

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No. 1186 of 2017

1. State of Chhattisgarh Through the Executive Engineer Public Health Engineering Department Project Division, Raipur (CG)
2. The Executive Engineer Public Health Engineering Department Project Division, Raipur (CG)

---- Petitioners

Versus

M/s Sheela Construction Co. Having its registered office at 'Gurukripa' Shriram Nagar, Phase-II Road, 3rd Street, Shankar Nagar, Raipur (CG)

---- Respondent

For Petitioners	:	Mr. Shashank Thakur, G.A.
For Respondent	:	Mr. Manaynath Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

5/7/2017

1. The Arbitral Tribunal constituted with the consent of the parties has passed award in favour of the respondent on 19.6.2015 resolving the dispute between the parties under the Arbitration and Conciliation Act, 1996 (hereinafter called as 'Act of 1996'), feeling aggrieved against the award passed by the Arbitrator, the petitioner/State preferred an application under Section 34(1) of the Act of 1996 along with an application under Section 5 of the Limitation Act stating inter-alia that on account of administrative reasons appeal could not be preferred right in time. Learned District Judge, Raipur by its impugned order rejected the application holding that he has only jurisdiction to condone the delay of 30 days after the prescribed period of 90 days and the limitation stood expired on 19th October, 2015, against which, this writ

petition has been filed.

2. Mr. Shashank Thakur, learned Government Advocate for the petitioners, would submit that the impugned order is unsustainable and bad in law.
3. On the other hand, Mr. Manannath Thakur, learned counsel for the respondent, would submit that the District Judge is not empowered to condone the delay of more than 30 days after the prescribed period of 90 days, as such, the order passed by the learned District Judge is absolutely justified, which does not call for any interference by this Court in this writ petition.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. In order to ascertain the correctness at the bar, it would be appropriate to notice under Section 34(3) of the Act, 1996, which reads as under:-

“34(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.”

6. A careful perusal of the aforesaid provision would show that the limitation prescribed is three months and the court is granted power to condone the delay for a period of another 30 days thereof i.e. total 90 days + 30 days; and thereafter further delay cannot be condoned by the Court.
7. The Supreme Court in the matter of **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others**¹ while dealing with Section 34(3) of the Act, 1996 has clearly held that the proviso to Section 34(3) of the Act, 1996 being a specific legislation excludes applicability of general provisions contained in Section 5 of the Limitation Act and, therefore, the Court has no discretion to extend limitation beyond 30 days prescribed in proviso to Section 34(3) even if sufficient cause is shown for it and observed as under:-

“20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local

¹ (2008) 7 SCC 169

law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.”

8. Justice R.V. Raveendran in his concurring judgment held as under:-

“53. Sub-Section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the Court discretion to extend the period of limitation by a further period not exceeding thirty days if the Court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “ but not thereafter” in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34 (3) of

the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the Court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-Section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34 (3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.”

9. The principal of law laid down by the Supreme Court in the matter of **Consolidated Engineering** (Supra) has been followed with approval by the Division Bench of this Court in the matter of **Kiran Ram Thakur Vs. State of Chhattisgarh & others** (W.A. No.349 of 2016 decided on 22.08.2016).
10. In light of the principle of law laid by their Lordships of the Supreme Court in the matter of **Consolidated Engineering** (Supra), if the facts of the case are examined, it would appear that award was passed on 19.6.2015 in presence of the parties, which was challenged before the District Judge, Raipur by filing an application under Section 34 (3) of the Act of 1996 on 27.11.2015. The limitation stood

expired on 19th October, 2015⁶. Learned District Judge has rightly held that he is not empowered to condone the delay of more than 30 days in addition to the prescribed period of 90 days and also held that application under Section 5 of the Limitation Act is not maintainable and dismissed the application under Section under Section 34(3) of the Act, 1996. I do not find any jurisdictional error in the impugned order warranting interference by this Court.

11. Accordingly, the writ petition being without substance is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-