The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Civil Miscellaneous Appeal Nos.586, 567 & 568 of 2016

Date: 17.08.2016

Between:

Govt. of Andhra Pradesh
rep. by Superintending Engineer,
Dam Maintenance Circle,
Srisailam, Kurnool District.

..Appellant

and

Gammon India Ltd.,
Gammon House
Veer Savarkar Marg,
Mumbai and another.

..Respondents

Counsel for the Appellant: **Mr.KA.Narasimham, GP attached to AG (AP)**

The Court made the following:

Common Judgment: **(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

These three Civil Miscellaneous Appeals (CMAs) raise identical issue *viz*., whether the orders passed by the Chief Judge, City Civil Court, Hyderabad, dismissing the Original Petitions, filed against the arbitral awards, at SR stage on the ground that they are barred by limitation, is in accordance with law.

We have heard Mr.K.A.Narasimham, learned Government Pleader representing the learned Advocate-General for the appellant.

The disputes between the appellant on one side and respondent No.1 on the other were referred to respondent No.2- Sole Arbitrator for adjudication through arbitration. Respondent No.2 has passed three separate awards (two on 19.03.2014 and one on 18.03.2014). The appellant has filed Original Petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act'), for setting aside the awards. As there was delay in filing those OPs, the applications for condonation of delay of 163 days were filed. At the time of numbering the OPs, the office has raised objections on the maintainability of the petitions in view of expiry of limitation period for filing the same. The learned Counsel representing the appellant has advanced his submissions before the lower Court. Upon considering those submissions, the lower Court has rejected the OPs by holding that they were filed beyond the time stipulated under Section 34 of the 1996 Act and that Section 5 of the Limitation Act, 1963 (for short 'the 1963 Act'), had no application. Aggrieved by these orders, the petitioner in the OPs filed these CMAs.

Sub-Section (3) of Section 34 of the 1996 Act is couched in peremptory terms as far as limitation for filing the application for setting aside the award is concerned. This provision reads as under:

> "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:
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> 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."

In **Union of India vs. M/s.Popular Construction Company**[1]**,** the issue, whether Section 5 of the 1963 Act, applies for condonation of delay beyond 120 days prescribed under the proviso to Sub-Section (3) of Section 34 of the 1996 Act, fell for consideration before the Supreme Court. After a thorough discussion of the provisions of the 1996 Act and the 1963 Act, the Supreme Court *inter alia* held as under:

> "14. Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge and 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".5 This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:
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> 5. 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996
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> "5. Extent 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."
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> 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

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[1] **AIR 2001 SC 4010**

> subject to the sweep for the prohibition contained in Section 5 of the 1996 Act.
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> 16. …….. 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 bar fixed under Section 34 is emphasised by the provisions of Section 36 which provided 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 the 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."

The afore-mentioned authoritative pronouncement was relied upon by the lower Court to reject the OPs.

Having carefully considered the judgment of the Apex Court referred to above, we have no reason to interfere with the orders of the lower Court as the petitions for setting aside the arbtiral awards were, admittedly, filed beyond the period of 120 days as prescribed under the 1996 Act, which is the special law within the meaning of Section 29(2) of the 1963 Act.

For the afore-mentioned reasons, all the three CMAs are dismissed.

As a sequel to dismissal of the CMAs, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 17th August, 2016
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