

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Miscellaneous Appeal No. 1242/2022

M/s R.P.S. Construction Co., Through Its Proprietor Raipal Singh Bhati S/o Shri Bheem Singh Bhati, Aged 44 Years, Dhibba Pada, Near Seema Gram, Jaisalmer.

-----Appellant

Versus

1. State Of Rajasthan, Through Collector, Jaisalmer.
2. Commissioner, Regional Development, Indira Gandhi Nahar Pariyojna (IGNP), Bikaner. (Raj.)
3. Executive Engineer, Irrigation Region Development, OFD Div-I, IGNP, Bikaner.
4. Rajendra Mehta, Sole Arbitrator, SE (Retd), PHED, 9A Section, 7th Extension, New Power House Road, Jodhpur.

-----Respondents

For Appellant(s)	:	Mr. Kuldeep Kumar Shah
For Respondent(s)	:	Mr. Arpit Samariya for Mr. Nathu Singh Rathore, AAG

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Reportable

Judgment

Conclusion of arguments and

Reserved on : **15/04/2026**

Pronounced on : **27/05/2026**

(per Sunil Beniwal,J.)

1. The appellant has preferred the present appeal being aggrieved by the order dated 06.07.2022 passed by learned Commercial Court No.1, Jodhpur in Civil Misc. Application No.10/2022, whereby the application preferred by the respondents under Section 34 of the Arbitration and Conciliation

Act, 1996 came to be allowed and the arbitral award passed in favour of the appellant was set aside.

2. The facts, in nutshell, which led to filing of the present appeal are that a tender was floated in the year 2004 for construction of permanent water course at Chak 20-SGS. However, subsequently, a couple of corrigendums came to be issued and the process for acceptance of tenders continued till 02.02.2008. Thereafter, the appellant was declared as successful bidder and his bid was accepted. It was issued work order on 07.02.2008 and an agreement came to be executed between the appellant and the respondent-Department for the aforesaid work. As per the agreement, the work was to commence on 16.02.2008 and was required to be completed by 15.11.2008. Since, the work assigned to the appellant could not be completed within stipulated time, it led to a dispute.

2.1. The appellant moved an application on 10.05.2012 to refer the dispute to the Standing Committee as per Clause 23 of the General Conditions of Contract.

2.2. Since the respondent-Department failed to respond to the said request, the appellant moved an application before this Court being S.B. Civil Misc. Arbitration Application No.52/2012 seeking appointment of an Arbitrator. The said application was allowed on 25.03.2014 while appointing Shri Rajendra Mehta as sole arbitrator to adjudicate and resolve the dispute referred in the notice-cum-letter dated 10.05.2012.

2.3. The Arbitration Tribunal, after assessing the claim of the present appellant so also after considering the counter stand of

the respondent-Department proceeded to allow the claim submitted by the appellant vide award dated 06.07.2016.

2.4. Being aggrieved by the award passed by the Arbitration Tribunal, the respondent-Department preferred application under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act of 1996'), which came to be allowed vide impugned order dated 06.07.2022.

2.5. Hence, the present appeal has been preferred against the said order dated 06.07.2022.

3. Learned counsel appearing for the appellant submitted that while deciding the application under Section 34 of the Act of 1996, the learned Commercial Court instead of deciding the matter on merit, proceeded to allow the application on the ground that the dispute / claim raised by the present appellant was time barred. It was further submitted that the Commercial Court while allowing the application has overlooked the fact that no such objection was specifically raised by the Department before the Arbitration Tribunal. In absence of such specific objection, the Commercial Court has committed error in entertaining such objection while considering application under Section 34 of the Act of 1996. Hence, on this ground alone, the impugned order deserves to be quashed and set-aside.

