



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 479 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

Approved for Reporting		
Yes	No	
✓		

DARSHANA BHUPENDRA PAREKH

Versus

TJSB SAHAKARI CO-OPERATIVE BANK LTD.

Appearance:

MANMEETSINGH P CHHABRA(9140) for the Appellant(s) No. 1

MR. HELIK S SONI(18295) for the Appellant(s) No. 1

MS. KRUTIKA K. BHATT(19271) for the Appellant(s) No. 1

CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

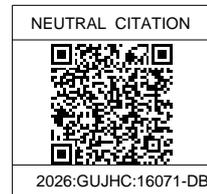
HONOURABLE MR.JUSTICE D.N.RAY

Date : 19/02/2026

ORAL JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act' 1996 (for short, "the Arbitration Act' 1996" or "the Act' 1996").

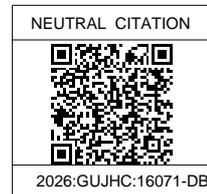


2. Having heard the learned counsel for the appellant and perused the record, it is noteworthy that the appellant herein was party to the arbitral award rendered on 07.10.2021 in Arbitration Claim Petition No.2 of 2021. A perusal of the arbitral award indicates that the liability, jointly and severally for the outstanding loan was fixed upon the appellant as well as other opposite party, who happens to be the brothers of the appellant on the claim petition filed by the respondent - bank.

3. The application under Section-34 of the Arbitration and Conciliation Act' 1996 has been filed on 20.01.2026 by the appellant herein, to challenge the award dated 07.01.2021, which was dismissed with the reasoning as follows:-

"4. After going through the submission made by Learned Advocate for the applicant, it is clearly stated that the applicant for the first time, came to know from the proceedings of Commercial Execution Petition No.426 of 2023 arising out of the impugned Award, that there is Award against her. At this juncture, the proceedings of Commercial Execution Petition No.426 of 2023 is very much important and which is fortunately pending before this Court, wherein various efforts to serve the process of execution proceedings upon including the present applicant came to be initiated and ultimately, the then Hon'ble Court allowed the application, by which, the process of execution petition came to be affixed on the conspicuous part of the residence. As the execution proceedings ultimately arising out of the main Award, which is challenged by the present applicant, the proceedings in execution petition qua the present applicant certainly can be considered.

*Now, on perusing Exh.9 of Commercial Execution Petition No.426 of 2023, which was notice and the same was affixed at the residence of the present applicant, at which, the construction was goin on and **thus, it is amply clear by way of affixing service of process took effected on 23.5.2024.** The matter does not rest here. Other application by the Award Holder bank came to be filed under Order XXI, Rule 54 of the*

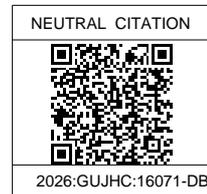


Code of Civil Procedure, 1908 ('the code' for short) and in the same manner, that notice was also came to be affixed on dated 14.10.2025. Thus, that means, two - two times notices of execution proceedings of the year 2023 came to be served as per Order V, Rule 20(1-A) of the Code upon the applicant on dated 13.5.2024 and 14.10.2025, respectively. Though on the basis of e-mail dated 12.12.2025, the applicant is taking recourse that she came to know from the execution proceedings very recently, which is an attempt to bring the present application within the circle of limitation.

5. Therefore, it clearly reveals that whatever the proceedings have been commenced in execution proceedings to save skin from the same or to derail the execution proceedings which supposed to be, the present application is filed and thereby challenge is made qua the Award which passed in the year 2021. Furthermore, the applicant has wisely taken the shelter to bring her application within the circle of limitation, which otherwise, prohibited as per mandatory provisions of section 34(2) of the A&C Act."

4. The learned Court under Section-34 of the Arbitration and Conciliation Act' 1996 [in short as "the Act' 1996"] has rejected the application on the ground of being beyond limitation prescribed under Section-34(3) of the Act' 1996. Challenging the order passed by the Court under Section-34, it was argued by the learned counsel for the appellant that the signed copy of the award was never served upon the appellant though the appellant herein was party to the arbitration proceedings. The appellant came to know about the award only on the issuance of process / notices in the Commercial Execution Petition No.426 of 2023.

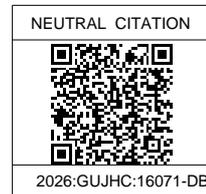
5. The contention is that the Commercial Court has erred in dismissing the application under Section 34 rejecting the submission of the petitioner that the copy of the award was received by the appellant only on 28.12.2025 and that the



limitation to assail the arbitral award would, therefore, commence from the said date of receiving of the award.

