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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 05.12.2016

+ **FAO 470/2016 & CM APPL. 35285/2016**

UNION OF INDIA Appellant
Through Mr J.K. Singh, Standing Counsel for
UI

versus

M/S SURESH CONSTRUCTION CO. Respondent
Through Mr Raman Kapoor, Sr. Adv. with Mr
Aviral Tiwari, Adv.

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CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA
: SUNITA GUPTA, J. (ORAL)

1. Challenge in this appeal is to the order dated 27th February, 2016 passed by the learned Additional District Judge-I (Central) Tis Hazari Courts whereby the objections filed by the appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for setting aside the arbitral award dated 9th June, 2015 for Rs.10,12,200/- in favour of the respondent was dismissed being barred by time.

2. The contract for the work at "Zone-III -All civil works like earthwork in filling/cutting with contractor/railway earth in embankment to the required profile, const./extn. of Hume pipe bridges of 1x0.400 m span box bridges of 0.61 m span, RCC slabs bridges of sizes varying from 0.915 m to 2.44 m including slab sub-structures of

bridges of span 3.05 m and above and other allied works between Km. 126.300 to Km. 120.000 in connection with 2nd line work of Ghaziabad-Hapur BG doubling was awarded by the petitioner to M/s. Suresh Construction Co.-Respondent herein vide letter dated 4.3.1977 with stipulated date of completion of entire work by 3.12.1997 i.e., within 9 months. Accordingly the contract agreement No. 119-W/Dy.CE/C/PTNR dated 11.6.1997 was executed between the petitioner and the respondent and contract value was for Rs.61,66,444.50 as per the agreement. The work was awarded to the respondent subject to applicability of GCC and the terms and condition of GCC was also part of the contract which was binding upon both the parties.

3. Disputes arose between the parties. The respondent invoked arbitration clause and arbitral tribunal was formed. After completion of proceedings before the arbitral tribunal, award dated 9th June, 2015 was given by the Tribunal. The petitioner filed a petition u/s 34 of the Act before the learned Additional District Judge, Delhi. Along with the petition, an application u/s 34(3) of the Act was also moved by the petitioner stating therein that impugned award dated 09.06.2015, was received on 26.6.2015, which was assigned to Railway Advocate Sh.Ashok Singh for filing the objection petition vide letter dated 09.10.2015 who has returned the file on 08.12.2015 on the ground that amount involved in the impugned award was less than rupees one crore and the same could be challenged before District Court and he was not on the panel of District Court. Accordingly, case file was

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assigned to Sh.Neeraj Kumar, Panel Advocate vide letter dated 16.12.2015 for filing objection before the competent court of law. But said case file was returned vide letter dated 22.12.2015 by said Sh. Neeraj Kumar, Advocate as he was unable to do the same due to sudden demise of his grandmother. Finally, case was assigned to the present counsel on 12.01.2016 and case file was handed over to him on 15.01.2016, who requested concerned department to provide the other connected file. Since, the case was very old, as such, the concerned officials took ten days in tracing out all the concerned files and thereafter on 20.01.2016 the requisite file was traced out. Objection petition was filed on 03.02.2016. It has been averred that the certified copy of impugned award was received on 26.06.2015 through daak and inadvertently the same could not be put up before the concerned Deputy Chief Engineer by the dealing assistant, which was a bonafide mistake of the dealing assistant and due to this reason the step could not be taken within stipulated period of three months. The petitioner is a Central Government Organization, working for the interest of public at large, hence, the petitioner sought condonation of delay submitting that petitioner would suffer irreparable loss and injury, if present application is not allowed and party should not suffer for the fault of their counsel.

4. After hearing learned counsel for the petitioner, the application seeking condonation of delay in filing the petition was dismissed being hopelessly barred by the limitation. Resultantly, the petition u/s 34 of the Act was also dismissed.

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5. Aggrieved by the said order, present appeal has been filed by the petitioner, *inter alia*, on the ground that the petitioner is a Central Government Department and public money is involved. In case the delay in filing the objection is not condoned, then the petitioner will suffer an irreparable loss and injury. Non filing of the objection petition within stipulated period of limitation was neither intentional nor deliberate but occasioned due to circumstances as averred in the application. As such, it is submitted that the impugned order be set aside. The Award dated 9th June, 2015 passed by the Arbitrator be also set aside.

6. Opposing the appeal, learned counsel for the respondent submits that proviso to Section 34 of the Act provides for a period within which the Court can exercise its discretion for condonation of delay. Legislature itself prescribed a special limitation for the purpose of appeal and the period of limitation is 3 months from the date of receipt of arbitral award. The delay can be condoned for a period of 30 days on showing sufficient cause but not thereafter. In the instant case, the arbitral award was received by the petitioner on 26th June, 2015 whereas the petition u/s 34 of the Act accompanied by application u/s 34(3) of the Act seeking condonation of delay was filed only on 3rd February, 2016. That being so, the Court was not competent to condone the delay, therefore, the application was rightly dismissed by the Trial Court which does not warrant any interference. Reliance has been placed on *Union of India vs. M/s. Popular Construction Co.*, AIR 2001 SC 4010.

