

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.7964 of 2016(O&M)
Date of decision: 14.02.2017

State of Punjab and others

... Appellants

Versus

M/s Harbhagwan Harbhajan Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. KK Gupta, Additional Advocate General, Punjab,
for the appellants.
Mr. VK Sachdeva, Advocate for the caveator-respondent.

ARUN PALLI, J. (Oral)

The State is in appeal against the order dated 05.10.2016, rendered by the Additional District Judge, Patiala, vide which its application, under Section 5 of the Limitation Act, to condone the delay in filing the objections, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), has since been dismissed.

1. The facts that are required to be noticed are limited.
2. Respondent No.1 i.e. M/s Harbhagwan Harbhajan Lal, was assigned the work for construction of Lohand Syphon with intake regulator at RD 0.149 Km of SYL Canal Project. Parties to the lis had entered into a work agreement on 11.03.1985. For, during the execution of the work a dispute arose between the parties, the matter was referred to the Arbitrator. And, vide award dated 28.02.2015, the claim of the respondent was partly accepted. Being aggrieved by the arbitral award, the appellants-State filed

objections under Section 34 of the Act on 09.09.2015, before the District Judge, Roop Nagar. Who in turn, entrusted the matter to the Additional District Judge. However, the objection petition was returned in original to the State, for the Court was of the view that since the award was rendered at Patiala, the Courts at Patiala alone would have the jurisdiction to decide the objections. Resultantly, the State filed fresh objections on 04.07.2016, before the District Judge, Patiala. For, concededly the objections filed by the State were barred by limitation, an application under Section 5 of the Limitation Act, to condone the delay of 250 days, was also moved therewith. On a consideration of the matter in issue, the Additional District Judge, Patiala, reached a conclusion that in terms of Section 34(3) of the Act, the objections to the arbitral award could be filed within three months from the date of the receipt of the award. And, even if, no such objections were filed within the specified time, the Court, in terms of the proviso to Section 34(3), could still entertain the application/objections, if filed within the next 30 days, provided it was satisfied that the objector was prevented by a sufficient cause to move the Court within limitation. But the State had filed objections much after even the extended period envisaged under the proviso. So much so, the Additional District Judge, Roop Nagar had returned the objection petition on 05.01.2016, whereas the application/objections under Section 34 were presented before the District Judge, Patiala on 04.07.2016. Thus, it could not be said either that objections were filed within a reasonable time after they were returned by the Additional District Judge, Roop Nagar. Further, no benefit of the provisions of Section 14 of the Limitation Act could be granted, for the objections filed by the State even at Roop Nagar were barred by time. As a result, the application seeking

condonation of delay in filing the objections and consequently the objection petition were dismissed. That is how, as indicated above, the State is in appeal before this Court.

3. Mr. Gupta, learned State counsel does not dispute that the objections filed by the State were grossly barred by time. However, he submits that the period of limitation envisaged under Section 34(3) of the Act to question the arbitral award was hardly of any consequence in the present case, for the Civil Judge (Sr. Divn.), Roop Nagar lacked jurisdiction to even appoint an Arbitrator. Therefore, he submits, that the arbitration proceedings as also the arbitral award, dated 28.02.2015, were a nullity. Further, he submits that any order, judgment or a decree that is a nullity, never acquires finality and, thus, its invalidity could be established at any stage, and even in the execution proceedings. In support of his submissions, he has placed reliance upon the decisions rendered by the Supreme Court as also this Court in State of Haryana and another v. Kartar Singh (D) through Lrs., 2013(11) SCC 375; Mantoo Sarkar v. Oriental Insurance Co. Ltd. and others, 2009(2) SCC 244; State of Haryana v. District Judge, Chandigarh and others, 2005(4) RCR (Civil) 664; Food Corporation of India v. Jagat Ram and another, 2016 SCC Online P&H 7476 [FAO-4261-2015]; and the Patna High Court in The Executive Engineer, Don Canal Division, Ramnagar, West Champaran and others v. Dulal Poddar, 2001(3) PLJR 661.

