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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINA. CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.1644 OF 2015
WITH
NOTICE OF MOTION NO.1901 OF 2015

1. Karuppiah Mahalingam,

2. Sumathi Rajendran,

3. Tamilselvan M.,

4. Bhuvanesh M.,

5. Sathya Jagan,

6. Jagan Ramaswamy,

All residing Old No.29, New
No.54, 3rd Main Road, R.A.
Puram, Chennai-600 028, T.N. ..Petitioners.

V/s.

M/s. Kotak Mahindra Bank Limited,
a banking Company within the meaning
of Section 5(c) of the Banking Regulation
Act, 1949(10 of 1949) and incorporated
under the Companies Act, 1956, having
its registered office at 27 BKC, C27,
G Block, Bandra-Kurla Complex, Bandra (E),
Mumbai-400 051 and branch office at Kotak
Infiniti, 4th Floor, Building No.21, Infinity Park,
Off Western Express Highway, General
A.K.Vaidya Marg, Malad (E),

Mumbai-400 097. ..Respondent.

Mr.Shillong Shah with Mr.A.K.Gopalan i/b. Haresh Mehta & Co. for the Petitioners.

Mr.Rohan Savant with Mr.Nikhil Rajani i/b. M/s. V.Deshpande & Co. for the Respondent.

CORAM : N.M.Jamdar, J.

DATED : 6 February, 2017

ORAL JUDGMENT

The arbitration petition challenges the Award of the sole Arbitrator dated 24 March, 2015 wherein the learned Arbitrator has directed the Petitioners to pay an amount of Rs.2,47,04,399/- with the interest at the rate of 13% p.a. from 18 December, 2014 till realization.

2. The Petitioners had availed a loan against the mortgaged property from the Respondent Financial Company. The Petitioners committed default in re-payment of loan. An arbitrator was appointed. The Respondent filed the claim statement. Notices were issued to the Petitioners, but they did not remain present. After giving adequate opportunity and after considering the material produced on record, the Arbitrator passed an Award on 24 March, 2015.

3. Arbitration petition was filed on 17 August, 2015. A Notice of Motion No.1901 of 2015 was taken out by the Petitioners on 28 October, 2015 seeking to condone of delay in filing the arbitration petition. The ground taken was the medical treatment of the wife of Applicant No.1. The Petitioners thereafter took out a chamber summons bearing Chamber Summons No.1575 of 2016 to amend the arbitration petition to place on record that on 27 July, 2015 the Petitioners received a copy of the corrigendum to the Award dated 13 July, 2015 and in view of this position, the arbitration petition was within the period of limitation. By order dated 15 November, 2016, the chamber summons was allowed and amendment was permitted to be carried out, keeping the rights and contentions of the parties open.

4. I have heard Mr.Shillong Shah, the learned counsel for the Petitioners and Mr.Rohan Savant, the learned counsel for Respondent.

5. Mr. Rohan Savant, the learned counsel for the Respondent took a preliminary objection that the petition is filed beyond the period of limitation.

6. Therefore, there are two aspects. In the petition it is stated that there is no delay in filing the Arbitration Petition and the same is filed within period of limitation. In the notice of motion, it

is contended that delay of period of thirty days in filing the arbitration petition be condoned in view of the illness of the wife of Applicant No.1 and that the Applicants are from out of Mumbai and took some time to contact the Advocates.

7. Mr.Shillong Shah, the learned counsel for the Petitioners submitted that in view of the corrigendum issued *suo motu* by the learned Arbitrator on 13 July, 2015, which was received by the Petitioners on 27 July, 2015, the Arbitration Petition filed on 17 August, 2015 is in time and in view of corrigendum, the period of limitation as per envisaged in section 34(3) read with section 33 of the Arbitration and Conciliation Act, 1996, stands extended. It was contended that whether the corrigendum was validly issued or not, is a matter of merits, which need not be considered for calculating the period of limitation. Mr.Shah submitted that the provisions of section 31 of the Act will come into play after the corrigendum is issued and will have to be read together with section 34 of the Act.

