

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.36 of 2017

1. State of Chhattisgarh, Through the Secretary, Public, Health & Engineering Department, Govt. of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
 2. Executive Engineer, Public Health and Engineering Division, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)
- (Applicants)
---- Appellants

Versus

P.C. Jain, S/o Shri D.P. Jain, R/o Sindhi Sadan, Gali No.1, Lal Bagh, In front of City Hospital, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

(Non-applicant)
---- Respondent

Arbitration Appeal No.34 of 2017

1. State of Chhattisgarh, Through the Secretary, Public, Health & Engineering Department, Govt. of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
 2. Executive Engineer, Public Health and Engineering Division, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)
- (Applicants)
---- Appellants

Versus

P.C. Jain, S/o Shri D.P. Jain, R/o Sindhi Sadan, Gali No.1, Lal Bagh, In front of City Hospital, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

(Non-applicant)
---- Respondent

Arbitration Appeal No.33 of 2017

1. State of Chhattisgarh, Through the Secretary, Public, Health & Engineering Department, Govt. of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
 2. Executive Engineer, Public Health and Engineering Division, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)
- (Applicants)
---- Appellants

Page 2 of 5

Versus

P.C. Jain, S/o Shri D.P. Jain, R/o Sindhi Sadan, Gali No.1, Lal
Bagh, In front of City Hospital, Rajnandgaon, Tahsil and District
Rajnandgaon (C.G.)

(Non-applicant)
---- Respondent

Arbitration Appeal No.42 of 2017

1. State of Chhattisgarh, Through the Secretary, Public, Health &
Engineering Department, Govt. of Chhattisgarh, Mahanadi
Bhawan, Mantralaya, Naya Raipur (C.G.)
2. Executive Engineer, Public Health and Engineering Division,
Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

(Applicants)
---- Appellants

Versus

P.C. Jain, S/o Shri D.P. Jain, R/o Sindhi Sadan, Gali No.1, Lal
Bagh, In front of City Hospital, Rajnandgaon, Tahsil and District
Rajnandgaon (C.G.)

(Non-applicant)
---- Respondent

AND

Arbitration Appeal No.35 of 2017

1. State of Chhattisgarh, Through the Secretary, Public, Health &
Engineering Department, Govt. of Chhattisgarh, Mahanadi
Bhawan, Mantralaya, Naya Raipur (C.G.)
2. Executive Engineer, Public Health and Engineering Division,
Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

(Applicants)
---- Appellants

Versus

P.C. Jain, S/o Shri D.P. Jain, R/o Sindhi Sadan, Gali No.1, Lal
Bagh, In front of City Hospital, Rajnandgaon, Tahsil and District
Rajnandgaon (C.G.)

(Non-applicant)
---- Respondent

For Appellants/State:	Mr. Shashank Thakur, Govt. Advocate.
For Respondent:	Mr. Ashok Mishra, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/07/2017

1. In order to resolve the dispute arisen between the parties, Arbitral Tribunal was constituted and accordingly, the matter was referred to the Arbitral Tribunal and said Arbitral Tribunal adjudicated the dispute by passing its award dated 5-7-2014. Feeling aggrieved against the award passed by the Arbitral Tribunal, the State preferred application under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act, 1996'), on 16-9-2014 and the said application was dismissed by the District Judge, Rajnandgaon by holding that it is barred by limitation against which this arbitration appeal has been preferred.
2. Since common question of law and fact is involved in these appeals, they are heard together and are being disposed of by this common order.
3. Mr. Shashank Thakur, learned Govt. Advocate appearing for the State/appellants, would submit that the learned District Judge is absolutely unjustified in applying Article 119(b) of the Limitation Act, 1963 to the application filed under Section 34 (2) of the Act, 1996 ignoring the period of limitation prescribed in the Act, 1996 which is three months from the date of award. Therefore, the impugned order is liable to be set aside on this ground alone.
4. On the other hand, Mr. Ashok Mishra, learned counsel appearing

for the respondent, would, however, support the impugned order.

5. I have heard learned counsel for the parties and perused the material available on record with utmost circumspection.
6. It is not in dispute that Arbitral Tribunal was constituted in accordance with the provisions of the Act, 1996 and the Act, 1996 is applicable to adjudicate the dispute arisen between the parties. At this stage, it would be appropriate to notice Section 34 (3) of the Act, 1996 which reads as follows: -

“(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.”

7. A careful perusal of the aforesaid provision would clearly provide that application for setting aside the arbitral award can be made within three months from the date on which the party has received the copy of arbitral award and the Court can entertain the application within a period of three months from the date of supply of copy of the award and one month further time is given to the said Court for condoning the delay, if any, in filing the application under Section 34 of the Act, 1996. Thus, in view of the express provision for limitation prescribed under Section 34 (3) of the Act, 1996, the provisions contained in Article 119 (b) of the Limitation Act, 1963

would not be applicable and filing of application under Section 34 (2) of the Act, 1996, for setting aside the arbitral award passed under the Act, 1996 would be governed by the Act, 1996. The learned District Judge has applied the provisions of Article 119(b) of the Limitation Act, 1963 and while reckoning the period of thirty days has legally erred ignoring the express mandate contained in Section 34 (3) of the Act, 1996 providing for the period of limitation of 90 days. It is not in dispute that the said arbitral award was challenged by the State on 16-9-2014 when the original award passed on 5-7-2014 within 90 days. Therefore, it is within the period of limitation.

8. As a fallout and consequence of aforesaid discussion, all the appeals are allowed. Orders passed by the learned District Judge holding the application under Section 34 (2) of the Act, 1996 as barred by limitation, is set aside. All the applications are restored to its original number to the file of the District Judge, Rajnandgaon for hearing and disposal in accordance with law on merits without being influenced by any of the observations made herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge