

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

+ O.M.P. 589/2009 & I.A Nos. 12930-12933/2009

NORTHERN RAILWAY

..... Petitioner

Through: Mr. P.K. Dey and Mr. Kaushik
Dey, Advocates.

versus

SHRI K.L. ARORA

..... Respondent

Through: Mr. B.L. Wali, Advocate.

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Date of Decision : 12th October, 2009

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J (Oral)

1. Present objection petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act, 1996” for setting aside the award dated 01st May, 2008 rendered by the sole Arbitrator Mr. Justice (Retd.) C.L. Chaudhry.

2. Along with the present petition, an application for condonation of delay under Sections 5 and 14 of the Limitation Act has been filed. By the said application, the petitioner seeks condonation of delay of 185

days in filing of objection petition.

3. Sub-section 3 of Section 34 of the Act, 1996 provides a period of limitation for filing objections to an arbitrator's award. The said sub-section reads as under:

“34. Application for setting aside arbitral award.

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(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days but not thereafter.

4. Consequently, three months is the period of limitation for filing objections to an arbitration award. However, Courts have the power to condone a further delay of thirty days. Accordingly, 120 days is the maximum period in which objections to an award can be filed. In fact, the Supreme Court in ***Union of India vs. Popular Construction Co.*** reported in ***(2001) 8 SCC 470*** after referring to Section 34 of the Act, 1996 has held as under:

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of

that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.

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14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need “to minimize the supervisory role of courts in the arbitral process”. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

*“5. Extent of judicial intervention—
Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”*

15. The “Part” referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application “in accordance with” that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that

“where the time for making an application to set aside the arbitral award under Section 34 has expired... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court”.

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to “proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow” (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court’s powers by the exclusion of the operation of Section 5 of the Limitation Act.”

5. However, learned counsel for petitioner has relied upon a judgment of Supreme Court in the case of ***State of Madhya Pradesh & Anr. vs. Anshuman Shukla*** reported in (2008) 7 SCC 487 wherein it has been held as under:

“31. There cannot, therefore, be any doubt whatsoever that if the Arbitral Tribunal in question is a court and not a persona designata, sub-section (2) of Section 29, Section 5 of the Limitation Act would apply. It is only when the limitation provided under the special law, is different from that prescribed in the Schedule appended to the Limitation Act, sub-section (2) of Section 29 would be attracted.

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33. If the Tribunal is a court, a fortiori sub-section (2) of Section 29 would apply. As it is a court it was not necessary for the legislature to confer power under Section 5 of the 1963 Act specifically. In that view of the matter an application under Section 5 of the Limitation Act would be maintainable.”

6. On a perusal of aforesaid Supreme Court judgment, I am of the view that the said judgment is not relevant to the issue at hand as it does not deal with the issue of limitation of filing objections to an arbitrator's award. In fact, in the said judgment, the case of **Popular Construction Co.** (supra) was discussed and followed. In this context, I may refer to paragraph 36 of the said judgment which reads as under:-

“36. In Popular Construction [(2001) 8 SCC 470] application of Arbitration and Conciliation Act, 1996 was in question. The Arbitration Act clearly provided for a limitation in the matter of exercise of discretionary jurisdiction for condoning the delay only for a period of 30 days and not thereafter. It was in the aforementioned situation this Court held that Section 5 of the Limitation Act as such will have no application, as a special limitation has been provided for.”

7. Consequently, in my view the issue of period of limitation of filing objections to an arbitrator's award is conclusively dealt with and answered by the Supreme Court in **Popular Construction Co.** (supra). Accordingly, Sections 5 and 14 of the Limitation Act are not applicable in the present case and, therefore, the present petition and pending applications are dismissed.

MANMOHAN, J

12th October, 2009
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