

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) Nos.36 and 37 of 2015

and

M.P.No.1 of 2015

Prakash Constructions
Rep. by its Proprietor S.Shiva Prakash
No.343, Basement Floor
Sampige Plaza
Sampige Road
Malleswaram
Bangalore - 560 003

... Petitioner in both the
CRPs

vs.

1.Government of Tamil Nadu
Public Works Department
Water Resources Organisation
Rep. by: The Chief Engineer, PWD
Water Resources Organisation
Chennai Region, Chepauk,
Chennai - 600 005

2.The Superintending Engineer, PWD,
WRO Project Circle
PWD Office Complex
Kangaenallore Road
Vellore - 632 006

3.The Executive Engineer, PWD, WRO,
Upper Palar Basin Division
PWD Office Complex
Kangaenallore Road
Vellore - 632 006

4.K.S.Ramasamy
Sole Arbitrator
No.511/47, "Sreeniketan"
No.8th Cross
West of Kanakapuram Road
7th Block, Jayanagar
Bangalore - 560 082

...Respondents in both the CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India against the orders of the learned Principal District Judge, Vellore dated 01.09.2014 made in I.A.No.162/2013 in Arb.O.P.No.Nil/2013 and I.A.No.163/2013 in Arb.O.P.No.Nil/2013.

For Petitioner : Mr.S.R.Raghunathan
in both CRPs

For Respondents : Mr.T.Jayaramraj
in both CRPs Govt. Advocate for R1 to R3
No Appearance for R4

COMMON ORDER

The petitioner in both the civil revision petitions was the contractor, who was awarded two contracts by the Government under Contract Agreement No.1 PBC/1998-99 dated 20.04.1998 and another contract Agreement No.1 PBC/1997-98 dated 23.08.1998 for the work of "Rehabilitation of East Main Canal and its structures from L.S. 6.25 - 51.97 under the Poiney Anicut System in Wallajah Taluk of Vellore District" and "Rehabilitation of Kondams, Feeder Channels, Tanks in surplus course of Kaveripakkam Tank under Palar Anicut System" respectively. On completion of work, dispute arose regarding the settlement of bills and as per the arbitration clause in the contract agreements, the disputes were referred to arbitration and the 4th respondent herein was the Sole Arbitrator, to whom the arbitration of the disputes was referred. The Sole Arbitrator passed awards in both the reference on 26.06.2009 holding the petitioner herein/contractor entitled to the amounts decided therein.

2. As against the said Awards of the Arbitrator, the respondents 1 to 3 herein preferred Arbitration O.P.Nos.1/2014 and 2/2014 under Section 34

of the Arbitration and Conciliation Act, 1996 on the file of the learned Principal District Judge, Vellore. In fact those Arbitration OPs were not filed within the time stipulated in Section 34 of the Arbitration and Conciliation Act, 1996 and they were filed with a delay of 497 days. Hence I.A.No.162/2013 in unnumbered Arbitration OP of 2013, which has subsequently been numbered as Arbitration O.P.No.1/2014 and I.A.No.163/2013 in unnumbered Arbitration OP of 2013, which has subsequently been numbered as Arbitration O.P.No.2/2014 came to be filed under Section 151 of the Code of Civil Procedure to condone the said delay in preferring the Arbitration OPs.

3. The revision petitioner herein, who was the first respondent therein, filed counters and resisted the applications. After hearing, the learned Principal District Judge, Vellore, by impugned orders dated 01.09.2014 allowed both the interlocutory applications, namely I.A.Nos.162/2013 and 163/2013 and condoned the delay of 497 days in filing the Arbitration OPs. Pursuant to the said impugned orders, the Arbitration OPs came to be numbered as indicated supra. As against the said orders of the learned Principal District Judge, Vellore dated 01.09.2014, the present civil revision petitions, namely C.R.P.(PD) No.36/2015 and C.R.P.(PD) No.37/2015 respectively have been filed under Article 227 of the Constitution of India.

4. The only question that arises for consideration in these civil revision petitions is:

"whether the delay in preferring the Arbitration OPs under Section 34 of the Arbitration and Conciliation Act, 1996 can be condoned either under Section 151 of the Code of Civil Procedure or under Section 5 of the Limitation Act, 1963?"

