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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1128-2014 (O&M)

Date of decision : 12.07.2016

PEC Ltd.

... Appellant(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagdish Manchanda, Advocate
for the appellant(s).

Mr. Anil Kumar Yadav, Addl. A.G., Haryana.

Mr. Ravinder Malik, Advocate
for respondent No.3.

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?

AMIT RAWAL, J. (ORAL)

The appellant is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 13.05.2011.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the appellant submits that due to inadvertence and in good faith, instead of filing of the objections under Section 34 of the 1996 Act, an appeal was filed in this Court on 08.07.2011. By that time, a period of 55 days had elapsed. The said appeal was withdrawn on 22.11.2011 and thereafter,

revision petition was filed which was also ordered to be dismissed as withdrawn and the liberty was granted to file the objections on 22.12.2011. At the best, 85 days had gone. The objections were filed on 01.01.2012 which have been dismissed, but the benefit of Section 14 of the Limitation Act ought to have been given as same applies to such matter in view of the ratio decidendi culled out by the judgment of Hon'ble Supreme Court rendered in **"M/s Shakti Tubes Ltd., Tr. Director V/s State of Bihar and others" 2009 (1) RCR (Civil) 512.** He relies upon the judgments of Hon'ble Supreme Court rendered in **"State of Goa V/s M/s Western Builders" 2006 (3) RCR (Civil) 475, "Gulbarga University V/s Mallikarjun S. Kodagali and another" 2008 (4) RCR (Civil) 116** and **"Union of India V/s M/s Shring Construction Company Private Limited" 2006 (8) SCC 18.**

Mr. Ravinder Malik, learned counsel appearing on behalf of respondent No.3 submits that the provisions of Section 5 of the Limitation Act does not apply. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in **"Assam Urban Water Supply & Sew. Board V/s M/s Subash Projects & Marketing Ltd." 2012 (2) RCR (Civil) 490** and the judgment of this Court rendered in **"Senior Executive Engineer, MHC (O&M), Division, PSEB, Talwara, District Hoshiarpur V/s M/s Minhas Builders" 2010 (4) Civ CC 374.**

Mr. Anil Kumar Yadav, Addl. A.G., Haryana submits that once, the application is lacking material particulars, the benefit of Section 14 of the Limitation Act cannot be granted. In support of his contentions, he relies upon the Division Bench judgments of Allahabad High Court rendered in **"Union of India and others V/s M/s Sankalp Associates" 2015**

(5) ADJ 719 & “Larsen & Toubro Ltd. V/s K.S. Baidwan and others” 2009 (3) ADJ 746 and the Division Bench judgment of Kerala High Court rendered in “Mac-N-Hom Systems V/s P.S. Varrier” 2004 (4) RCR (Civil) 802 and urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

Shorn of the facts as noticed above are that it is apparent that inadvertence and in good faith had played vital role. The appeal was filed on 08.07.2011 and thereafter revision petition which was ordered to be withdrawn on 22.11.2011. By that time, a period of 85 days had gone. As per liberty granted, the objections were filed immediately on 01.01.2012 i.e. next working day after winter vacation. In my view, the benefit of Section 14 of the Limitation Act ought to have been given in view of the ratio decidendi culled out by the judgment of Hon'ble Supreme Court rendered in “M/s Shakti Tubes Ltd., Tr. Director's case (supra).

It is also matter of record that the appellant was bonafidely and in good faith pursuing the remedy in a wrong court, thus, the ratio decidendi culled out by the judgment rendered in “Larsen & Toubro Ltd.'s case (supra) would not apply as the contents of application therein did not comply rigors of provisions under Section 14 of the Limitation Act, whereas the ingredient of the application explicitly envisages the expressions “good faith” and “bona fide relief”. The Objecting Court ought to have taken into consideration the objections and should have to decide the same on merits instead of pondering upon the limitation by denying the benefit of Section 14 of the Limitation Act.

In view of the aforementioned facts and circumstances, the order dated 04.10.2013 of the Objecting Court is hereby set aside and the matter is remitted back to the Objecting Court to decide the objections on merits.

Learned counsel for the parties/parties are directed to appear before the Objecting Court on 29.07.2016.

Resultantly, the appeal stands disposed of.

12.07.2016
yogesh

(AMIT RAWAL)
JUDGE