6. Reliance is placed on the decision of the Apex Court in the case of **Benarsi Krishna Committee & Ors. v. Karmyogi Shelters Pvt. Ltd. [Special Leave Petition (Civil) No.23860 of 2010 dated 21.09.2012]**, wherein the Apex Court had examined the question as to whether the service of an arbitral award on the agent of the party amounts to the service to the party itself. Having regard to the provisions of Section 31(5) and Section 34(3) of the Arbitration Act' 1996, the Apex Court has dismissed the Special leave petition challenging the order of the Division Bench of the Delhi High Court noticing that the Delhi High Court was right in holding that the signed copy of the award had not been delivered to the party itself and hence, the limitation in filing petition under Section 34 of the Act' 1996 would commence from the date when the party obtained the copy of the award.

7. Much emphasis has been laid to the language of Section 31(5) and Section 34(3) of the Act' 1996 to submit that the period provided in Section 34(3), would commence from the date on which the party making that application had received the arbitral award. As the signed copy of the arbitral award had not been delivered to the appellant, as mandated under Section 31(5) of the Act' 1996, the order passed by the Commercial Court in refusing to compute limitation from the date of receipt of the copy of the award by the appellant from

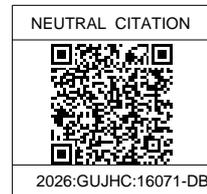


other sources, i.e. from 28.12.2025, is liable to be set aside. The matter is to be remitted back for fresh consideration of the application under Section 34.

8. Dealing with the contentions of the learned counsel for the appellant, we may go through the order impugned dated 23.01.2026 passed by the Commercial Court.

9. The reasoning given by the Commercial Court, as extracted hereinbefore, is that the summons for service in the Commercial execution petition was affixed at the residence of the applicant on 23.05.2024. Further, the notice issued in the application under Order XXI Rule 54 of the Code of Civil Procedure came to be affixed on 14.10.2025. The observation is that once the notices of the execution proceedings instituted in the year 2023 came to be served upon the applicant on 13.05.2024 and 14.10.2025, it cannot be accepted that the applicant came to know about the award only in the month of December' 2025.

10. It is observed by the Commercial Court that the application under Section 34 has been filed to stall or derail the execution / enforcement proceedings qua the award passed in the year 2021. It is also noted by the Commercial Court that the main borrower is none other but the real brother of the applicant and who appeared before the learned Arbitrator also on behalf of the applicant (his sister). This fact can be ascertained from the endorsement made by the main borrower during the course of the arbitration proceedings, from the documents produced by the applicant herself.

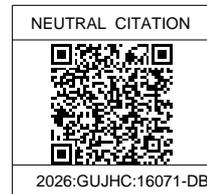


11. The Commercial Court has, thus, refused to accept the legal contentions of the applicant based on the decision of the Apex Court in **Benarsi Krishna Committee (supra)**, while concluding that the petitioner was having due knowledge of the award and hence, the ratio of the said decision will not be applicable.

12. Considering the submission of the learned counsel for the appellant, we have raised a pointed query as to whether the applicant made a specific statement before the Court under Section 34 about the non-delivery of the arbitral award in accordance with Section 31(5) of the Arbitration Act' 1996. However, no specific answer could be given by the learned counsel for the appellant.

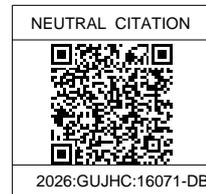
13. A perusal of the application under Section 34(2) of the Arbitration Act' 1996 filed by the appellant, on record, indicates that the appellant has contended therein that:-

- i. The Arbitration award dated 07.10.2021 was passed by the Arbitrator without any prior intimation to the applicant and that the award has been passed in relation to the hypothecation agreement dated 14.12.2015, which was executed between the respondent Bank and the borrower, namely Mr.Hemendra Bhupendrabhai Khatri. The applicant had never signed any document and there exists no agreement between the applicant and the bank.
- ii. The award dated 07.10.2021 is not in accordance with the law, inasmuch as, the Arbitrator had not taken into



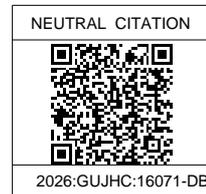
consideration the mandatory compliance of Section 7 of the Arbitration Act' 1996 and hence, the application under Section 34 has been filed to set aside the award.