7. It is undisputed case of the parties that the arbitral award was

passed by the arbitral tribunal on 9th June, 2015. The award was received by the petitioner on 26th June, 2015. Challenging the award, petition u/s 34 of the Act was filed on 3rd February, 2016. Along with petition, an application u/s 34(3) of the Act was also filed seeking condonation of delay in filing the petition.

8. Section 34(3) of the Act reads as under:-

“(3) 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.”

9. A bare perusal of the Sub-Section goes to show that an application for setting aside the award is to be filed within three months from the date on which the arbitral award is received by the party. Proviso appended to this Sub-Section, however, empowers the Court to extend the period of 30 days on showing sufficient cause by the applicant which prevented him from making the application within the said period of three months. Undisputedly, the petition u/s 34 of the Act was filed much after the expiry of period of three months as stipulated under this Sub-Section and even after the expiry of 30 days as the same has been filed only on 3rd February, 2016.

10. The question which arises for determination is whether the Trial Court was competent to extend the period of limitation u/s 34 of

the Act. In *Union of India*(supra), delay was sought to be condoned by the appellant by invoking the provisions of Section 5 of the Limitation Act, 1963. After referring to Section 34(3) of the Act, it was held by the Supreme Court that :-

"8. Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5.

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.

13. Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. Even in a case, where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

Here by history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an 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 minimise the supervisory role of courts in the arbitral process". This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

"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."

14. 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.

15. 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 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. 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."

11. Applying the ratio of this judgment to the factual matrix of the present case, the Court was not vested with any power to condone the delay in filing the petition u/s 34 of the Act.

12. Much emphasis has been laid by the learned counsel for the appellant for submitting that the petitioner is a Central Government department and it

is not necessary for the Government department to explain each and every day's delay. Hence the petitioner seeks indulgence of the Court to take lenient view and to condone the delay in filing the objections as well as the appeal. There are catena of decisions to the effect viz. *Union of India v. N. Das R. Israni*, 1993 AIR SCW 2573; *State of Haryana v. Chandra Mani and Ors.*, 2002 (143) ELT 249(SC); *Pundlik Jalam Patil(D) by LRs vs. Exe. Eng. Jalgaon Medium Project and Anr.*, (2008) 17 SCC 448 that law makes no distinction between a private party and Government. State accorded the same treatment in an even-handed manner, and no separate standards to determine the cause laid down by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause, however, the Apex Court observed that in view of the procedural red-tapism in the process of making decisions and in order to see that ultimately the public interest does not suffer, certain amount of latitude to the appeal brought by the State is not impermissible. It was held that the expression "sufficient cause" should be considered with pragmatism in justice-oriented approach rather than the technical detection of "Sufficient cause" for explaining every day's delay. Nevertheless, in none of its decisions the Supreme Court has held that since a liberal approach is normally adopted while dealing with such applications filed by a public authority, the delay in filing appeal by them is to be condoned on a mere asking. Irrespective of the fact whether a litigant is the State or a private party, "sufficient cause" has to be shown for the delay in filing the appeal. The only difference would be some amount of latitude to the State on account of procedural red-tapism and the larger public interest.

13. Tested on the touchstone of the afore-noted broad principles to be kept in view while dealing with such applications, the Court is of the view that the appellant has miserably failed to show any cause, much less a sufficient cause for delay in filing the petition as well as the appeal. Undisputedly, the impugned award was received on 26th June, 2015. After a lapse of approximately 3½ months, it was assigned to Sh. Ashok Singh, Advocate for filing the objection petition vide letter dated 9th October, 2015. After merely two months, the Advocate returned the file vide letter dated 8th December, 2015 on the ground that the award being less than Rs.1 crore has to be challenged before the District Court and he was not on the panel of the District Court. Thereafter it was handed over to the panel advocate on 16th December, 2015 who returned the file on 22nd December, 2015 due to personal reasons. Thereafter the file was handed over to the counsel on 12th January, 2016 and thereafter objections were filed on 3rd February, 2016. No sufficient explanation except for a casual approach adopted by the dealing assistant for putting up the file before the Dy. Chief Engineer for taking necessary steps has been alleged by the petitioner. This is not the end of the matter. After the petition u/s 34 of the Act was dismissed on the ground of limitation even the present appeal has not been filed within the stipulated period and an application seeking condonation of 87 days delay in filing the appeal has been moved. The grounds for delay in filing the appeal is narrated in para 2 of the application to the following effect:

"2. That the appellant has got certified copy on 2nd March, 2016. The department decided to file appeal against the impugned order dated 27th February, 2016. The department approached the counsel Mr. J.K. Singh on 26th July, 2016 to file appeal against the impugned order. The draft appeal prepared and sent to the department on 10th August, 2016. The

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department sent back to the signed on 19th August, 2016. Thereafter the present appeal was filed on 22nd August, 2016 before this Court. In the process, delay has occurred in filing the present appeal."

14. The ground so stated in the application shows that it is a simple case of inaction or negligence for which no indulgence can be given to the appellant. In any case, in view of the specific provisions incorporated u/s 34 (3) of the Act, the delay could not have been condoned.

15. In this view of the matter, the impugned order does not suffer from any infirmity which warrants interference. Accordingly the appeal is dismissed.

Sunita Gupta
SUNITA GUPTA, J

DECEMBER 05, 2016

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