issued the notice dated 14.11.2022, which was delivered on 18.11.2022, and the objection against the award under Article 119(b) of the Limitation Act expired on 13.11.2022, as it was beyond 30 days from the date of service of notice. It is submitted that the learned District Judge, Sonitpur vide

order dated 27.04.2023, rejected the petition. It is further submitted that the petition under Section 30 of the Arbitration Act, 1940, was filed on 16.12.2022, against the arbitration award dated 31.05.2022, but the said petition was registered on 19.12.2022, as Misc. Arbitration Case No. 07/2022. It is submitted that the award was submitted before the District Judge under sealed cover and the appellant learnt about the contents of the award only after receiving the same on 23.11.2022. Immediately, the appellants filed a petition against the award dated 31.05.2022, within the period of limitation.

9. It is submitted that the respondent filed another Misc. Arbitration Case No. 01/2023 under Section 14(2) and 17 of the Arbitration Act, 1940, with the plea that court notice dated 14.11.2022 was delivered on 18.11.2022, as the objection against the award under Article 119(b) of the Limitation Act, being 30 days expired on 13.11.2022 as reckoned from the date of service of notice from the Court. The learned District Judge vide order dated 27.04.2023, rejected the application filed by the respondent, Krishna Devi @Sabitri. The respondent challenged the order dated 23.11.2023, passed in Misc. Arbitration Case No. 61/2022 before this Court and this Court considering the fact that the notice was served upon the appellants on 18.11.2022, and such, filing of written objection on 22.11.2022 was within the period of limitation, dismissed the Civil Revision petition vide order dated 27.03.2024, passed in CRP No. 138/2024.

10. The respondent then preferred an SLP before the Hon'ble Supreme Court against the judgment and order dated 27.03.2024 in CRP Case No. 138/2022 and the Hon'ble Supreme Court vide order dated 03.01.2025 allowed the SLP which was registered as Civil Appeal No. 47/2025, arising out of SLP(C) No. 10621/2024. Vide order dated 03.01.2025, the Hon'ble Supreme Court held that the date of issuance of notice on 18.11.2022 was deemed inconsequential as

the respondent has already been sufficiently apprised of filing of an award through the Court order dated 21.09.2022 which had directed them to clear the arbitrator's fee. Accordingly, the limitation period expired on 20.10.2022. In view of the above, the Supreme Court set aside the order dated 27.03.2024, passed in CRP No. 138/2022 and remanded back the case and directed the District Judge, Sonitpur to take up and dispose of Misc(J) Case No. 61/2022.

11. It is submitted that immediately after the Supreme Court's order, the appellant filed a petition with prayer for condonation of delay of 56 days and the District Judge disposed of the Misc(J) Case vide order dated 23.06.2025, holding that the grounds cited in support of delay were found to be hollow, lacking bonafide and finally rejected the petition with prayer for condonation of delay. The Misc. arbitration Case No. 04/2025 was thereby disposed of in view of the order rejecting the condonation of delay. The District Judge disposed of Misc(J)/14/2025, originally Misc(J) No. 61/2025 on 23.06.2025 in the light of the order of the Supreme Court and pronounced the judgment in terms of the arbitral award dated 31.05.2022 in arbitration Case No. 01/2019-2020. Accordingly, decree was prepared on 06.07.2025.

12. The respondent initiated execution proceeding before the Civil Judge, Senior Division, Sonitpur and proceeded in registering Money Execution proceeding Case No. 91/2025 and notice was issued upon the appellants in Money Execution Case No. 91/2025. The appellants are before this Court being aggrieved by the order dated 23.06.2025, passed in Misc arbitration Case No. 04/2025 against the award dated 31.05.2022 passed in arbitration Case No. 01/2019.

Arguments for the Appellants :-

13. It is submitted on behalf of the appellants that the Arbitrator failed to consider the preliminary objection raised by the appellants on the ground of maintainability. Initially there was a conflict between the S.R. Engineering represented by Sukhram Dhiman and the appellants. From the document, it appears that Satish Chandra Dhiman, who was the Power of Attorney holder, was attending office of the respondent from time to time regarding the present position of the final bill. On request of the Attorney holder, Satish Dhiman, efforts were made to clear the final bill. Finally on 18.01.1993, final bill was paid and no further claim certificate was issued by the respondent, which was duly acknowledged by the Attorney Holder, Satish Dhiman. The security deposit against the contract was released on 23.02.1993, and the same was acknowledged by the contractor.