3.1. Learned counsel further submitted that though the tenders were floated in the year 2004, however, for some or the other reason, the process was delayed and ultimately, agreement came to be executed in favour of the appellant on 07.02.2008. The appellant was required to commence work from 16.02.2008 and

complete the same by 15.11.2008. However, there was some agitation by the local farmers who were objecting the construction of permanent water course, therefore, there was delay in commencing the work which was also communicated to the respondent-Department on several occasions.

3.2. It was further contended that despite such correspondence, the agitation continued and as a result thereof, the site was not made available to the appellant for commencement of the earthwork, much less the construction of water course. The fact that the agitation subsisted even after it was communicated to the respondent-Department is apparent from the facts noted by the Arbitration Tribunal while considering Issue Nos.3 & 4. It was argued that this was an undisputed fact that communications were being made by the appellant and the Department even after the expiry of the completion date which was 15.11.2008.

3.3. Learned counsel, while referring to the award passed by the Arbitration Tribunal, particularly the discussion made under Question No.4, submitted that the Tribunal had taken into consideration communications dated 13.03.2008, 19.03.2008, 11.06.2008 and 04.08.2009. Learned counsel further submitted that while considering Question No.9, the Tribunal also referred to letters addressed by the appellant on 10.10.2008, 03.12.2008, 06.08.2009 and 17.11.2009. Based on the said correspondence, it was contended that continuous communications were made regarding law and order situation, which includes the communication made by the Department to the administration seeking police aid. All these facts fully demonstrate the fact that

there was continuous hindrance / obstacle by the local public, which led to delay in commencing the work. Considering the continuous correspondence, the Arbitration Tribunal went on to consider the claim within limitation and decided the same on merit. Hence, the learned Commercial Court committed serious error while observing that the cause of action in the present case arose on 20.03.2008 and considering the limitation of three years, the claim as raised by the appellant on 10.05.2012 was time barred.

3.4. Learned counsel for the appellant, while referring to the documents submitted along with the application for taking correct documents on record, submitted that the annexed communications, which are dated 01.06.2009 and 13.05.2010, further fortified the fact that the dispute could not be resolved by the Department and continuous communications were made including a request letter for taking police aid.

Based on the above submissions, learned counsel for the appellant prayed that the present appeal be allowed and order passed by the learned Commercial Court be quashed and set-aside.

4. *Per contra*, learned counsel appearing for the respondent-Department submitted that the Commercial Court rightly allowed the objection filed under Section 34 of the Act of 1996 as the Arbitration Tribunal committed serious error in accepting a time barred claim.

4.1. Learned counsel further submitted that despite repeated opportunities having been granted, the appellant failed to

commence the work. Further, while countering the argument of learned counsel for the appellant with regard to the objection qua limitation not been raised before the learned Tribunal, it was contended that specific objection was raised by the respondent-Department, however, Arbitration Tribunal did not choose to adjudicate the same on merit. In these circumstances, the learned Commercial Court was well within its jurisdiction to consider the question of limitation on merit and on finding the claim to be time barred, the award passed by the Tribunal was rightly set-aside by the learned Commercial Court.

Based on the above submissions, learned counsel for the respondent-Department contended that the order passed by the learned Commercial Court deserves to be affirmed and the present appeal is liable to be dismissed.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is an undisputed fact that the tender for construction of a permanent water course at Chak 20-SGS was floated in the year 2004. Initially, the last date for submission of tenders was fixed as 18.03.2004. However, subsequently, a couple of corrigendums came to be issued revising the last date for submission of tenders, which ultimately came to be fixed as 02.02.2008.

6.1. The bid submitted by the appellant came to be accepted by the respondent-Department on 07.02.2008 and the work order was also issued on the same date. As per the terms and conditions of the work order, the stipulated date for commencement of work was fixed as 16.02.2008 and the appellant was required to

complete the work within a period of nine months, i.e. by 15.11.2008.

6.2. Since the work could not be completed within the stipulated period, disputes arose between the parties, which ultimately culminated into arbitral proceedings. The said proceedings resulted in an award dated 16.07.2016 being passed in favour of the appellant. Aggrieved thereby, the respondents preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the learned Commercial Court.

7. The issue which arises for consideration before this Court is whether the learned Commercial Court was justified in setting aside the arbitral award on the ground that the claim raised by the appellant was barred by limitation.

8. The learned Commercial Court proceeded to observe that the claims raised by the appellant were barred by limitation. It further observed that although a specific objection regarding maintainability of the claims on the ground of limitation had been raised before the Arbitral Tribunal, the same had neither been considered nor adjudicated upon on merits.

9. This Court takes note of the fact that the Arbitration Tribunal has noted the stand of the respondent-Department while considering Issue No.11 and has also reproduced the stand of the respondent qua issue of limitation.

For ready reference, the same is reproduced as under :-

*“The respondent further added in its reply that
“.....अधियाचक फर्म रूल ऑफ एस्टोपल के तहत स्वयं के
आचरण और कृत्य से उत्पन्न परिणाम के लिए बाध्यता है।
भुगतान की मांग विधिक रूप से कालातीत भी हो चुकी
है””*

10. The respondent-Department has though stated that the claim is time barred, however, no supporting assertion has been made as to how the claim is required to be treated as time barred. The objection appears to be raised in vague and general manner. Thus, learned counsel for the appellant is right in contending that there was no specific objection raised with regard to the question of limitation. Be that as it may, since this issue was raised by the respondent-Department in the application filed under Section 34 of the Act of 1996, the learned Commercial Court proceeded to decide this issue.

11. It transpires that the learned Commercial Court proceeded on the premise that since reference to the cause of action dated 20.03.2008 finds mention in the arbitral award, the claim raised by the appellant on 10.05.2012 was *ex facie* barred by limitation. However, in the opinion of this Court, the issue could not have been determined merely by isolating one date from the factual matrix. The material available on record, including the correspondence exchanged between the parties subsequent to 20.03.2008, required consideration in entirety for determining as to when the dispute finally crystallized between the parties.

12. Upon perusal of the arbitral award, this Court finds reference to several communications exchanged between the parties after the scheduled date of commencement of work, i.e. 16.02.2008. The Arbitration Tribunal in its award has reproduced extracts of communications dated 19.03.2008, 20.03.2008, 15.05.2008, 30.05.2008, 11.06.2008, 10.10.2008, 07.11.2008, 01.06.2009, 06.08.2009, and 17.11.2009. That apart, alongwith the

application, two more communications have been placed on record, which are dated 01.06.2009 and 13.05.2010.

12.1. The aforesaid correspondence indicates that although the respondent-Department had issued the work order dated 07.02.2008 directing the appellant to commence the work from 16.02.2008, the correspondence reproduced in the arbitral award as well as the communications placed on record clearly indicate that the contractual disputes between the parties had not attained finality on 20.03.2008.

12.2. The correspondence reproduced in the arbitral award itself reflects that issues relating to agitation by farmers, non-availability of site and requirement of police assistance continued even after 20.03.2008. The respondent-Department itself continued corresponding with the administration and seeking police aid till 13.05.2010 for facilitating commencement of the work. The English translation of the said communication reads as under:-

“With reference to the subject mentioned above, the Chief Engineer, Command Area Development, Indira Gandhi Nahar Pariyojana (IGNP), Bikaner, vide his letter No. F38-IV/MuA/D-11/7825 dated 05.05.2010, informed that the cultivators of Sankhla village did not allow the construction work of Chak 22 SGS to commence on the ground that the land was reserved as grazing land. In this regard, the Colonization Department had also clarified earlier that the command area land had not been reserved for grazing purposes. In order to commence and complete the construction work of the said Chak, it is necessary to provide administrative protection by establishing a police camp at the site. Therefore, it is requested that necessary advance action be taken for establishment of a police camp to ensure completion of the construction work of the said Chak.”

