

(2026) 08 DEL CK 3862

In the Delhi High Court, Principal Bench, New Delhi

Case No : FAO (COMM) 95/2026, CM APPL. 23137/2026, CM APPL. 23138/2026
& CM APPL. 23139/2026

The Union Of India

APPELLANT

Vs

M/S JBCC

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 37(1)(c), 34, 37, Sub-Section 3 of Section 34
Commercial Courts Act, 2015 — Section 13
CPC — Order IX Rule 9

Citation : (2026) 08 DEL CK 3862

Hon'ble Judges : Nitin Wasudeo Sambre, J; Amit Sharma, J

Bench : Division Bench

Advocate : Ms. Rashmi Malhotra

Final Decision : Dismissed

Judgement

Nitin Wasudeo Sambre, J.

1. The present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'A&C Act'), read with Section 13 of the Commercial Courts Act, 2015 has been filed by the appellant against the order dated 30th October, 2025 whereby appellant's application under Order IX Rule 9 of the CPC, seeking restoration of his petition under Section 34 of the Act, challenging the arbitral award dated 26th April, 2018, was dismissed in default.

2. Along with the present appeal, an application, **CM APPL. 23139/2026**, is enclosed seeking condonation of delay of 85 days in re-filing the present appeal.

3. The facts necessary for deciding the present appeal are, a tender for repair & maintenance of track in the yard was issued by the appellant on 6th September, 2011, wherein the respondent was issued LOA, whereunder the work was to be concluded by 6th December, 2012.

4. According to the appellant, the entire amount, due and payable to the respondent, was released and 'no claim certificate' was accordingly executed, which was signed by the respondent.

5. However, after signing the no claim certificate, the respondent invoked arbitration on 10th August, 2017, resulting in the appointment of an arbitrator.

6. The arbitrator accordingly adjudicated the disputes and an arbitral award came to be passed on 16th April, 2018, against the appellant, thereby allowing the claims raised by the respondent.

7. Feeling aggrieved, the appellant invoked the remedy under Section 34 of the A&C Act, before the learned District which came to be dismissed in-default on 31st January, 2023, as the counsel for the appellant failed to appear.

8. The appellant, thereafter, preferred application under Order IX Rule 9 of the CPC seeking setting aside of the order dated 31st January, 2023, and restoration of its petition filed under Section 34 A&C Act. The said application preferred under Order IX Rule 9 of the CPC came to be dismissed *vide* impugned order dated 30th October, 2025, as such this appeal under Section 37 of the A&C Act.

9. Amongst other grounds raised in support of prayer for setting aside the orders impugned dated 31st January, 2023 and 30th October, 2025, is that the order dated 31st January, 2023, is a non-speaking order, whereby the petition filed by the appellant under Section 34 of the A&C Act, against the arbitral award dated 26th April, 2018, has been dismissed, which fact has not been considered while passing the order dated 30th October, 2025 while exercising the powers under Order IX Rule 9 of the CPC.

10. It is the contention for learned counsel for the appellant that prior to the date of dismissal of the petition on 31st January, 2023, the counsel appearing for the appellant was regularly appearing in the matter and as the appellant- Railways had decided to scrap the panel of advocates maintained on its establishment, the said work was assigned to the Ministry of Law and Justice; the newly appointed panel advocate was unable to collect the papers from the old panel advocate and as such, the proceedings remained unattended.

11. According to her for aforesaid administrative lapse, the Section Officer has already been departmentally proceeded against, and the punishment of temporary stoppage of increments has been enforced.

12. Learned counsel for the appellant would urge that the aforesaid fact was brought to the notice of the Court at the time of hearing of the application under Order IX Rule 9 of the CPC, but the Court did not appreciate that owing to the administrative issues and appointment of the fresh panel of advocates, non-appearance of advocate on the said date had occurred in the matter.

13. She would urge that for the fault of the advocate, the appellant may not be punished, and in such an eventuality, the orders impugned are not sustainable.

Her further contention is that the appellant at the first instance had approached the court having jurisdiction to restore proceedings under Section 34 of the A&C Act, with a request for setting aside of the order of dismissal in default, in wake of the provisions of Order IX, Rule 9 of the CPC. While reckoning the limitation, it was expected of the said court to have regard to the date of knowledge of the dismissal order, and as such, the limitation has to be counted from the date of knowledge, and not from the date when such order of dismissal in default was passed. It is urged that the learned court had committed an error in failing to appreciate even the aspect of the limitation.

14. According to her, even if the application for condonation of delay is not preferred, the same is a curable defect and in that eventuality, an opportunity should have been offered to the appellant seeking condonation of delay. As such, she would urge that the present appeal is liable to be entertained, thereby quashing the orders impugned.

15. We have considered the aforesaid submissions. We are required to be sensitive to the admitted facts which are borne out of the record.

16. It appears that an award came to be passed against the appellant on 26th April 2018, whereby the financial responsibility was fastened on the appellant.

17. In the award, the defence of the appellant was that of occurrence of a typographical mistake in the agreement, which was entered into between the parties. The Arbitral Tribunal noted that, in such an eventuality, it was expected of the appellant to enter into a supplementary agreement or a modification agreement, which they failed to do.

18. If we consider the approach of the respondent in the proceedings which were sought to be pursued before the learned District Judge, against the quashing of the arbitral award, the learned District Judge has initially proceeded to pass an order on 31st January, 2023 in regard to the conduct of the appellant.

19. The learned District Judge in the impugned order dated 31st January, 2023 has, in clear terms, observed that, *'None appeared for the petitioner since morning'*, and further that, at 02:00 P.M., *'None appeared on behalf of the petitioner since morning despite various calls. It seems that the petitioner is not interested in pursuing the matter'*, and as such, dismissed in-default the matter for want of prosecution.