14. The contract was completed between the parties without any dispute. It is further averred that in the arbitration proceedings, each issues/claims are related to the contract agreement No. CWE/TEZ/08 of 1987-88. During the period of contract, everything was dealt with by Sukhram Dhiman, proprietor of S.R. Engineering and the Power of Attorney holder, Satish Dhiman. Now, Ghansyam Dhiman approached before the arbitration proceedings by filing instant claims. On being asked, Ghansyam Dhiman submitted some documents claiming to be the Attorney holder of S.R. Engineering on 08.04.2022, vide reference number SREF/TEZ/08/369 dated 08.04.2022. The claimant submitted a general Power of Attorney and a copy of probate and order dated 04.04.2022 in WPC No. 1699/2022. To establish being a legal heir of the contractor, succession certificate is required from the Principal Civil Court of the original jurisdiction under the Indian Succession Act, 1925. The claimant failed to submit

any document in his support and he is a stranger to the proceeding, sans any authority to file the arbitration case. Thus, the arbitration case is not maintainable and is liable to be dismissed, as the claimant has no *Locus Standi*, being an alien and not a legal representative of S.R. Engineering.

15. The Arbitrator has erred in law by awarding Rs. 5,50,000/- in favour of the respondent. It is contended that evidently the contract was not delayed owing to Department's fault, but rather owing to the fault of the contractor himself, as he had asked for extension of time.

16. Contractor's Letter No. SREC/TEZ/8/35 dated 02.09.1989, LetterNo.SREC/TEZ/8/375dated28.11.1989,LetterNo.SREC/TEZ/8/423 dated05.05.1990,Letters issued by GE (AF) Tezpur on progress of work vide Letter No. 8866/1217/E8 dated 18.11.1989 & AMP, and 8866/1218/E8 dated 23.11.1989, are referred.

17. Extension was granted on two occasions to mitigate the loss. Unfortunately, in lieu of the co-operation by the Department, the contractor took undue advantage. It is submitted that delay and extension is governed by Condition 11 of IAFW-2249. From the condition 11, it is clear that the contention of the contractor is baseless. It is also contended that the contractor, after being fully satisfied of the NIT agreement, affixed his signature on the work order in token "as accepted" and commenced the work. Thus, it is amply clear that the contention of the contractor is false and not in conjunction with the contract provisions.

18. As far as standing trees is concerned, it is submitted that it was removed by the Air Force authorities and not by the contractor who did not even execute preliminary work before cutting of trees. The delay relating to the final bill was owing to the contractor's default.

The appellant has vehemently denied the claim that the bill was received after seven years. On the contrary, the work was completed only on 14.07.1990, and thereafter final bill was processed and paid vide cheque No. E-319857 on 18.01.1993. A final bill is prepared only after completion of work and not after conclusion of contract.

19. It is further submitted that the contract agreement is an exact replica of the tender documents already published during the tendering stage and after acceptance of the tender documents, any amendments thereof are signed by both the contracting parties. The contractor is responsible for every delay to execute and complete the work. It is further contended that although Condition 7 is abundantly clear relating to the conditions of deviations in the contract, the contractor/respondent is litigating against the contract agreement agreed and signed by them. It is further contended that deviation order is final and binding on the contract and not a matter of arbitration.

20. It is further contended that the Department has ordered deviations within the ambit of the contract itself and there was no violation of the contract provisions. The contention of the respondent that the site was not made available has been strongly denied by the appellant stating that the contractor has not only visited the sites but after being fully satisfied about the quoted rates, he has accepted and executed the work. It is contended that the Arbitrator has failed to consider that there was no breach of contract provisions and on the basis of imaginary and out of contract claims, the respondent was awarded a sum of Rs. 1,88,719/- under Claim No. 2, which is not sustainable in law.

21. It is further contended that the learned Single Judge failed to consider the fact and awarded an amount of Rs. 3,07,255/- against the Claim No. 4, which is

not sustainable as this is beyond the ambit of CA provisions. It is further contended that the learned Arbitrator committed manifest error in law as well as on fact vide impugned order dated 23.11.2022 as the claim was beyond the ambit of the Arbitrator as the decision of the accepting officer was final and binding.

22. It is contended that the learned Arbitrator has failed to establish that the respondent himself was responsible for breach of contract on many occasions. It is contended that the claim is repetitive and an award of Rs.1,03,440.00 + Rs.6,200.00 = Rs.1,09,640.00, considering the 40% of Rs.2,25,600.00 plus lump sum of Rs.6200.00 against the claim of Rs.61,050.00 without any details supporting the claim is not sustainable, moreso, when the claimant had signed the final bill without any protest.

23. It is further contended that the award by the Arbitrator of Rs.14,00,000.00 by the claimant without any specific details, is not sustainable. It is further contended that the Arbitrator awarded a sum of Rs.1,00,00,000/- (Rupees One Crore) with an interest of 9% per annum on the awarded amount till realization without any details in support and this award is not sustainable. It is contended that there was no dispute and an appointment of Arbitrator was not warranted but the claimant's intention to extract extra money from the Government by raising flimsy and illogical claims, prompted the claimant to resort arbitration.

