Court No. - 40

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 543 of 2023

Appellant :- M/S Rachna Marketing And Services
Respondent :- M/S Balaji Paper Products
Counsel for Appellant :- Some Narayan Mishra

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Heard learned counsel for the appellant.

2. The instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been filed challenging order dated 12.09.2022 passed by the Commercial Court, Kanpur Nagar in Misc. (Arbitration) Case No.52/74/2021 (M/s Rachna Marketing and Services vs. M/s Balaji Paper Products Unnao), which was an application preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act").

3. Apparently, there was a dispute between the parties, which has been referred to the arbitration and an award was passed on 19.03.2019 in Claim Petition No.19/2018.

4. The award was challenged by the appellant by filing an application under Section 34 of Arbitration & Conciliation Act, 1996. The Commercial Court, Kanpur Nagar was pleased to reject the application preferred by the appellant by passing order dated 12.09.2022.

5. As per Section 13 (1A) of the Commercial Court Act, 2015 read with Section 37 of the Arbitration Act, the limitation prescribed to file an appeal under Section 37 of Arbitration Act is 60 days. For ready reference Section 13 (1A) of the Commercial Court Act, 2015 is quoted hereunder:-

"(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgement or order."

6. There is a delay of 290 days in filing of the instant appeal and no substantial ground for delay has been mentioned in the delay condonation application filed along with the instant appeal for condonation of delay.

7. The primary aspect which arises for consideration in this appeal is as to whether the petition filed under Section 37 of the Act 1996 was within the period of limitation provided therein. If not, whether the delay is condonable by exercise of power under Section 5 of Limitation Act.

8. The Hon'ble Supreme Court in ***P. Radha Bai and others vs. P. Ashok Kumar and another, reported in (2019) 13 SCC 445*** has held as follows:-

"33.2. The proviso to Section 34 (3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates, "but not thereafter". The use of the phrase "but not thereafter" shows that the 120 days' period is the outer boundary for challenging an award. If Section 17 were to be applied, the outer boundary for challenging an award could go beyond 120 days. This Court has consistently taken this view that the words "but not thereafter" in the proviso of Section 34 (3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt."

9. The Hon'ble Supreme Court in ***Union of India vs. M/s Varindera Constructions Ltd., reported in (2020) 2 SCC 111*** has held that since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the self-same proceeding under Section 37 should be covered by the same drill. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul and Others vs. Keshwar Lal Chaudhuri and Others, AIR 1941 Federal Court 5, and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.

10. That the Hon'ble Supreme Court in the matter of Government of Maharashtra (Water Resources Department) Represented by ***Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.*** reported in ***(2022) 4 SCC 162*** has held that, given the aforesaid object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 of the Limitation Act or Section 13(1A)

of the Commercial Courts Act, a delay beyond prescribed time can only be condoned by way of exception and not by way of rule only in a fit case in which a party has otherwise acted bonafide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

11. That the Hon'ble Supreme Court in the matter of ***Mahindra and Mahindra Financial Services Ltd. Vs Maheshbhai Tinabhai Rathod and others*** reported in ***(2022) 4 SCC 162*** has held that where limitation is prescribed and the extent to which it can be condoned is circumscribed, the Court, under Section 5 of Limitation Act cannot condone the delay beyond the period prescribed under the Arbitration and Conciliation Act.

12. In view of the aforesaid facts and circumstances that the appeal was filed with delay of 290 days, we are not inclined to entertain this appeal. The application seeking condonation of delay in filing the appeal stands rejected.

13. The instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 (1A) of the Commercial Court Act, 2015 is, accordingly, ***dismissed***.

Order Date :- 9.11.2023
A. Pandey

Digitally signed by :-
ANAND PANDEY
High Court of Judicature at Allahabad