5. When there is a specific provision, invocation of the inherent powers of the court under Section 151 of the Code of Civil Procedure shall not arise. There are provisions for condoning the delay in initiating the proceedings, which are governed by the provisions of the Limitation Act, 1963. Certain special enactments provide limitation in the provisions contained therein. If a mere limitation itself has been provided therein, then the provisions of Sections 4 to 28 of the Limitation Act, will get attracted. Section 29 of the Limitation Act, 1963 is to the effect that where any special law or local law prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule to the Limitation Act, the same shall apply if such period were the periods prescribed by the Schedule for the purpose of determining any period of limitation prescribed for any suit, appeal or application. For such period of limitation prescribed by any special or local law, the provisions contained in sections 4 to 24 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

6. Though a relief could have been sought for quoting a wrong provision, the court is not powerless to grant the relief treating the petition to have been filed under the proper provisions of law. Here the respondents 1 to 3 ought to have filed the petitions under Section 5 of the Limitation Act to condone the delay in filing the Arbitration OPs under Section 34 of the Arbitration and Conciliation Act, 1996. Perhaps conscious of the provisions found in Section 34 of the Arbitration and Conciliation Act, 1996 and Section 29 of the Limitation Act, 1963, the respondents 1 to 3 have chosen to file the petitions under Section 151 of the Code of Civil Procedure, in an attempt to

invoke the inherent powers of the civil court. Hence the applications filed by the respondents 1 to 3 though contains the provision 151 CPC as the provision under which the same came to be filed, are to be treated as applications filed under Section 5 of the Limitation Act, 1963.

7. The next question that arises for consideration is "*whether Section 5 of the Limitation Act, 1963 is applicable in respect of an Arbitration OP filed under Section 34 of the Arbitration and Conciliation Act, 1996?*"

8. The very same question was dealt with by the Hon'ble Supreme Court in two cases. They are:

- (1) ***Union of India vs. Popular Construction Co.*** reported in **(2001) 8 SCC 470**; and
- (2) ***Chief Engineer of BPDP/REO, Ranchi vs. Scoot Wilson Kirpatrick India (P) Ltd.*** reported in **(2006) 13 SCC 622**.

8.1. In the first of the above cited cases, **Justice Ruma Pal, J.** writing the order for the Bench, made the following observations:

"2. The question which arises for determination in this case is whether the provisions of Section 5 of the Limitation Act, 1963 are applicable to an application challenging an award, under Section 34 of the Arbitration and Conciliation Act, 1996 (referred to hereafter as the '1996 Act'). "

"11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation

Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.

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. "

"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 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 if it were a decree of a 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 (he judgment so pronounced a decree shall follow". 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."

8.2. In the second of the cases cited supra, **Justice Arijit Pasayat, J.** relying on the judgment of the Supreme Court in **Popular Construction Co's** case, made the following observation:

"8. The decision in Popular Construction Case did not deal with specific issues in this case. In that decision it was held that in respect of "sufficient cause cases" the provisions of Section 34(3) of the Act which are special provisions relating to condonation of delay override the general provisions of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act"). The position was reiterated in the Western Builders case and also in Fairgrowth Investments Ltd. v. Custodian. There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the Act."

9. The above said observations made by the Hon'ble Supreme Court provide an answer to the question raised in these civil revision petitions. This court needs nothing to add than to follow the said judgments and hold that the court below committed a grave error in exercising a jurisdiction, which is not conferred on it, by not only entertaining the applications to condone the delay in filing the Arbitration OPs under Section 34 of the Arbitration and Conciliation Act, 1996 beyond the period contemplated therein and beyond the extended period contemplated in sub clause (3) of Section 34. The orders of the court below cannot stand the scrutiny of this court and the same deserve to be interfered with and set aside by this court in exercise of its power under Article 227 of the Constitution of India.

Accordingly, both the civil revision petitions are allowed and the orders of the learned Principal District Judge, Vellore dated 01.09.2014 made in I.A.No.162/2013 in unnumbered Arbitration OP of 2013 (subsequently numbered as Arbitration O.P.No.1/2014) and I.A.No.163/2013 in unnumbered Arbitration OP of 2013 (subsequently numbered as Arbitration O.P.No.2/2014) are set aside. The Arbitration O.P.Nos.1/2014 and 2/2014 shall stand rejected as filed beyond the period of limitation. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

19-02-2016

Index :Yes
Internet : yes
asr/-

To

The Principal District Judge, Vellore

P.R.SHIVAKUMAR, J.

asr/-

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and
M.P.No.1 of 2015

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