

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No580/2009

VISHAL EXPORTS OVERSEAS LTD....Appellant through
Mr. Mihir Thakore, Sr.
Adv. with Mr. Unmesh
Shukla & Ms. Manmeet
Arora, Advs.

versus

HAMBURG BULK CARRIERS Respondent through
Mr. O.P. Gaggar &
Mr. Ashwini Sinha, Advs.

% Date of Hearing : February 03, 2011

Date of Decision : February 10, 2011

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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| 1. Whether 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 |

VIKRAMAJIT SEN, J.

1. This Appeal assails the Order dated 22.10.2009 passed by the learned Single Judge, which, in effect, rejected the Appellant's plea predicated on Section 14 of the Limitation Act, 1963. Although it has not been specifically stated so, the effect of the Order is that the Objections under Section 34 of the Arbitration & Conciliation Act, 1996 (A&C Act for short) preferred by the Appellant before us, stand dismissed. All the

eventualities that would arise on an interplay between Section 34 of A&C Act and Section 5 and Section 14 of the Limitation Act, 1963 have been considered by the Division Bench in ***Bharat Sanchar Nigam Limited -vs- Haryana Telecom Ltd.***, 2010 VII AD (Delhi) 331 and *Executive Engineer -vs- Shree Ram Construction Co.*, 2010 X AD(Delhi) 180. In ***Bharat Sanchar Nigam Limited***, the Court noted that Objections were filed within the statutory period of ninety days and after excluding time spent in prosecuting these Objections in Courts which did not possess jurisdiction, the Objections would have to be heard on merits. A similar position obtained in ***Shree Ram Construction Co.*** The Court had the added advantage of relying on the decision of the Apex Court in *Consolidated Engineering Enterprises -vs- Principal Secretary, Irrigation Department*, 2008 VI AD(SC) 520 = (2008) 7 SCC 169. In this decision, their Lordships have reiterated that Section 14 of the Limitation Act has the effect of bestowing benefit of exclusion of time spent bonafide in a wrong Court, restricted, however, to the period prescribed by the A&C Act, namely, three months and thirty days. This brief analysis of the law should suffice since ***Bharat Sanchar Nigam Limited*** and ***Shree Ram Construction Co.*** have been reported in the Journals.

Repeating the dialectics in those cases will only lead to prolixity of this Judgment.

2. The relevant facts are that an Award was published on 30.8.2002 and the copy of the same was served on the Petitioner on 31.8.2002. Objections under Section 34 were filed on 22.11.2002, palpably within the period of three months prescribed under the A&C Act. However, the Objections had been filed in the City Civil Court at Ahmedabad, Gujarat. A Preliminary Objection was taken by the Respondent before the City Civil Court, Ahmedabad, Gujarat pertaining to the territorial jurisdiction of that Court. Since the Objection was dismissed, the Respondent filed an Appeal in the High Court of Gujarat. This time around, they were successful. That Petition/Appeal was allowed on 3.11.2004 with the direction that "the Trial Court may return the plaint to the party for presentation of the same before the appropriate Court". The Respondent contends that the Appellant is entitled to exemption only to the period of three days which was spent in obtaining the Certified Copy plus five days in collecting the Certified Copy. The Appellant contends that limitation would commence running on 15.4.2005 when the Plaint was returned by the City Civil Judge, Ahmedabad, Gujarat to the Appellant for filing in the appropriate Court.

3. It will be important to record that the City Civil Court, Ahmedabad, Gujarat had, in Civil Misc. Application No.628/2002, passed the Order on 30.3.2005, the operative part of which reads thus:-

Civil Misc. Application No.628 of 2002 be returned to the applicant alongwith all the original documents for presentation of the same before the appropriate court.

The applicant is hereby directed to present the application before the appropriate court on or before 15.4.2005 under the intimation to the opponent and the opponent has to remain present as soon as the application is presented before the competent court.

4. The question that arises is whether the period between 3.11.2004 and 15.4.2005 would qualify for exemption under Section 14 of the Limitation Act, 1963, even though the Appellant calculates this exemption to have come to an end on 7.4.2005, the date on which the Plaint was actually and physically returned to it. It is not in controversy that the Plaint was filed in this Court on 12.4.2005.

5. Learned counsel for the Appellant contends that the Appellant was not legally obligated to secure an Order of return of the Plaint to the Petitioner subsequent to the Order dated 3.11.2004 passed by the High Court of Gujarat. It is argued that it was the bounden duty of the City Civil Court, Ahmedabad,

Gujarat to pass appropriate orders in the matter. Since that Court had not taken up the matter on 13.1.2005, the Appellant had preferred an application praying for the return of the Plaint. We think that the argument is well-founded. It is conceivable and permissible for the City Civil Court, Ahmedabad, Gujarat to have *suo moto* implemented the Order of the High Court of Gujarat. It must be assumed that the Order of the High Court would have been conveyed to the City Civil Judge, Ahmedabad, Gujarat. Therefore, on any date prior to 13.1.2005, the City Civil Judge, Ahmedabad, Gujarat could have passed an order returning the Plaint to the Appellant. Had this been done, time would have started to run against the Appellant from that day forward. In the event, the Appellant had to secure the Order of the return of the Plaint by filing an application which was opposed by the Respondent, *inter alia*, on the ground that the Objections had become time-barred. It should also be recalled that the High Court of Gujarat had, in terms of Order dated 3.11.2004, left it to the discretion of the Trial Court whether or not to return the Plaint. It, therefore, required adjudication, which exercise was completed only on 30.3.2005, that too granting liberty to the Appellant to file the returned Plaint in the competent Court before 15.4.2005. It is not the Respondent's case that the Appellant had delayed in collecting the Plaint and,

