

206.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1158 of 2012 (O&M)

Date of decision:27.04.2016

M/s Saraswati Builders

... Appellant

versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.K. Singal, Advocate,
for the appellant.

Mr. Jagdish Marwaha, Advocate,
for the respondents.

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

K.Kannan, J. (Oral)

1. The appeal is against the order rejecting an application filed under Section 34 of the Arbitration and Conciliation Act as barred by time. The arbitral award was admittedly passed on 15.06.2009 and the application under Section 34 was filed on 17.12.2009, that is, beyond a period of 3 months from the time when the award was passed. Sub Section (3) of Section 34 of the Arbitration and Conciliation 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.”

2. A self-limiting limitation that this provision makes possible is to extend the period of 3 months to a period when a request for correction of the award was disposed of by the Arbitral Tribunal under Section 33. The first part of Sub Section (3) therefore will come in operation where an application is filed under Section 33 for correction or for interpretation of award and when the request had been disposed of. The petitioner's case is that he had made a request for correction of the award through an application filed on 29.06.2009 and he had been giving reminders to the Arbitrator on 18.09 and still later on 11.11.2009. Sub Section (3) does not contemplate a situation of what would happen if the Arbitral Tribunal does not choose to dispose of an application for correction or pass an additional award. The petitioner could not have waited for the Arbitrator to make correction indefinitely, for, Section

33(5) itself declares that if the Arbitral Tribunal considers a request to be justified, it should make an additional award within 60 days from the receipt of such request. Sending reminders in the month of September or November can advance the case of the petitioner in no way because the moment an Arbitrator chose not to modify it within 60 days as contemplated under Sub Section 5, that is, within 2 months from the date of filing of an application for correction said to have been issued on 29.06.2009, the petitioner must have approached the competent court for setting aside the award under Section 34. If such a process had been adopted, the application itself could have been filed within 3 months, the time which subsection (3) of Section 34 provides. The proviso makes possible a further extension of period by another 30 days, that is, after the completion of 3 months, meaning thereby that an outer limit of 4 months is all that is possible under the scheme of Arbitration and Conciliation Act to have the arbitral award set aside. The application filed in December was simply incompetent.

3. The court below has stated that there was no proof offered for filing an application for correction. I take it that there is sufficient proof of such an application as having been filed on 29.06.2009. Even if such an application had been filed, if it is not disposed of within 2 months by the Arbitrator in the manner contemplated under Section 33(5), there was no scope for

condonation beyond what Section 33(3) provides. The impugned order passed is sustained on other ground than what has been already set forth. The appeal is dismissed.

(K.KANNAN)
JUDGE

27.04.2016
sanjeev