

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ OMP 232/2005

D.M. JAWAHAR MERICAN Petitioner

Through : Mr. Anil Kher, Sr. Advocate with
Mr. P.K. Mahapatra, Advocate

versus

ENGINEER INDIA LTD. Respondent

Through : Mr. Ashok Mathur with Mr. Gaurav
Srivastava

CORAM:

Mr. Justice S. Ravindra Bhat

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| 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 |

Mr. Justice S. Ravindra Bhat (Oral)

1. In this proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the `Act'), the petitioner challenges the validity of the award of a sole arbitrator, made on 18.01.2005. The respondent, at the threshold objects to maintainability of the proceedings on the ground that the petition under Section 34 of the Act, was filed beyond

time prescribed by law.

2. To better appreciate the controversy the following essential facts are narrated. The award was announced on 18th January, 2005. The arbitrator at that stage communicated copies of the award to the parties. He however, recorded that the original award was not being communicated since it had to bear the prescribed stamp duty. The claimant (i.e. the petitioner here) was directed to ascertain the required amount and send the stamp papers to enable the arbitrator to have the award imprinted on it. On 12.02.2005, the petitioner moved the arbitrator for clarification, correction and interpretation of the award under Section 33 (1) of the Act. Among several contentions, it was urged that the arbitrator, in his award committed an error in overlooking that the claim, as made originally, was for US Dollars 500,000 and that in the award he erroneously assumed the claim to be MR 211,250. The arbitrator by his order dated 20th February, 2005 rejected this application. It is not in dispute that the award was eventually stamped and sent on 13.03.2005. The petitioner claims that the date on which he received the award was 13.04.2005. The present petition under Section 34 (3) of the Act, was filed on 04.07.2005.

3. Mr. Ashok Mathur, learned counsel for the respondent contends that the time for filing objections to the award under Section 34 (3) is fixed and judgments of the Supreme Court have now established conclusively that objections have to be filed within the time prescribed, failing which resources

to the Limitation Act is excluded. He relied upon text of Section 34 (3) of the Act and contended that enforceability of the award which is linked with the period within which the petition under Section 34 (3) of the Act, has to be preferred, cannot be confused with the executability of an award. He relied upon the judgment reported as Anusuya Devi & Another Vs. M.Nanik Reddy & Others, (2003) 8 SCC 565, where it was held that the question as to whether the award is required to be stamped or registered is relevant only when the parties would file the award for its enforcement under Section 36 of the Act. On the strength of this authority, it was contended that the parties can object to admissibility of such a decree arising out of a award on account of non-registration and non-stamping at that stage. However, it was, contended that the sequitor is that the petition under Section 34 of the Act has to be preferred within the period prescribed under Section 34 (3) of the Act i.e. ninety days from date of receipt of the arbitral award, which in this case was 18.01.2005.

4. Learned counsel also relied upon another judgment of the Supreme Court reported as Dr. Chiranjil Lal (D) By L.R.s., Appellant Vs. Hari Das (D) by L.Rs. AIR 2005 SC 2564, for the proposition that the period of limitation starts or commences from the date when the decree (in this case award) is passed and not from the date when it is engrossed on the stamp paper. It was therefore, urged that the award in this case was obtained by the petitioner, in terms of Section 31 (1) of the Act on 18.01.2005 when a copy was

communicated. So construed the last date for filing the objections or the present petition was 17th April, 2005 and in case the petitioner were to rely upon the proviso to Section 34 (3) of the Act, the extended period expired on 16.05.2005. The counsel submitted that the present petition was filed on 04.07.2005 and therefore is clearly beyond the time contemplated; it has to be rejected as time barred.