therefore, we must presume that the Plaint was made available for being returned to the Appellant only on 7.4.2005. It is not disputed that the returned Petition [the Objections under Section 34 of the A&C Act] was definitely filed in this Court by 12.4.2005 which is three days prior to the expiration of the period granted by the City Civil Judge, Ahmedabad, Gujarat. It is also not controverted that when the Appellant had filed Objections in the City Civil Court, Ahmedabad, Gujarat, it had exhausted eighty two days; ergo eight days still remained out of the three months period ordained by the statute. It is also beyond cavil that the Court possesses power to condone delay for a period of thirty days thereafter. Since the City Civil Court, Ahmedabad, Gujarat had not ordered the return of the Plaint till 30.3.2005, the Appellant must be deemed to have exhausted only eighty-two days till then.

6. The Order granting the Appellant time upto 15.4.2005 has not been assailed, although the question of the Objections being barred by time had been left open by that Court. We must immediately address the submission of learned counsel for the Appellant that since the filing in this Court had been carried out on 12.4.2005, it was within time. In other words, the argument on behalf of the Appellant is that the filing could have been carried out till 15.4.2005 without the Appellant having to

account for any delay. Order VII Rule 10/10-A of the Code of Civil Procedure, 1908 (CPC for short) does not prescribe whether the Court is bound to grant any specified time within which the returned Plaint must be filed in the appropriate Court. This conundrum has also been discussed in ***Shree Ram Construction Co.*** and since nothing turns on this controversy so far as we are presently concerned, we need not go any further than merely alluding to that decision. If no time had been indicated by the City Civil Judge, Ahmedabad, Gujarat within which the returned Plaint was required to be filed in the transferee Court, it would have to be assumed that the time had started running immediately from the date of the Order or from the date when the Plaint was returned. We raise this question because it may become critical in a case where inordinate delay takes place in the actual return of the Plaint, ascribable only to the Court. It is also quite possible that the Plaintiff may take no steps towards impressing upon the Court of the necessity to return the Plaint to the Plaintiff. Since this question does not arise before us, we shall only surmise that if the delay is on the part of the Plaintiff/Objector, he would receive no remission beyond a total of three months and thirty days. We are also reminded of the legal adage that no party/person can suffer for the act of the Court. Therefore, had the period of limitation

expired prior to 15.4.2005, the Plaintiff/Objector could still have taken advantage of the Order and filed the Plaint on or before that date. We are of the opinion that so long as the Plaint was filed in the competent Court on or before 15.4.2005, no delay would occur. It is arguable that the Appellant would be within its rights to seek condonation of delay for a period of eight days together with thirty days if the deadline of 15.4.2005 had not been met by it. That question has also not arisen before us and, therefore, we need not pronounce upon it. It needs to be clarified that exclusion upto 15.4.2005 is relevant because the Orders to this effect have been passed by the City Civil Court, Ahmedabad, Gujarat and have not been challenged. It is certainly possible that that Court may have permitted the Appellant a shorter time, and in that event it would have been prudent for the Appellant to file the Plaint in this Court within that period. For example, the Court could have granted only eight days for filing in the Competent Court, that is, delay since that would bring the filing within the three months statutory period.

7. In *Ram Ujarey -vs- Union of India*, (1999) 1 SCC 685, their Lordships have enunciated the law regarding refiling of a plaint returned under Order VII Rule 10/10-A of the CPC in the following words:-

21. The period of limitation within which claim petitions can be filed before the Tribunal is indicated in Section 21 of the Act. The contingencies contemplated by Section 21 are not applicable to the present case. The suit, admittedly, was filed within time. It is another matter that it was filed in a court which had no jurisdiction and, therefore, the Tribunal, while allowing the appeal filed against the decree passed by the trial court, directed the plaint to be returned to the appellant for presentation before the appropriate Bench of the Tribunal. Some delay had occurred in the refiling of the plaint before the Tribunal and as pointed out by the Tribunal itself, the delay was only of one-and-a-half months, although at one place the Tribunal observed that there was a delay of about eight months. The period of eight months has been calculated by the Tribunal from the date on which an order was passed at Allahabad for the return of the plaint. The limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the appellant, if the appellant was not at fault. Two dates have been mentioned on which the plaint was returned; in the application for condonation of delay, the date mentioned is 20-8-1988, but in the affidavit filed in support of that application, the date of receipt of the plaint is mentioned as 20-10-1988. Since the OA was filed before the Tribunal on 12-12-1988, there was a delay of either three-and-a-half months or one-and-a-half months, but not a delay of eight months as observed by the Tribunal. The Tribunal

had itself observed in an earlier part of its judgment that there was a delay of one-and-a-half months only.

A perusal of the above passage fortifies us in our view that the period upto 15.4.2005 would be excludable while computing limitation, by virtue of Section 14 of the Limitation Act, 1963.

8. It is in this analysis that we accept the Appeal and set aside the impugned Order. The learned Single Judge has already noted that the proceedings before him had been dismissed in default on two occasions. Since the matter requires to be remanded back to the learned Single Judge for a decision on the Objections, we feel that the Appellant must be cautioned that in the event of any further default in appearance, the learned Single Judge would be justified in dismissing the Objections.

9. Parties to appear before the learned Single Judge on 24.2.2011. There shall be no order as to costs.

(VIKRAMAJIT SEN)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

February 10, 2011
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