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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 30, 2009

Date of Order: April 13, 2009

+ IA No.3178/2006 in OMP 323/2005

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DDA

Through : Mr. Bhupesh Narula, Advocates

Versus

Kalyan Chand Goyal Ands Co.

Through : Mr. Girish Aggarwal, Advocate

13.04.2009

...Petitioner

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER

IA No.3178/2006 in OMP 323/2005

1. This application under Section 14 of the Arbitration Act, 1940 read with Order 7 Rule 11 and Section 151 of CPC has been made by the respondent for dismissal of the suit/petition filed by the plaintiff/petitioner on the ground of limitation.

2. It is submitted by the respondent that the award in this case was published by the learned Arbitrator on 5th May 2005. The petitioner received the copy of the award on 10th May 2005. The petitioner paid the amount and interest on Claim No.1 to 5 to the respondent on 8th August 2005. On 6th September 2005, the petitioner filed this petition under Section 14(2) of the Arbitration Act, 1940 with a prayer that the Arbitrator be directed to file the original award in the Court. The Arbitrator received notice of this application on 24th November 2005 and the Arbitrator filed the original award and

proceedings in December' 05. However, the petitioner filed objections against the award on 23rd November 2005 i.e. before filing of award by the Arbitrator in the Court. It is stated by the respondent that under Article 119A of the Limitation Act, limitation for filing application in the Court is 30 days from the service of notice of making the award. In the instant case, the petitioner received notice of the award on 10th May 2005 and received copy of the award and not notice for filing the award. The period of limitation expired on 9th June 2005. Thus the suit filed by the petitioner was barred by limitation. Since the petitioner did not file the application under Section 14 of the Arbitration Act within 30 days and also moved no application for condonation of delay, the suit was liable to be dismissed being barred by limitation.

3. The petitioner in written statement has submitted that the award was served on the petitioner on 10th May 2005 and the original award was filed by the Arbitrator on 28th November 2005. The application under Section 14(2) was filed by the petitioner on 6th September 2005. The petitioner filed objections on 23rd November 2005. It is stated that the objections filed against the award by the petitioner were filed within time granted by the Court to the petitioner.

4. There is no dispute that under the Arbitration Act, 1940, the period of limitation under Article 119 A of the Limitation Act is 30 days from the date of service of notice of the making of the award. The petitioner did not make application under Section 14 to this Court within this stipulated period of 30 days. It is not a case where the Arbitrator suo moto filed the award in the Court and Court served notice of filing of award on parties. The period of limitation for filing for application under Section 14 is 30 days from the date

of notice of the award.

5. The petitioner who received notice of the award on 10th May 2005 was supposed to file the application for setting aside the award under Section 33 of the Arbitration Act, 1940 or under Section 14(2) within a period of 30 days of the receipt of the notice. Since this application was not filed within a period of limitation as prescribed under law, it is barred by limitation. The application moved by the respondent is hereby allowed and the instant suit preferred by the petitioner, is hereby dismissed. No orders as to costs.

April 13, 2009
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SHIV NARAYAN DHINGRA J.