20. The appellant had then taken recourse to the proceedings under Order IX Rule 9 of the CPC, which provides **'Decree against the plaintiff by default bars fresh suit'**. The said provision provides for the remedy to the appellant to apply for an order to set the dismissal aside, provided, and in case; the Court is satisfied that there was sufficient cause for the non-appearance and then, upon hearing, the Court can pass an appropriate order in the matter.

21. The order impugned dated 30th October, 2025, was passed by the Court in exercise of powers under Order IX Rule 9 of the CPC.

22. While dealing with the claim for setting aside the order dated 31st January, 2025, the learned District Judge has taken recourse to the pleadings in the application preferred under Order IX Rule 9 of the CPC by the appellant/applicant.

23. In the said application, the stand taken by the appellant was that it suffered an award for an amount of Rs.13,47,671/- against the claimed amount of Rs.26,47,671/-. It was specifically pleaded that the matter was listed before the learned District Judge on 24th August, 2022, and it was informed that the advocates' panel of Railway has been scrapped, and the same has been taken over by the Ministry of Law and Justice. Accordingly, the counsel, who was appearing earlier, had sought time in the matter.

24. Considering the aforesaid administrative difficulty narrated by the earlier counsel for the appellant, the matter was adjourned to 3rd November, 2022. Thereafter, matter was again adjourned and listed on 31st January, 2023. It appears that on these dates, none appeared for the appellant in the matter.

25. The fact remains that the Court, while dealing with the application under Section 34 of the A&C Act, was apprised of scrapping of the panel of the advocates and the appointment of a new panel. The Court, having regard to the above said administrative difficulty expressed by the appellant, granted accommodation and accordingly, adjourned the matter at the behest of appellant, that too, by granting a last opportunity on 3rd November, 2022. The specific pleadings to that effect given by the appellant in paragraph 3 of the application preferred under Order IX Rule 9 of the CPC reads thus:-

"3. That the said petition was finally listed before this Hon'ble Court on 24.08.2022 and proxy counsel of Sh. Jagjit Singh Advocate appeared before this Hon'ble Court and submitted that the Advocate's panel of Railway has been scrapped and the same has been taken over by the Ministry of Law & Justice. The previous counsel sought time on the aforesaid ground, which was not opposed and case adjourned to 03.11.2022 as last opportunity."

26. It is only thereafter having noticed that in spite of one more chance and after the last opportunity was granted, the appellant failed to appear in the matter, that the Court proceeded to pass the order of dismissal for want of prosecution on 31st January, 2023.

27. The appellant, thereafter, had not taken any steps in the matter to immediately approach the very same Court within the reasonable time for restoration of the petition.

28. Order IX Rule 9 of the CPC was invoked for setting the order dated 31st January, 2023, aside only in the month of February 2024. As such, it can be inferred that the said application under Order IX Rule 9 of the CPC preferred by the appellant was suffering from a delay of more than one year.

29. The counsel for the appellant though has claimed that the passing of the order of dismissal in default on 31st January, 2023 was firstly noticed on 2nd

February, 2024. However, that by itself won't stop the limitation from the said date. The appellant might have noticed the order on 2nd February, 2024. We are equally required to be sensitive to the fact that, during the pendency of the proceedings preferred under Section 34 of the A&C Act by the appellant, at its own request an adjournment was sought on 24th August, 2022, and the matter was adjourned to 3rd November, 2022. Thereafter, the matter was further adjourned to 31st January, 2023. This fact was within the knowledge of the appellant. There is a reason to believe that these adjournments were granted to the appellant on its own request, and in view of administrative exigencies cited by it.

30. In such an eventuality, it cannot be said that the appellant was able to demonstrate a 'sufficient cause' before the learned District Judge for invoking the provisions of Order IX Rule 9 of the CPC. Rather, the very conduct of the appellant by not attending the matter in spite of the adjournments being granted by the learned District Judge, on account of administrative difficulty (scrapping of the panel of lawyer) cited by the appellant, which was an independent act, and was not volunteered by any impediment outside their department, demonstrates unjustifiable negligence. We must be sensitive to the fact that the appellant is trying to take advantage of its own wrong, thereby claiming that the order of dismissal was noticed on 2nd February, 2024.

31. As to when the panel of advocates maintained with the appellant was scraped, and when the new panel was established by the Ministry of Law and Justice, and subsequent thereto, the date on which the matter was entrusted to the newly appointed counsel, is not at all pleaded or brought to the notice of the learned District Court or this Court by the appellant, except the two vague pleadings in the application under Order IX Rule 9 of the CPC filed by the appellant, as noted earlier.

32. Apart from above, we are equally required to be sensitive to the scheme of Section 34 of the A&C Act. In any given set of circumstances, Section 34 proceedings cannot be taken recourse, beyond the period of 90+30 days, *i.e.*, 120 days, and powers are not vested with either Court exercising jurisdiction under Section 34 of the A&C Act, or this Court under Section 37 of the A&C Act, to condone the delay and entertain such proceedings.

33. In such an eventuality and legal background, particularly, in view of provisions of proviso to Sub-Section 3 of Section 34 of the A&C Act, we are of the view that, even if, an opportunity of filing an application for a condonation of delay as prayed, would have been granted, then also, there is a delay of more than one year. Further, in such an eventuality, no powers are vested, even with the learned District Court to condone the delay, as such an act would have been contrary to the statutory provisions referred above.

34. In the aforesaid background, in our opinion, no case for causing interference, in exercise of Section 37 of the A&C Act, read with Section 13 of the Commercial

Courts Act, 2015, is made out. The appeal, in our opinion, lacks merit, and stands dismissed and disposed of.

35. Pending application(s), if any, also stands disposed of.

36. Judgment be uploaded on the website of this Court, *forthwith*.