- iii. The execution application filed by the respondent Bank has been registered as Commercial Execution Case No.426 of 2023, wherein the application to affix the service of notice was allowed vide order dated 04.10.2025 and process was affixed on the conspicuous place of the residence, which is the new construction of the applicant. Only after affixation of the said notice, the applicant officially came to know about the execution proceedings initiated against her as a guarantor before the Commercial Court.
- iv. After getting the official affixed notice at the new construction place of the applicant, the applicant had appointed her advocate for appearance on the date fixed, i.e. 15.10.2025. The applicant is residing at a different place in a rental premises and the notice of the execution case was affixed at the new construction place, where applicant does not reside. Copies of the electricity bill and rental agreement etc. have been brought on record to assert in the application that the award passed by the Sole Arbitrator dated 07.10.2021 was never in the knowledge of the applicant and it was never served to her.
- v. Only after engagement of her advocate, the applicant received execution case documents, wherein in the list of documents, the impugned arbitration award dated

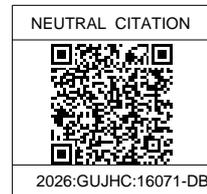


07.10.2021 was annexed. The applicant, then, came to know that the borrower, namely Hemendra Bhupendrabhai Khatri had signed multiple loan documents. It is, then, contended that the applicant herself had not signed the loan documents as a guarantor.

- vi. The applicant also sent E-mails on the official e-mail address of the respondent Bank asking it to provide requisite documents, which were presented in the arbitration proceedings. On 15.12.2025, a reminder e-mail was sent by the applicant to the respondent Bank asking the respondent Bank to keep the loan documents ready for perusal of the applicant. However, on her visit to the Bank on 16.12.2025, no documents were given to the applicant and for providing the certified copy of the loan documents, the applicant was forced to deposit money, whereafter, the documents were handed over to the applicant.
- vii. After going through the said documents (loan and arbitration documents), the applicant came to know that she had never signed nor given consent of multiple loan documents and also that she had never appeared in the arbitration proceedings and the learned Arbitrator, in a hasty manner, negligently, without following due process of law, had permitted the borrower to sign the documents in place of the guarantor.



- viii. The learned Arbitrator was unilaterally appointed without existence of any arbitration agreement as per Section 7 of the Arbitration Act' 1996.
- ix. It was the respondent Bank's duty to get in touch with the applicant to let her know about the proceedings that were taking place and provide opportunity to decide upon a mutually viable arbitration proceedings, due to lack of any already existing clause or agreement.
- x. The entire arbitration proceedings was, thus, in violation of applicant's right to receive fair adjudication. The award is liable to be set aside being unfair and rendered in violation of the principles of natural justice.
14. Having extensively gone through the contents of the application under Section 34, noted hereinabove, it is evident that while challenging the award on merits on various grounds even of unilateral appointment of the Arbitrator and the applicant not being signatory to the arbitration agreement or any other contract or there being no contract between the applicant and the respondent Bank, the appellant did not make any categorical statement with regard to the non-delivery of the signed copy of the arbitral award contrary to Section 31(5) of the Act' 1996.
15. The fact that the signed copy of the arbitral award had never been served upon the applicant being in the exclusive knowledge of the applicant, was required to be specifically stated in the application under Section 34, filed in January'

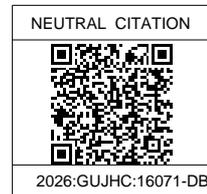


2026 while challenging the award of 2021. The limitation for filing the application under Section 34(3) of the Arbitration Act' 1996 is three months from the date on which, the arbitral award has been received by the party making an application under Section 34. The proviso to sub-section (3) of Section 34, however, provided for extension for a further period of 30 days, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed period. However, 120 (90 + 30) days as prescribed in sub-section (3) of Section 34 is an inelastic period, which cannot be extended by the Court.

16. From the language employed in sub-section (3) of Section 34, the period for making of the application prescribed therein commence from the date of the receipt of the arbitral award by the party concerned.

17. Section 31(5) mandates that a signed copy of the arbitral award is to be delivered to each party. The period prescribed under sub-section (3) of Section 34, thus, commence from the date of delivery or receipt of the signed copy of the award to the party concerned.

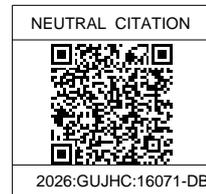
18. There cannot be a dispute to the submission of the learned counsel for the appellant that for compliance with the provisions of Section 31(5) of the Arbitration Act' 1996, a signed copy of the award is to be delivered to the party itself and not to its agent, and any service upon anyone except the party, will not be falling within the meaning of Section 31(5) of the Arbitration Act' 1996.