5. Mr. Anil Kher, learned senior counsel appearing on behalf of the petitioner contended that the proceedings were lodged within the time stipulated. He emphasized on the conditions on the Section 34 (3) of the Act, to say that the outer limit of 3 months (or the extended period under the proviso) is subject to an exception where a party applies for clarification under Section 33 of the Act. In this case, the petitioner had applied for clarification under Section 33 in February 2005; that application was disposed of on 20.02.2005. It was contended that the arbitrator admittedly asked for calculation of costs. The award was stamped on 13.03.2005. The counsel contended that since there is no dispute, about the petitioner having received the original award on 13.04.2005, the objection should be construed as having been preferred within the time limit prescribed by law. Learned counsel in this context, relied upon the ruling of the Supreme Court in Union of India Vs. Tecco Trichy Engineers & Contractors, AIR 2005 SC 1832, to submit that the expression of an party "having received", the award should not be treated as a mere formality since parties' substantive rights

are involved. The expression has to be construed meaningfully which would entail that, in a case like the present one, when the award was in fact received on 13.04.2005.

6. Learned counsel relied upon two judgments of this Court reported in Union of India & Another Vs. Saboo Minerals Pvt. Ltd., 106 (2003) DLT 92, and Vindhya Telelinks Ltd. Vs. Bharat Sanchar Nigam Ltd. & Anr., 103 (2003) DLT 82 in this regard. He submitted that the application under Section 33 of the Act in this case was made within the time prescribed for that purpose i.e. one month. The award announced on 18.01.2005 and the application under Section 33 of the Act was made on 12.02.2005. Therefore, the petitioner was entitled to the benefit of latter of portion of Section 34 (3) of the Act.

7. Counsel contended that this Court had noticed inter-play between the various provisions of the Act such as Sections 33 (2), 33 (5), 33 (6) and 33 (7), in this case while considering the issue of limitation. Placing reliance on Vindhya Telelinks Ltd. case (supra), it was therefore contended that the petition was filed within the time and should be considered on its merits.

8. The facts as may be noticed are undisputed. There is no dispute about the fact that the petitioner received a copy of the award announced on 18.01.2005. On that day, the arbitrator also required the claimant (i.e. the petitioner) to arrange for the requisite stamp papers and observed as follows:

"I am herewith communicating the copies of the Final Award. However, the original Award is not being

communicated for the reason that the Award having been made at Delhi, it has to bear the stamp duty as prescribed by law. The claimant is directed to ascertain the amount of stamp duty payable on this Award and send me the stamp papers at the earliest. The stamp papers may be purchased in my name. I will have the Award transcribed on the said stamp papers and send the original Award to the claimant."

9. The petitioner thereafter approached the arbitrator under Section 33 of the Act, undeniably within the time prescribed for the purpose (30 days) on 12.02.2005. That application was rejected on 20.02.2005 and the stamped award, received on 13.04.2005. The question, therefore, is as to whether first point for reference for filing a petition under Section 34 (3) of the Act – Is it 18.01.2005 as contended by the respondent or 13.04.2005 as contended by the petitioner?

10. In Anusuya Devi's case (supra), the Supreme Court was concerned with a case involving a decree arising out of an award. The court noticed the purpose of Sections 34 and 36 of the Act in the context of argument that award could not be looked into unless it was appropriately stamped. The Court rejected the contention in the following terms :

"The question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter, the exercise undertaken to decide the said issue by the civil court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and

registration is within the ambit of section 47 of the code of Civil procedure and not covered by Section 34 of the Act."

11. In Dr. Chiranjil Lal's case, (supra) the Supreme Court was called upon to consider a somewhat analogical argument as is being urged in this case.

The Supreme Court observed as under :

"2. The question that arises for determination in this matter is when would the period of limitation for execution of a decree passed in a suit for partition commence. In other words, question is when such a decree becomes enforceable – from the date when the decree is made or when the decree is engrossed on the stamp paper which, out of these two would be the starting point of limitation.