4. As opposed to this, learned counsel for the caveator-respondent contends that the provisions of Section 34(3) of the Act are mandatory in nature and clearly stipulates that objections to the arbitral award could be filed within three months from the receipt of the award. He submits that

although in terms of the proviso to sub-section (3) of Section 34 of the Act, the period of limitation to file the objections could be extended by a further period of thirty days, but that too would not enure to the advantage of the State, for the appellants had received the arbitral award on 28.02.2015, whereas the objections before the District Judge, Roop Nagar were filed on 09.09.2015. And, thus, were barred by 102 days. Further, he submits that the objection petition was returned by the Additional District Judge, Roop Nagar on 05.01.2016, to be presented before the Court of competent jurisdiction at Patiala. But the objection petition was presented before the District Judge, Patiala on 04.07.2016, along with an application for condonation of delay. He asserts, for the objections filed by the appellants were concededly barred by time, therefore, the delay in filing the same could never be condoned. Further, even the provisions of Section 5 of the Limitation Act would not apply to the proceedings under Section 34(3) of the Act. He places reliance upon a decision of the Supreme Court in **Union of India v. M/s Popular Construction Co., 2001(8) SCC 470**. And, in response to the argument of the learned State counsel; for the Civil Judge (Sr. Divn.) Roop Nagar lacked jurisdiction to appoint an Arbitrator, the arbitral award was a nullity, he submits, that no such objection was ever raised before the Arbitrator. And even otherwise, the grievance, if any, in this regard is misconceived, for the objections were dismissed being barred by time. Reliance is placed upon a decision of this Court in **Senior Executive Engineer, MHC (O&M), Division, PSEB, Talwara, District Hoshiarpur v. M/s Minhas Builders, 2011(1) PLR 592**.

5. I have heard learned counsel for the parties and perused the record.

6. For, the objections filed by the State were dismissed, in terms of the provisions of Section 34(3) of the Act, a reference thereto is inevitable:

34. Application for setting aside arbitral award:

... (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.”

Ex facie, the provisions of Section 34(3) of the Act are clear, concise and incapable of any misconstruction. The provision requires that objections to the arbitral award could be filed within three months of the receipt of the award by the objector. The proviso to the said provision postulates that, even if, the objections are not preferred within the specified time, still those could be entertained, provided they were filed within the next 30 days, and the Court was satisfied that the objector was prevented by any sufficient cause to institute them within the stipulated time.

7. **What is the position in the matter in hand?**

Concededly, the arbitral award was rendered on 28.02.2015. It is not disputed either that the award was received by the appellants on 28.02.2015 itself. However, the State filed objections, before the Additional District Judge, Roop Nagar, on 09.09.2015. Ex facie, the objections filed by the State were barred by 102 days i.e. $192-90=102$. Further, even in terms of the proviso to Section 34(3), the objections filed by the State could not be entertained, for these were preferred way after the period of 30 days envisaged under the proviso.

8. Further, as indicated earlier, the objections at Roop Nagar were filed on 09.09.2015 and the Additional District Judge had returned the objection petition in original, to be presented before the Court of competent jurisdiction at Patiala, on 05.01.2016. Concededly, the State filed fresh objections before the District Judge, Patiala on 04.07.2016, along with an application for condonation of delay. Undoubtedly, the provisions of Section 14 of the Limitation Act, applies to the proceedings under Section 34 of the Act, and the objector can seek exclusion of time or the period the matter was being pursued bonafidely before a Court that lacked jurisdiction in the matter. [**M/s Shakti Tubes Ltd. Tr. Director v. State of Bihar & Ors. 2009(1) R.C.R. (Civil) 512; and M/s. Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, 2008(7) SCC 169**]. But even that would not advance the case of the State a bit, for the objections filed by the State on 09.09.2015, at Roop Nagar, itself were barred by 102 days. So, even if, the time period w.e.f. 09.09.2015 to 05.01.2016, is excluded that would hardly be of any consequence.

9. The matter in issue could be examined from yet another perspective; the Additional District Judge, Roop Nagar, had returned the

objection petition under Section 34 on 05.01.2016. The objections before the District Judge, Patiala were filed on 04.07.2016 i.e. after a period of six months. Thus, even if, it is assumed for a moment's time that limitation period, to file objections under Section 34(3) of the Act, would commence from the date the objections filed at Roop Nagar were returned i.e. 05.01.2016, still the objections filed by the State were grossly barred by time. Which is why, the State also moved an application for condonation of delay.