19. In **Benarsi Krishna Committee & Ors. (supra)**, a duly signed arbitral award was received by the counsel for one of the parties, who filed application under Section 34 beyond a period prescribed in Section 34(3) of the Arbitration Act' 1996. The Apex Court, while reading the expression "party" as defined in Section 2(h) of the Arbitration Act' 1996 read with the provisions of Section 31(5) and Section 34(3) of the Arbitration Act' 1996, has held that the expression "party" as defined in Section 2(h) of the Arbitration Act' 1996 will not include the agent of the party to the agreement.

20. It was held therein that since a signed copy of the award had not been delivered to the party itself and the application under Section 34 of the Arbitration Act' 1996 was filed by such party after obtaining the arbitral award, the stipulated period of three months as contemplated under Section 34(3) of the Arbitration Act' 1996 would commence from the date of knowledge.

21. This position of law stated in **Benarsi Krishna Committee & Ors. (supra)**, in the judgment relied by the learned counsel for the appellant, will not come to the rescue of the appellant, for the simple reason that there is no categorical statement of the applicant in the application under Section 34 that the signed copy of the award was never served upon her. The statement made in paragraph No. '5' of the application that "the award passed by the Sole Arbitrator dated 07.10.2021 was never in the knowledge of the applicant and also was never served to her", is liable to be ignored being vague.

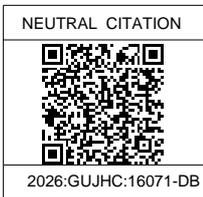


22. For the missing categorical pleading, the further assertion of the applicant that she got to know about the award only after summons in the execution case were affixed at the place of the applicant, is neither here nor there.

23. It is evident from the material on record that the applicant has approached the Commercial Court by filing the application under Section 34 of the Act' 1996 to challenge the arbitral award dated 07.10.2021, only when the execution case had proceeded. The Commercial Court has noted that after several efforts made by the award holder, the process of execution proceedings was affixed at the residence of the applicant only on 13.05.2024. The second notice was affixed on 14.10.2024.

24. The contention of the learned counsel for the appellant that the copy of the impugned award was received by the applicant only on 28.12.2025 was based on the assertion made in the application under Section 34 that the applicant received the loan documents and the copy of the award only after making a visit to the respondent Bank and depositing money to get the original certified copies of the documents.

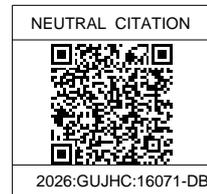
25. However, there is no reason to believe the said statement of the applicant for one more reason that the main borrower is none other but the real brother of the applicant, who appeared before the learned Arbitrator not only on his behalf but also on behalf of the applicant / appellant herein (her sister). This fact recorded in the impugned order dated 23.01.2026 of rejection of the application under Section 34 could not be disputed by the learned counsel for the applicant.



26. In absence of any categorical statement made by the applicant about the non-delivery or non-receipt of the arbitral award, the contention based on the affixation of process in execution case is neither here nor there. Rather the material on record discloses that the applicant has conveniently avoided the summons in the execution case and even after affixation of process at the residence of the applicant on 13.05.2024, in order to build up her case, the e-mails dated 05.12.2025 and 15.12.2025 were sent to the Bank and the certified copy of the loan papers and the arbitral award were allegedly obtained on 16.12.2025 during personal visit. In any case, the applicant got knowledge of the award, at least, on 13.05.2025.

27. On a further query made by the Court, the learned counsel for the applicant admitted that the award has not been challenged by the original borrower, namely the brother of the applicant. The borrower and the applicant both have been held jointly and severally liable for payment of the awarded amount. The award also record that the brother of the appellant herein had appeared before the learned Arbitrator after notice was served upon the applicant as well and made a statement that he was appearing on behalf of the applicant as well.

28. From all the angles, submissions made by the learned counsel for the applicant to assert that the application under Section 34 was filed well within the prescribed period of limitation under Section 34(3) of the Arbitration Act' 1996, inasmuch as, the signed copy of the arbitral award was not



delivered upon the applicant, are liable to be rejected as misconceived.

29. In this scenario, in absence of any cogent material on record, the judgment and order dated 23.01.2026 of the Commercial Court in rejection of the application under Section 34 being beyond the prescribed period under Section 34(3) of the Arbitration Act' 1996 cannot be interfered with. The appeal stands dismissed, accordingly. No order as to costs.

(SUNITA AGARWAL, CJ)

SAHIL S. RANGER

(D.N.RAY,J)