8. Mr.Savant, the learned counsel for the Respondent on the other hand, submitted that the Act of 1996 is a code in itself for the purpose of limitation. The period of limitation prescribed, as laid down by the Apex Court in various decisions, will have to be strictly construed to achieve the purpose of the Act. It was contended that, after Award is rendered, under section 32 of the Act, the mandate of the Arbitrator is terminated and is extended only for a period of

thirty days to enable the Arbitrator to carry out clerical corrections and thereafter no power is left with the Arbitrator. He submitted that if the corrigendum is issued beyond the period of thirty days, which is admittedly done in the present case, such alteration of the Award will have to be ignored as the Arbitrator has no power to issue such corrections. Mr.Savant relied upon the decisions of the Delhi High Court in the case of [1]*S.P.S. Rana V/s. MTNL and Ors.*, [2]*S.A. Builders Ltd. V/s. Municipal Corporation of Delhi*, [3]*Ircon International Ltd. V/s. Budhraja Mining and Constructions Ltd.* He submitted that as far as the contention raised in the notice of motion that the delay of thirty days be condoned will not arise in the present case as the Registry has calculated that the petition is filed 2 days after the extended period available of thirty days under section 34 of the Act. Even the period of thirty days is calculated on the premise that on the last day Court was not working being a Sunday. It was submitted that considering the law laid down by the Apex Court in [4]*Assam Urban Water Supply and Sewerage Board V/s. Subhash Projects and Marketing Limited* and the learned Single Judge of this Court in [5]*Tirumala Roadways, Navi Mumbai V/s. Indian Oil Corporation Ltd., Mumbai*, the extended period of thirty days is only an indulgence and this period is not automatically extended on the ground that the Court was not functioning on the last day.

1 **MANU/DE/356/2009**
2 **MANU/DE/0309/2008**
3 **(2007) ILR 7 Delhi 53**
4 **2012 (2) Supreme Court Cases, 624**
5 **2016 (5) Mh. L.J. 679**

9. It is settled law that the interpretation of a provision of an enactment will have to be made keeping in mind the legislative intent. In the decision of [6]*Union of India V/s. Popular Construction Co.,* the Apex Court has dealt with the provisions concerning limitation under the Arbitration Act and has held that the Act is a special law which has provided period of limitation different from the one prescribed under the Limitation Act. Section 34 (3) of the Act, wherein the period of limitation is provided, uses the phrase "*but not thereafter*" to connote the mandate of the legislature to give finality to the Award. Keeping this object of the legislature in mind, the scheme of the Act will have to be seen.

10. Section 31 of the Act deals with the form and contents of the abitral Award. Section 31 states that after the arbitral Award is made, a signed copy will be delivered to the parties. Section 32 of the Act deals with termination of proceedings and lays down that the abitral proceedings shall be terminated by the final arbitral Award or by an order of the arbitral Tribunal under sub-section (2). Section 33 of the Act deals with the correction and interpretation of the Award. It permits parties to apply to correct any computation, clerical or typographical errors. For such exercise, the time period has been stipulated under section 33(3). The Arbitrator is empowered, on his own initiative, to correct the clerical, typographical or computational error, within a period of thirty days from the date of the Award. In the present case, it is an admitted position that the

6 **(2001) 8 SCC 470**

arbitral Tribunal *suo motu* carried out the correction. Then, section 33(3) of the Act is applicable. The language of section 33(3) is clear and admits no other interpretation. The correction will be carried out by the Arbitrator within the period of thirty days. Therefore, the mandate of the Arbitrator, which terminates upon the contingencies specified in section 32 of the Act, continues for a limited period of thirty days, only for the purpose of carrying out clerical, typographical or computational error. The decisions relied upon by Mr.Savant of the learned Single Judges of Delhi High Court and of the Division Bench of the Delhi High Court supports the view that after the period of thirty days, as contemplated under section 33(3) of the Act, the arbitral tribunal has no powers to correct any error, and the arbitral tribunal becomes *functus officio*.

