

S~7 to 9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 616/2015
UNION OF INDIA

..... Petitioner
Through Mr. Anurag Ahluwalia, CGSC with
Mr. Debesh Panda and Mr. Prashant
Ghai, Advs.

versus

KERALA STATE CO-OP MARKETING FEDERATION LTD &
ANR

..... Respondents
Through Mr. Harshad V. Hameed, Mr. Dileep
Poolakkot and Mrs. Ashly Harshad,
Advs.

+ CM(M) 618/2015
UNION OF INDIA

..... Petitioner
Through Mr. Anurag Ahluwalia, CGSC with
Mr. Debesh Panda and Mr. Prashant
Ghai, Advs.

versus

KERALA STATE CO-OP MARKETING FEDERATION LTD &
ANR

..... Respondents
Through Mr. Harshad V. Hameed, Mr. Dileep
Poolakkot and Mrs. Ashly Harshad,
Advs.

+ CM(M) 619/2015
UNION OF INDIA

..... Petitioner
Through Mr. Anurag Ahluwalia, CGSC with
Mr. Debesh Panda and Mr. Prashant
Ghai, Advs.

versus

KERALA STATE CO-OP MARKETING FEDERATION LTD &
ANR

..... Respondents
Through Mr. Harshad V. Hameed, Mr. Dileep
Poolakkot and Mrs. Ashly Harshad,
Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **24.02.2016**

Order impugned before this Court is the order dated 19.07.2014 vide which the application filed by the petitioner (Union of India) under Section 14 of the Arbitration Act, 1940 seeking a prayer that the Award dated 15.09.2011 (passed in their favour) be made into a Rule of Court had dismissed. The Trial Court had relied upon Article 119 of the Limitation Act; it was noted that this application is barred by time.

Contention before this Court of the learned counsel for the petitioner is that it was due to an inadvertence and bonafide mistake on the part of the learned counsel for the petitioner that the application has been filed under Section 14 of the Arbitration Act, 1940; since the reference in all these matters had been made post 25.01.1996 (date of promulgation of the Arbitration and Conciliation Act, 1996), the Award was essentially an Award under the Act of 1996 and the application under Section 14 of the Arbitration Act filed under the earlier Act (1940 Act) was due to an inadvertence and a bonafide mistake of the Advocate for which a party should not be penalized and to support this submission, he has placed reliance upon 1981 (2) SCC 788 Rafiq Vs.

Munshilal; further submission being that under Section 85 (2) of the Act of 1996, benefit also even otherwise has to accrue in favour of the petitioner. He has also placed reliance upon (1998) 5 SCC 599 Shetty's Constructions Co. Pvt. Ltd. Vs. Konkan Railway Constructions and Another to support this stand; submission being that the applicability of Section 85 (2) of the Arbitration and Conciliation Act, 1996 has been culled out in this judgment.

These submissions have been refuted. Learned counsel for the respondents/non-applicants submits that the bar of Article 119 of the Limitation Act was rightly construed by the Trial Judge; attention has also been drawn to the Award which has been passed on 15.09.2011; submission being that this Award has been passed under the Act of 1940 and this is so specifically stated and thus in this background, the impugned order suffers from no infirmity. He has placed reliance upon MANU/KE/0240/1995 Government of Kerala and Anr. Vs. V.J. Chacko as also 2015 (10) SCALE 575 Nagrik Chetna Manch Vs. Union of India & Ors. to support his submission.

This Court is hearing the submissions made by the learned counsel for the petitioner for the first time; the Trial Court did not have any opportunity to deal with these submissions made before this Court which is to the effect that the Award dated 15.09.2011 was essentially an Award passed under the Act of 1996 and not under the Act of 1940 and the application filed by the learned counsel for the petitioner under Section 14 of the Act was filed due to an inadvertent error; the counter submission of the learned counsel for the respondents that the Trial Court had rightly held that the application under Section 14 was barred

7

by limitation and the Trial Court would now have no jurisdiction to entertain any future application on this count shall also be considered by the Trial Court in its correct perspective. Parties shall address their submissions before the Trial Court as and when an application to this effect is filed before the Trial Court who shall pass order on its merits.

Petitions disposed of.

INDERMEET KAUR, J

FEBRUARY 24, 2016

A