

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/54/2025
STATE OF WEST BENGAL
VS
M/S. P. KANJILAL AND COMPANY

BEFORE:
THE HON'BLE JUSTICE SHAMPA SARKAR
Date : 17th April 2025.

Appearance:

Mr. Paritosh Sinha, Adv.
Mr. Arindam Mandal, Adv.
Ms. Swagata Ghosh, Adv.
...for State.

Mr. Sarosij Dasgupta, Adv.
Mr. Avijit Dey, Adv.
...for respondent.

1. This is an application under Section 36(2) of the Arbitration and Conciliation Act, 1996. The petitioner is the award-debtor. The petitioner prays for stay of operation of the arbitral award dated August 8, 2022 passed by the learned sole arbitrator.
2. It is contended by Mr. Mandal that the point of limitation was disposed of as a preliminary issue by the learned arbitrator without referring to the appropriate provisions of law. The claim was patently time barred. The

work was completed in 1992 and the invocation of the arbitration clause was done after 15 years. The cause of action arose on July 15, 1994, and not on July 20, 2009. Such delay had defeated the right of the claimant to seek any relief under the contract. It is urged that the learned arbitrator had erroneously relied on clauses 7, 8 and 9 of the Conditions of Contract in support of the finding that the claimant had a mandatory right to submit the bills in terms of the contract and the claimant had done so, but they remained unpaid. Once such bills were submitted, the obligation on the respondent to pay such bills had set in. On such flimsy grounds, the learned arbitrator admitted a time-barred claim, by misconstruing the clauses of the contract. The further contention of Mr. Mandal is that, the learned arbitrator was under a misconception that if the bills were not counter signed by the respondent, the contract would not come to an end and relationship between the parties would not terminate. The issue of limitation could not be urged under such circumstances. These findings, according to Mr. Mandal, were errors apparent on the face of the record and the award should be stayed unconditionally.

3. Mr. Dasgupta, learned advocate for the respondent submits that the petitioner cannot seek a stay on the enforceability of an award, by arguing on the merits of the award. Merits of the award, will be decided in the application for setting aside the award. Unconditional stay can be granted if either the arbitration agreement or the award were products of fraud

and misrepresentation. Mr. Dasgupta further submits that limitation was not decided as a preliminary issue, but as one of the main issues.

4. The court has gone through the award and considered the arguments of the respective parties. This Court agrees with the submission of Mr. Dasgupta to the extent, that the submissions of Mr. Mandal are on the merits of the award. The pleadings do not disclose that, either the contract between the parties or the making of the award, were perpetuated by fraud. It is not the case of the petitioner that the award was procured by the award holder by practicing fraud. It is also not the case of the petitioner, that the award was vitiated by fraud and illegality at the behest of Arbitrator. The merits of the matter will be decided in the application under Section 34 of the Arbitration and Conciliation Act, 1996. Under such circumstances, stay of the award can be granted only if the petitioner secures the entire awarded sum.
5. There shall be an unconditional stay of the award for a period of six weeks from date. The petitioner shall deposit a sum of Rs.21 lakhs either by bank draft or pay order or banker's cheque before the learned Registrar, Original Side, High Court at Calcutta. The learned Registrar shall encash the same and invest the amount in an interest bearing auto renewable fixed deposit in a nationalized bank. If such payment is made within six weeks as directed hereinabove, the award shall remain stayed until disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996. In the event of failure to comply with this order,

the stay shall stand vacated and the award-holder can proceed with the execution.

6. AP/54/2025 is disposed of.

(SHAMPA SARKAR, J.)

S. Kumar / R.D. Barua