11. It is the contention of the Mr.Shah that this aspect is not relevant for the purpose of calculating the limitation, but is a matter to be seen on merits. This submission is not correct. Section 33(7) states that section 33 of the Act will apply to correction of the arbiral award meaning thereby, corrected award will have to be delivered. Conjoining sections 31 and 33(7) of the Act would show that an award corrected as per the provisions of section 33 will substitute the original award and the period of limitation would be computed from such substituted award. However, to extend the period of limitation, there must be a substitution in the eyes of law. If after the mandate of the Arbitrator is terminated, and after the period of thirty days from

the date of arbitral award as contemplated under section 33(3) of the Act, any correction carried out will have no force of law being carried out by an authority which has no power. There will be thus no substitution in law, neither any corrected award comes into being. Such correction will have to be ignored, and will not result in any consequence. Therefore, in such circumstances, neither the original Award stands corrected nor a fresh substituted award comes into being. Therefore, it cannot be said that for the purpose of limitation, the corrigendum will have to be taken into consideration, but discarded for the purpose of merits. As stated earlier, any correction carried out by the arbitral tribunal beyond the period specified in section 33(3) will not lead to any consequence and the parties will be governed by the original award and the limitation will have to be computed from the date of the original award.

12. In the present case, the Arbitrator has *suo motu* carried out this exercise. It could not have been in contemplation of the Petitioners that such exercise will be carried out by the Arbitrator, as none of the parties had applied. Therefore, there was nothing that stopped the Petitioners from filing a petition within the period of limitation in respect of the original Award. What would be the consequences when an award is corrected by the arbitrator within the period of thirty days and received by the party subsequently, is not something that arises for consideration in the present case and, therefore, such eventuality need not be the commented upon. In the

present case, the Arbitrator has admittedly carried out the correction to the Award after the period of thirty days from the passing of the award. Therefore, the starting period of limitation for the purpose of the present petition will have be 16 April, 2015 when the Award was received by the Petitioner and not 27 July, 2015 when the corrigendum dated 13 July, 2015 was received.

13. If the starting point of limitation period is taken as 17 April, 2015, then, the question arises whether the petition filed on 17 August, 2015 would be within period of limitation. Though this aspect has not been argued by the learned counsel for the Petitioners and the only contention that is advanced is that the starting period of limitation will have to be from the date of receipt of the corrigendum, for the sake of completion, I will deal with this position also. Also since a notice of motion has been filed wherein delay of thirty days in filing the petition is sought to be condoned. It was contended by Mr.Savant that after the period of three months and thirty days, the limitation has expired. Mr.Savant submitted that the period of limitation under the Act is three months and it expired on 17 July, 2015. He submitted that thereafter, thirty days expired on 16 August, 2015 and the petition was filed on 17 August, 2015.

14. The period of three months and thirty days will have to be given their assigned meaning. The limitation of three months expired on 17 July, 2015 and the next thirty days expired on 16

August, 2015. It was pointed out that 16 August, 2015 was a Sunday. Even if that is the position, in view of the law laid down by the Apex Court in the case of *Assam Urban Water Supply and Sewerage Board* and of the learned Single Judge in *Tirumala Roadways,* there cannot be an extension of this period of thirty days on the ground that the Court was closed, as the period of thirty days is only an indulgence and not prescribed period of limitation, which remains as three months.

15. Lastly, if the affidavit in support of the notice of motion is perused, it is bereft of any particulars whatsoever. Only casually, it is mentioned that the wife of Applicant No.1 was unwell. It is also stated that the Petitioners are from out of Mumbai. There are six Petitioners and they could have pursued the petition in time.

16. Considering the subject matter of the petition, i.e. Home loan, attempts were made to amicably resolve the dispute, but the attempts were not successful. It appears that the Petitioners are simply buying time.

17. In the circumstances, the arbitration petition will have to be rejected as barred by period of limitation. Notice of Motion will also have to be dismissed. The arbitration petition is rejected and the notice of motion is also disposed off accordingly.

(N.M.Jamdar, J.)