12. The Court, however, rejected the argument and held that the period of limitation begins from the date when the decree is passed and not from the date when it is engrossed on the stamp papers supplied by the parties, in the following terms :

"18. Thus, even if there is direction by the court for furnishing of stamp papers by a particular date for the purposes of engrossing of the decree, the period of limitation begins to run from the date when the decree is passed and not from the date when the decree is engrossed on the stamp papers supplied by the parties.

19. The Court also held that the period of limitation prescribed in Article 136 of the Act cannot be obliterated by an enactment wholly unconnected therewith, like the Indian Stamp Act. Legislative mandate as sanctioned under Article 136 of the Act cannot be kept in abeyance unless the selfsame legislation makes a provision therefore. The Indian Stamp Act, 1899 has been engrafted in the statute book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Indian Stamp Act.

20. *It was held that though the decree may not be received in evidence or be acted upon but the period of limitation cannot be said to remain under suspension at the volition and mercy of the litigant. The period of limitation starts by reason of the statutory provisions as prescribed in the statute. Time does not stop running at the instance of any individual unless, of course, the same has a statutory sanction being conditional.*

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23. *Learned Counsel for the respondents contends that Section 35 of the Indian Stamp Act, 1899 provides that an instrument not duly stamped cannot be acted upon. Therefore, a decree passed in a suit for partition cannot be acted upon which means it cannot be enforced until engrossed on stamp paper. It is further contended that Article 136 of the pre-supposes two conditions for the execution of the decree. Firstly, the judgment has to be converted into a decree and secondly, the decree should be enforceable. It is further submitted that a decree becomes enforceable only when the decree is engrossed on the stamp paper. Therefore, the period of limitation begins to run from the date when the decree becomes enforceable i.e. when the decree is engrossed on the stamp paper.*

24. *Such an interpretation is not permissible having regard to the object and scheme of the Indian Stamp Act, 1899. The Stamp Act is a fiscal measure enacted with an object to secure revenue for the state on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue .*

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26. *The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The*

date of furnishing of stamp paper is an uncertain act, within the domain purview and control of a party. No date or period is fixed for furnishing stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity.

27. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree, on stamp paper and there is no statutory obligation on the court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. “

13. The above decision is a clear pointer to distinguish between enforceability and executibility of an award. Its enforceability i.e. the legal validity or correctness has to be decided in the Court of law in accordance with the procedure prescribed. In the case of a decree, the validity is challenged by way of an appeal. The decision in Dr.Chiranjilal case (supra) was concerned with that question . Analogically in the case of an arbitral award the validity can be questioned in proceedings under Section 34 (3) of the . The awards executibility, is postponed in such cases as is evident on reading of Section 36 of the Act. However, in both instances (i.e. award and decree) and since the effect of an award is that it amounts to a decree under the New Act – is the same. Therefore, this Court is un-persuaded by the arguments on behalf of the petitioner that the correct date for

considering it receiving the award (under Section 31 of the Act, to enable it to file the petition under Section 34 of the Act) was 13.04.2005. It was in fact 18.01.2005.

14. As far as reliance placed on behalf of the petitioner upon the decision in Vindhya Telelinks case (supra) and Saboo Minterals Pvt. Ltd. case (supra) is concerned, this Court is of the opinion that these decisions are of no avail in the facts of this case. The petitioner admittedly applied for clarification on 12.02.2005. The application was rejected on 20.02.2005. Even on textual application under Section 34 (3) of the Act i.e. taking the latter point of time to be referral, for purpose of limitation, the period of 90 days expired on 19.05.2005. No application for seeking benefit under the proviso to Section 34 (3) has been made. It is not urged that the petitioner was prevented by sufficient cause from filing the objections for any reason. Even if one were to apply, the extended period of limitation, as applicable under the proviso, that too ended on 18.06.2005. In 2005 this Court re-opened on 2nd July, 2005. This Court is of the opinion that the petition filed on 04th July, 2005 was time barred.

15. For the above reasons, the petition is not maintainable and is dismissed.

S. RAVINDRA BHAT, J.

AUGUST 26, 2008
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