13. A perusal of the record, particularly the claim petition filed before the Arbitral Tribunal, reflects that the appellant had placed the aforesaid communications on record before the Tribunal. The said communications were also available before the learned Commercial Court while adjudicating the issue of limitation. However, the same do not appear to have been examined while determining the said issue.

13.1. In the claim petition, it was contended that on 13.03.2008, the local MLA along with the Deputy Commissioner, CAD visited the site and directed the claimant to stop the work and remove the camp, compelling the claimant to seek either resumption of work or compensation for losses suffered. Despite repeated representations dated 10.10.2008, 03.12.2008, 06.08.2009 and 17.11.2009, no response was received from the respondents. Meanwhile, the Superintending Engineer and Executive Engineer continuously corresponded with higher authorities seeking written orders regarding stoppage of work, expressing apprehension that the contractor might claim damages and that adverse court orders could follow in absence of formal directions. It was further stated that the villagers of Chak 20-SGS were obstructing the work on the ground that the land was gochar land, whereafter the matter was referred for appropriate action. Subsequently, a site inspection report dated 12.09.2009 prepared by the Tehsildar, CAD and the Executive Engineer recorded that the land was lying vacant without any cultivation, and therefore a decision was required to be taken so that the sanctioned budget for construction of the Khala could be utilized. Also, in one of the

communications, the Department also recorded work not being initiated and absence written orders for the same. The Executive Engineer communicated this to the Assistant Colonization Commissioner, Mohangarh, vide letter dated 07.11.2008, the English translation of which reads as under:-

“With reference to the subject mentioned above, it is submitted that on 14.03.2008, the Hon’ble Commissioner, during the grievance redressal camp, had orally directed that the said Chak be reserved as grazing land, and it was stated that a written order in this regard would shortly be sent to you. However, till date, no such written order has been received.

For this purpose, upon continuously contacting the Office of the Colonization Commissioner, Bikaner personally, it has been informed that proposals for reservation of the said Chaks have been sought from the Assistant Colonization Commissioner, Mohangarh and the Tehsildar, Mohangarh. A decision is to be taken only after receipt of such proposals from them.

Therefore, it is requested that necessary arrangements be made to send the proposals relating to the said Chaks to the Office of the Colonization Commissioner, Bikaner, so that litigation in respect of the said Chaks may be avoided. This is because payment is being demanded by the contractor for the work carried out in Chak Nos. 20 and 21 SGS, which has presently been withheld in absence of a decision. In case the contractor approaches the Court, the department may have to undergo penal proceedings due to absence of any written order or decision on record, which may result in loss to the State Government.”

14. The aforesaid correspondence clearly reflects that the respondent-Department itself was conscious of the possibility of compensation being claimed by the contractor on account of non-availability of land, as also noted by the Arbitration Tribunal. Thus, the conduct of the parties clearly demonstrates that the contract continued to be treated as subsisting and efforts for execution of work continued even beyond the year 2008. In such

circumstances, the dispute could not have been conclusively treated as having finally arisen on 20.03.2008 alone.

15. Without further discussing as to whether the Commercial Court has rightly entertained the application under Section 34 of the Act of 1996 or not, this Court, in view of the discussion made herein-above, is of the opinion that the correspondence for resolving the issue continued till the year 2010. This clearly reflects continuous cause of action and since, the claim submitted by appellant on 10.05.2012 is within three years from the year 2010, the claim was required to be treated within limitation.

16. As a result of the above discussion, the present appeal is allowed. The impugned order dated 06.07.2022 passed by learned Commercial Court No.1, Jodhpur is set aside. The matter is remanded back to the learned Commercial Court No.1, Jodhpur to decide the application filed by the respondent-Department under Section 34 of the Act of 1996 on merits, while treating the claim raised by the appellant to be within limitation.

17. Needless to observe that the findings recorded herein-above are confined only to the issue of limitation. The learned Commercial Court shall independently examine the matter on merits in accordance with law without being influenced by any observations made herein-above.

18. Pending application(s), if any, stand(s) disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J