10. In the wake of the above, a short but a significant question that comes to fore is; **Whether the provisions of Section 5 of the Limitation Act, applies to the proceedings envisaged under Section 34 of the Act?** The answer is 'No', for the proposition of law is not *res integra*.

The Supreme Court in M/s Popular Construction Company's case (supra), on an analysis and construction of provisions of Section 34 of the Act, as also the provisions of Section 29(2) of the Limitation Act, concluded:

“12. As for 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.

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16. ...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 (he 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."

11. The argument advanced by the State counsel; for the Civil Judge (Sr. Divn.) lacked jurisdiction to appoint an Arbitrator, the arbitral

award was a nullity, and therefore the State could establish its invalidity at any stage, also lacks conviction and cannot be countenanced.

A Single Bench of this Court in Senior Executive Engineer, MHC (O&M), Division, PSEB, Talwara, District Hoshiarpura v. M/s Minhas Builders, 2010(4) CivCC 374, considered precisely the similar issue. In fact, the question before the Court was, “**Whether learned Court below or even this Court has the jurisdiction to extend the period of limitation beyond the period of 90 days + 30 days as provided under Section 34(3) of the Act even in the case where the award is a nullity?** And, in reference to the decision of the Supreme Court in M/s Popular Construction Co.’s case (supra), the Court reached a conclusion:

“4. Learned counsel for the appellant could not refer to any precedent in this regard that even in a case where it is presumed that award passed by the Arbitrator is a nullity, the learned Civil Court or this Court has the jurisdiction to extend the period of limitation in the face of Section 34(3) of the Act.

5. On the contrary, learned counsel for the respondent has relied upon two judgments, namely, “*Union of India Vs. M/s Popular Construction Co.*” 2002(1) RCR (Civil) 124 and “*M/s Daler Singh Vs. District Food & Supplies Controller, Kurukshetra*” 2010(1) RCR (Civil) 358 to contend that the period of limitation cannot be extended even by invoking Section 5 of the Limitation Act, 1963.

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8. However, no such case as envisaged under Section 33 of the Act, is made out. The Court below has even unanimously computed the period of 30 days + 90 days but still the appeal was found to be beyond the period of limitation as it was filed after a period of 4 months and 9 days. There is no plausible explanation given before the Court below. However, even if there is some explanation, in my view, that is of no use as the provision of Section 34(3) is very stringent in its nature and leaves no room for the Courts to extend the time even if the appellant has a strong case on merit. Needless to say that law of limitation bars the remedy but not the 'right'. But once the remedy is not available, the Court has no jurisdiction to adjudicate upon the rights of the parties. Moreover, in the present case the appellant has come even to this Court under Section 37 of the Act for filing the appeal against the order of the Court below after a considerable delay of 385 days which, in my view, is again uncondonable."

Learned State counsel could not refer to any decision or a precedent, vide which it was observed or held that in case an arbitral award is alleged to be a nullity, the limitation envisaged under Section 34(3) and a proviso thereto pales into insignificance or the delay in filing the objections has to be condoned.

12. Likewise, in the wake of the factual matrix of this case, the decisions that have been relied upon by the learned State counsel have no application or bearing on the matter in this case. In the case of **District Judge, Chandigarh and others** (supra), the Division Bench of this Court examined the validity of the order dated 30.04.2005, rendered by the District Judge, Chandigarh, vide which he appointed a retired District and Sessions Judge as a sole Arbitrator. Whereas, when the application under Section 11(6) of the Act was moved, the scheme published on 19.12.1996 was in operation and in terms thereof, the Civil Judge (Sr. Divn.), Chandigarh was competent to deal with any such application as a delegatee of the Chief Justice. And, at the time when the application was disposed of by the District Judge, the scheme published on 19.09.2003 was in vogue, which entitled the District Judge to entertain such applications, provided the value of the subject matter did not exceed ₹ 25,00,000/-. Whereas, subject matter of the dispute involved was ₹ 29,22,500/-. Thus, in either situation, the District Judge lacked jurisdiction. It was in this context, the Division Bench has made the following observation:

“11. There is no gain saying that the competence of a Court to try a case goes to the very root of its jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction, which cannot be cured by consent of parties or waiver. (See *Seth Hiralal Patni v. Kali Nath, 1962(2) SCR 747* and *Sushil Kumar Mehta v. Gobind Ram Bohra, 1990(1) SCC 193*). It is equally well-settled that a Court, which has no jurisdiction in law, cannot be conferred with the

jurisdiction. (See *Isabella Johnson v. M.S. Susai*, 1991(1) SCC 494).