24. It is further contended that the Court has failed to consider –

the grounds of the petition for the condonation of delay of 56 (Fifty Six) days, The Arbitrator passed the award on 31.05.2022 in Arbitration Case No. 1/2019, The appellant received a notice on 18.11.2022 and accordingly, filed objection on 16.12.2022,

Meanwhile, the respondent preferred Misc (J) Case No. 61/2022 under Section

17 of the Arbitration Act, 1940, to pronounce the judgment according to the award dated 31.05.2022; and

The Civil Judge (Sr. Div) rejected the application under Section 17 of the Arbitration Act, 1940.

25. It is contended that the learned Civil Judge has failed to consider the fact that the delay was neither intentional nor due to any laches and negligence. Further, the learned Civil Judge has failed to appreciate the fact that this Court has allowed the appellants' case.

26. It is submitted that the learned Civil Judge failed to consider the fact that only after the Hon'ble Apex Court's order, it became clear that the limitation starts from 21.09.2010. The appellants were under the impression that the limitation would start from service of notice as per law laid down in the Indian Limitation Act, 1963.

27. The learned District Judge has erred in law by not considering the petition under Section 30 of the Arbitration Act, 1940, in view of the order passed in Misc (J) Case No. 55/2025.

Arguments for the Respondent :-

28. *Per contra*, learned counsel for the respondent laid stress in his argument that the submissions on behalf of the appellant that there was no direction from the Hon'ble Supreme Court to dismiss the arbitration, is an argument which cannot be accepted. The Supreme Court's order clearly goes against the contention of the appellants. An application under Section 30 of the Arbitration Act, 1940, can be entertained not on the merits of the case but only on three grounds as Section 30 reads :-

“30. An award shall not be set aside except on one or more of the following grounds,

namely :-

- (a) that an arbitrator or umpire has misconducted himself or the proceedings';*
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35 ;*
- (c) that an award has been improperly procured or is otherwise invalid."*

29. It is submitted by the learned counsel for the respondent that it has been held by the Hon'ble Supreme Court in *Madan Lal (dead) by his legal representative—versus-Sunder Lal and another* reported in AIR 1967 Supreme Court 1233 that -

"8. It is clear therefore from the scheme of the Act that if a party wants an award to be set aside on any of the grounds mentioned in S. 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Art 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in S. 30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award for if it is so treated it will be barred by limitation."

30. Relying on this decision, it is submitted that an application under Section 30 has no entity in the eye of law if filed beyond limitation.

31. The respondent has also relied on the decision of the Hon'ble Supreme Court in *Indian Rayon Corpn. Ltd v. Raunaq and Company Private Limited* reported in AIR 1988 SC 2054 wherein it has been held that

"5. On 18th August, 1981, the appellant applied for a certified copy of the

award and the application for setting aside the award under [S. 30](#) of the Act, was filed on 8th September, 1981. Under Cl. (b) of [Art. 119](#) of the [Limitation Act, 1963](#) the time for setting aside an award or getting an award remitted for reconsideration is 30 days from the date of the service of the notice of the filing of the award. Hence, there must be filing of the award in Court. A notice must be given to the party/parties concerned of such filing of the award in the Court and on the expiry of 30 days from the service of the said notice limitation for setting aside an award expires. In this case, it appears that the appellant applied for a certified copy of the award on 18th August, 1981 and on 1st September, 1981, the appellant received the certified copy from the Court. The application under [S. 30](#) of the Act, for setting aside the award was made on 8th September, 1981. Hence, if the date of service of the notice of the filing of award be 30th July, 1981, then in the events that have happened as narrated above, indisputably the application was within time. If, however, the notice is attributed to have been served prior to that date then the application was barred by lapse of time. The High Court held that the notice in this case was served prior to 30th July, 1981."

32. Relying on these decisions of the Hon'ble Supreme Court, the learned counsel for the respondent has submitted that Section 30 is not subject to condonation but barred by lapse of time.

33. The respondent has also relied on the decision of the Hon'ble Supreme Court in the appeal preferred by the respondent registered as Civil Appeal No. 47/2025, arising out of SLP (C) No. 10621/2024 wherein it has been held that :

"19. Applying these principles to the fact of this case, it is seen that both the District Court and the High Court fell into error that the limitation for filing objections was still running when the appellant filed an application under Section 17 of the Act on 10.11.2022. The formal date of notice of filing of the award on the respondents, that is, 18.11.2022 holds no significance as they were made sufficiently aware of the award 's filing on 21.09.2022 itself. The

court directing the respondents to clear the fees was a clear intimation about its filing. Holding otherwise would not only be departing from precedents of this Court, but also allowing the respondents to take advantage of their own inaction. Hence, the limitation is to be treated as expired on 20.10.2022, and the appellant's application seeking pronouncement of judgment in terms of the award was valid and well beyond the period for filing objections to the award."

