

UNREPORTED

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

% **RESERVED ON:** November 26, 2008

DATE OF DECISION: March 27, 2009

+ **OMP 472/2008**

UNION OF INDIA

..... Petitioner

Through: Ms.Seema Bhadauriya, Advocate for Mr.Kumar Rajesh
Singh, Advocate.

versus

M/S. KAMAL VIJAY JAIN & ANR.

..... Respondents

Through: Mr.Vivekanand, Advocate.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

: REVA KHETRAPAL, J.

I.A. NO. 10857/ 08

1. This is an application under section 5 of the Limitation Act , 1963 read with section 151 CPC filed on behalf of the petitioner /objector for condonation of delay in filing of the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act')

2. Notice of this application was issued to the respondent and on service thereof, the learned counsel for the respondent contends that the delay cannot be condoned and the objections entertained as the time limit prescribed under section 34 is absolute and unextendable by the court under Section 5 of the Limitation Act.

3. In this behalf it would be appropriate to refer to the provisions of sub-section

(3) of section 34 of the Act which reads as under:-

“Section 34:- Application for setting aside arbitral award:-

(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 had 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 30 days, but not thereafter.”

4. The impugned award was passed on 15-01-2008. The date when the award is stated to be received by the concerned department of the petitioner/objector was 10-03-08. Thus, the period of three months stipulated in sub-section (3) of section 34 of the Act elapsed on 7-6-08. The objections were filed on 5-9-08, i.e. after a delay of 180 days. According to the learned counsel for the petitioner, however, the delay was of 140 days.

5. Even a delay of 140 days, in my considered view, cannot be condoned in view of the provisions of sub- section (3) of section 34 of the Act, which provides for a period of limitation different from that prescribed under the Limitation Act. Admittedly, the objections have been filed beyond the period of 120 days as prescribed, which is the maximum prescribed period of limitation for filing of objections to the award after receipt of the same under sub- section (3) of section 34 and the proviso thereto, which provides for a further period of 30 days if the court is satisfied that the applicant was prevented by sufficient cause for making the

application within the period of three months prescribed by sub-section (3). The expression “**but not thereafter**” in the proviso clinches the matter, clearly indicating the legislative intent of laying down a deadline.

6. Reference in this connection may be made to the case of *Union of India vs. Popular Construction Co.* 2001 (3) Arb.LR 345 (SC), wherein Section 5 of the Limitation Act, 1963 was held to be not applicable to arbitration proceedings under section 34 of the Arbitration and Conciliation Act, 1996. Paragraphs 12, 14, 15 & 16 of the said judgment are apposite, which read 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 the Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside an award beyond the extended period of the proviso, would render the phrase ‘but not thereafter’ wholly otiose. No principle of interpretation would justify such 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 unextendable 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”. [4(v) of the statement of objects and reasons of the Arbitration and Conciliation Act,1996]. This objective has found expression in Section 5 of the Act which prescribes the extend of judicial intervention in no uncertain terms:

“5. Extend 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 period fixed under Section 34 is emphasised 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 and the Code of Civil Procedure ,1908 in the same manner as 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”. Now the consequence of 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. “

7. The aforesaid judgment of the Hon’ble Supreme Court was followed by this Court in ***Delhi Jal Board vs. Vijay Kumar Goel & Anr, 2005 VIII AD (Delhi) 406*** and in OMP No.186/2003 titled ***Delhi Jal Board Vs. Khub Chand Tyagi*** decided on March 23, 2007, and has been relied by the Hon'ble Supreme Court in ***State of Goa***

vs. Western Builders, (2006) 6 SCC 239.

8. In all the aforesaid cases it has been held that if the petitioner /objector has failed to adhere to the limitation period prescribed under section 34(3) he may plead that he was prevented by sufficient cause from making the application within the aforesaid period and if the court is satisfied about the sufficiency of the cause for his delay the court may entertain the application within a period of 30 days, ***but not thereafter.***

9. The objections in the instant case have been filed after 180 days and cannot be considered within the parameters of Section 34 of the Act. This apart, the applicant has failed to show that it was prevented by any sufficient cause from filing the objections within the prescribed time frame of 90 days.

10. Resultantly the delay on the part of the petitioner/objector in filing the objections cannot be condoned.

11. I.A. No. 10857/08 is accordingly dismissed.

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12. In view of the fact that I.A. No. 10857/08 has been dismissed on the ground that the objections filed by the petitioners are beyond limitation, the present objection petition also stands dismissed.

REVA KHETRAPAL, J

March 27, 2009