

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

243

Civil Revision No.8784 of 2014

Date of Decision:21.04.2015

Kartar Singh Contractor

.....petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN.

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

**Present: Mr.Vivek Khatri, Advocate,
for the petitioner.**

Mr.Gaurav Goel, Assistant Advocate General, Haryana.

K.KANNAN, J.(oral)

1. The revision is against the order allowing for the limitation issue to be considered as a preliminary issue, when the contractor objected to the maintainability of the petition itself. Admittedly, the award was passed on 12.02.2013 and the petition was being instituted under Section 34 of the Arbitration & Conciliation Act by the State only on 22.04.2014. The petition had been accompanied by an application under Section 5 to condone the delay of 342 days in filing the same. The court below framed an issue whether the award was liable to be set aside and whether the petition moved under Section 34 of the Act was time barred.

2. When the objection was that the petition was barred by law, the Court was literally abdicating on its duty to render adjudication on the

objection but allowed it to linger to be adjourned to a date on 16.01.2015.

3. Learned counsel appearing on behalf of the respondents before the Court below challenges the order stating that Section 34(3) of the Act is self-contained in providing for a particular period of limitation and there is no scope for entertaining any application under Section 5. Learned counsel appearing on behalf of the respondents states that after all the issue of limitation has not been considered by the Court below and it could be left to the court below to consider the same at an appropriate time.

4. If the term of limitation is a mixed question of law and fact and evidence would be necessary, I would have had no problem in acceding to the plea of the State that the matter could go before the lower court for consideration. If, on the other hand, the point is a direct principle of law to be applied, then we need not run it through a needless exercise by putting it before a Judge, who failed to consider what is brought before him at the initial time.

5. Section 34(3) of the Act reads thus:-

“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 thirty days, but not thereafter.”

6. This provision has been considered in several judgments of the Hon'ble Supreme Court. In Assam Urban Water Supply & Sew.Board Versus M/s Subhash Projects & Marketing Limited, 2012(2) SCC

624, the court has held that the period of 30 days mentioned in the proviso, follows sub-section 3 of Section 34 and not “the prescribed period” for the purposes of making an application for setting aside the arbitral award and hence Section 4 of the Limitation Act, 1963 is not attracted. It means the period of limitation computed in accordance with the provisions of Arbitration Act. The Court was holding that there is no scope for extension of time under Section 4 of the Limitation Act. Making reference to Section 43 of the Arbitration and Conciliation Act that provided for the applicability of the provisions of Limitation Act, Hon'ble Supreme Court held in **M/s Consolidated Engg. Enterprises Versus Principal Secretary Irrigation Deptt. and others, 2008(7) SCC 169**, that the proceedings, which Section 43 contemplates will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. But the proceedings under Section 34 for challenging the award will not be taken as being brought under Section 43. The Court while making reference to Section 29(3) of the Limitation Act, held that the applicability of Section 5 of the Act would stand excluded by a specific period of limitation prescribed under Section 34 of the Arbitration Act. In other words, Hon'ble Supreme Court held that the specific period of limitation spelt out under Section 34(3) proviso will exclude the applicability of Section 5 by the operation of Section 29(3) of the Limitation Act. This point was reiterated in **Union of India Versus M/s Popular Construction Co., 2001(8) SCC 470**. It was held that the Court cannot condone the delay in exercise of its discretion under Section 5 of the Limitation Act in filing an application under Section 34 of the

Arbitration Act. The Court observed that Section 34 is contained in Part I of the Act and the application for setting aside the award under Arbitration & Conciliation Act under Section 43(3) was liable to be rejected. That have also been also decisions of this Court and of Delhi High Court cited by the counsel and are followed in Hon'ble Supreme Court judgments. I do not think it necessary to reproduce them. The petition filed before the Court below by the State was not competent and was liable to be rejected. I order the rejection of the petition filed under Section 34 as barred in law and set aside the order passed by the Court below.

7. The revision petition is allowed.

April 21, 2015
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(K.KANNAN)
JUDGE