Analysis, reasons and decision;-

34. I have considered the submissions at the bar with circumspection.

35. There may have been grounds to consider the appellants' grievance against the award of the Arbitrator but the appellant's case may not be defeated on the ground of delay. The issue of limitation under the Article 119 and 158 of the Schedule of the Limitation Act has already been decided by the Hon'ble Supreme Court vide order dated 03.01.2025 in Civil Appeal No. 47/2025 arising out of SLP © No. 10621 / 2024.

36. The order impugned by the petitioner was passed on 23.06.2025, wherein it was held by the learned Civil Judge, Senior Division as follows:

"Both parties represented

The application filed by the petitioner under Section 30 of the Arbitration and Conciliation 1940 has considered in view of the order been Act, not passed in Misc (3)-58 of 2025 filed under Section 5 of the Limitation Act whereby the delay has not been condoned by this Court.

Accordingly, Misc (Arbitration)-04 of 2025 has been disposed of."

37. In Misc. (Arbitration) Case No. 04/2025 vide order dated 23.06.2025, the issue of limitation under Section 30 of the Arbitration Act, 1940 has been dealt with and it has been held by learned Civil Judge, Senior Division in Misc. (J)

Case No.14/2025 that the limitation period for filing the objection against the award is 30 days. It was held that the application under Section 30 of the Act of 1940 has been disposed of and could not be considered by the court on merit as the delay to file the application has not been condoned by the court. This order was also passed in Misc. Case No.14/2025 on the same day i.e. on 23.06.2025. It was thus held by the learned Civil Judge, Senior Division vide order dated 23.06.2025 in Misc. Case No. 58/2025 that the delay could not be condoned as there was no legal or factual impediment preventing the appellants from approaching the court within the stipulated period. The reliance placed by the appellants on 18.11.22 as the date of knowledge was held to be self-serving presumption devoid of merits and contrary to the settled legal position.

38. In view of the above observation, the petition under Section 5 of the Limited Act with prayer for condonation of delay of 56 days was rejected by the learned Civil Judge vide order dated 23.06.2025 in Misc. Arbitration Case No.4/2025. The High Court of Judicature of Madras in the case of ***H.Chandanmull & Co.vs.Mohambal M.Mehta & Ors*** reported in AIR 1953MADRAS 561 has observed the following:

“Before the Arbitration Act of 1940 the law was well settled that the Court had no power under section 5 of the Limitation Act to extend the time prescribed by Article 158 for filing an application to set aside an award. That was held by Mookerjee and Holmwood, JJ., in Surja Narain v. Bunwari Jha¹ and that view was followed by the Lahore High Court in Devi Ditta v.Balu Ram². The learned Advocate for the appellant does not dispute the correctness of the law as laid down in those decisions. What he contends is that the law has been

changed by the Arbitration Act, and under section 37(1) of the Act properly construed, section 5 of the Limitation Act would be applicable to an application to set aside an award. Section 37(1) runs as follows:

“All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court.”

.....

“In mercantile references it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract and every defence which would have been open in a Court of law can be legally raised for the arbitrator’s decision unless the parties have agreed to exclude the defence,” and the statute of Limitations is mentioned as one of the laws in accordance with which the arbitrators should pronounce their decision. It was in this state of the law that the Arbitration Act of 1934 was enacted and section 16(1) provide that the rules of limitation applicable to proceedings in Civil Court should also be applicable to proceedings before the arbitrators. It was this provision that has been enacted in section 37(1) of the Indian Arbitration Act. The true scope of this provision is therefore that when proceedings are taken before the arbitrator the parties are entitled to plead limitation exactly as if the proceeding had been taken in a Civil Court. That being the scope of section 37(1), its operation should be limited to proceedings before the arbitrator and not to proceedings taken in a Court, though they might arise out of arbitration proceedings. In this view we are of opinion that section 37(1) does not have the effect of making section 5 of the Limitation Act applicable to an application to set aside the award.”

39. After considering strenuous arguments on both the sides, it is held that the application with prayer for condonation of delay was relating to the

appellants preference to file an application under Section 30 of the Arbitration Act of 1940. It appears that the prayer of stay may not be considered but there are grounds to admit the appeal. The petition with prayer for limitation to file an application under Section 30 of the Arbitration Act is also not in the record. As the appeal is primarily made against the order passed by the learned Civil Judge on a petition with prayer for condonation of delay, petition is necessary to be scrutinized and then the contention of the appellant whether this decision of the learned Civil Judge is bad in law can be taken up.

40. This Court has taken note of the fact that this case is pending for a prolonged period and delay may defeat justice.

41. Thereby, appeal is admitted for hearing for final disposal.

42. List this matter on 08.01.2026.

JUDGE

Comparing Assistant