

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **FAO(OS) No.733/2006 & CM No.16680/2008**

% Date of Decision: February 1st, 2008

UNION OF INDIA Appellant
! Through: Mr. Jaswinder Singh, Advocate

versus

\$ MAHAVIR INDUSTRIES & ANR. Respondent
^ Through: Mr. Shiv Khorana, Advocate

CORAM:

* **HON'BLE MR.JUSTICE MANMOHAN SARIN**
* **HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Per Veena Birbal, J.

CM No.16680/2008

There is a delay of 20 days in filing the present appeal. In view of the reasoning stated in the application which is supported with affidavit of Shri Dinesh Kumar Singh, Dy. Director of Supply of appellant, delay in filing the present appeal stands condoned.

FAO(OS) No.733/2006

1. Present is an appeal under Section 37 of the Arbitration and Conciliation Act 1996 (in short the Arbitration Act) against the order dated 14th September, 2006 by which the application under

Section 34 of the Arbitration Act of the appellant has been dismissed by learned Single Judge of this Court on the ground of limitation.

2. Briefly the facts necessary for the disposal of the present appeal are that the appellant, Union of India through Director General of Supplies and Disposal entered into a contract with respondent M/s Mahavir Industries for supply of 55 km of 150 sq. mm ASCR conductor. Certain disputes arose between the parties which were referred for arbitration to the sole Arbitrator Shri B.L. Nishad. The Arbitrator made the award on 28.2.2001, in favour of respondent regarding claims No.1 and 4. Aggrieved by the aforesaid award, appellant filed objections by way of making an application under Section 34 of Arbitration Act for setting aside the arbitral award before District Judge, Delhi. This application was filed on 25.4.2001. The application was assigned to an Additional District Judge, who vide order dated 16.1.2002, held that the District court had no pecuniary jurisdiction to entertain the application and ordered the same to be returned to the appellant under Order VII Rule 10 CPC for presenting in a court of competent jurisdiction. The said application was taken back by the appellant on 4.2.2002 and was filed in this Court on 5.3.2002. Notice of this application was issued by learned Single Judge to

respondents who in response moved an application under Order VII Rule 11 read with Section 151 CPC for dismissal of the objections on the ground of limitation. Learned Single Judge after hearing the parties allowed the application of respondent and rejected the application of the appellant on the ground that same was not presented to the court within the period of limitation prescribed under Section 34(3) of the Arbitration Act. Aggrieved with the said order present appeal has been filed.

3. Learned counsel for appellant contended that appellant had pursued his remedy before learned ADJ by moving an application under Section 34 of Arbitration Act. It is contended that if benefit under Section 14 of the Limitation Act i.e. time spent by appellant in prosecuting his remedy in another court is excluded in computing the period of limitation under Section 34 of the Act, there was delay of only seven days in filing objections in the court. It is contended that learned Single Judge could have condoned the same under proviso to Section 34(3) of the Arbitration Act. It is contended that learned Single Judge has taken a hypertechnical view in not condoning the delay of seven days.

4. On the other hand learned counsel for respondent has contended that when appellant filed application under Section 34 of Arbitration Act before learned Single Judge, same was not

accompanied by an application under Section 14 of Limitation Act seeking exclusion of time spent in pursuing remedy in another court. It is further contended that there was not even an application under proviso to Section 34(3) of the Act seeking condonation of further delay of seven days in filing the application in High Court. It is contended that learned Single Judge has considered all the facts and circumstances and has rightly rejected the application on the grounds of limitation.

5. We have considered the submissions made and perused the record. It is an admitted position that Arbitrator had made an award on 28.2.2001. The award was received by the appellant on 14.3.2001. Application under Section 34 of the Arbitration Act was filed by the appellant before the District Court on 24.5.2001 and vide order dated 16.1.2002 learned ADJ ordered to return back the same to the appellant for presentation to the competent court. On 4.2.2002 appellant had taken back the application and filed the same before this Court on 5.3.2002. Thus, appellant took a total of 354 days in filing the application under Section 34 before this Court from the date of 14.3.2001 i.e. the date of receiving the award. Section 34(3) of the Arbitration Act provides that the period of limitation for filing objections against the award is three months. Thus, the appeal, prima facie is time barred. Perusal of

record shows that there are no pleadings before learned Single Judge either by way of a separate application under Section 14 of Limitation Act or by way of incorporating the same in the petition itself to the effect that appellant was pursuing the matter with due diligence and in good faith in another court due to which petition could not be filed in time. There is also no application showing sufficient cause for condonation of delay under proviso to Section 34(3) of the Act. Learned Single Judge has dealt with the aforesaid contention at length and has rightly rejected the objections on the ground that no cause at all is shown, let alone sufficient cause for delay in filing the application of objections to the award. Learned Single Judge has also observed that matter remained pending there for about four years. The appellant did not move any application in this regard earlier nor did he do so even at the stage of arguments. Learned Single Judge was under no obligation to condone the delay suo moto as seems to be the case of appellant before us. Learned counsel for respondent has pointed out that even after filing application under Section 34 of Arbitration Act on 5.3.2002 before the High Court, the same was returned to appellant thrice due to some objection. Lastly, it was returned on 26.4.2002. Thereafter, appellant did not file the same for five months. This speaks volumes for the lack of diligence on

the part of appellant and is inexcusable. Even in the memorandum of appeal before this Court, there is no averment to show that the appellant was pursuing his remedy before learned ADJ in good faith having reason to believe that the said court had jurisdiction. There is no cause shown for further delay of seven days in filing the application before the learned Single Judge. The award in favour of respondent is of Rs.1,36,767/- with interest @ 15% per annum. Parties are litigating for the past eight years. In these circumstances, no interference is called for in the order of learned Single Judge. The same is upheld. Appeal stands dismissed. The amount deposited by the appellant be released to the respondent in terms of the award. If there is any excess amount, the same be refunded to the appellant.

Veena Birbal, J.

Manmohan Sarin, J.

February 1st, 2008
srb