12. In view of the above, the District Judge did not have jurisdiction to try the petition. Under these circumstances, we are constrained to hold that the order passed by the District Judge, appointing an Arbitrator, being coram non judice, would, as held in *East India Corporation Ltd. v. Shree Meenakshi Mills Ltd.*, 1991(3) SCC 230, be a nullity and therefore, cannot be sustained.”

In the case of Jagat Ram and another (supra), vide order dated 16.05.2009, the Civil Judge appointed an Arbitrator, though in terms of the notification dated 17.09.2003, the application under Section 11(6) involving the dispute less than ₹ 25,00,000/- could only lie to the District Judge. Therefore, the grievance of the objector i.e. Food Corporation of India was that even though a specific objection as regards the very jurisdiction was raised before the Arbitrator, but it was never examined. Therefore, following the decision of the Division Bench in the case of District Judge, Chandigarh and others (supra), the arbitral award as also the judgment vide which the objections under Section 34 were dismissed, were set aside.

In the case of Kartar Singh (D) through LRs (supra), the Supreme Court did observe “It goes without saying that a plea of nullity of a decree can always be set up before the executing court. Any judgment and order which is a nullity never acquires finality and is thus open to challenge

in the executing proceedings.” However, the observations referred to above were made by the Court in context of an issue; that award/decision rendered under the Land Acquisition Act, that has become final, cannot be amended or altered to seek the benefit of the subsequent amendments in the Land Acquisition Act, vide applications under Section 151 and Section 152 of the Code of Civil Procedure.

In the case of Mantoo Sarkar (supra), a claim petition under the Motor Vehicles Act was submitted before the Motor Accident Claims Tribunal, Nainital. One of the respondents therein had raised an issue as regards lack of territorial jurisdiction. The Tribunal held that it had the territorial jurisdiction to determine the claim. Whereas, in appeal the said finding was reversed by the High Court. On a consideration of the matter, the Supreme Court observed that the Tribunal was a Court subordinate to the High Court and an appeal against the Tribunal lies before the High Court. Therefore, while exercising its appellate power, the High Court would follow the provisions contained in the Civil Procedure Code or akin thereto. In reference to the provisions of Section 21(1) of the Civil Procedure Code, it observed that the appellate Court ought to have pose unto itself the right question, viz., whether the respondent has been able to show sufferance or any prejudice. And if neither any prejudice was suffered nor failure of justice had occurred, the High Court should not have entertained the appeal on that ground alone. It was in this context, the Court had made the following observations:

“18. We, however, while taking that factor into consideration must place on record that we are not oblivious of the fact that a decision rendered without

jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. (See *Chief Engineer, Hydel Project v. Ravinder Nath , [(2008) 2 SCC 350]* wherein inter alia the decision of this Court in *Kiran Singh v. Chaman Paswan, [AIR 1954 SC 340]* was followed.”

In the case of **Dulal Poddar** (supra), the State had assailed the order rendered by the Court appointing an Arbitrator vide a civil revision before the High Court. In the absence of any stay, the Arbitrator pronounced an ex parte award. Although the revision petition was said to have become infructuous, still the High Court granted liberty to the State to raise the issue as regards jurisdiction of the Arbitrator while filing the objections to the arbitral award. And since the appointment of the Arbitrator was held to be in violation of the provisions of Sections 5 and 8 of the Arbitration Act, 1940, the entire proceedings taken before the Arbitrator was held to be bad in law.

13. Needless to assert that in all the decisions referred to above, neither the provisions of Section 34(3) of the Act were in issue nor the question whether the delay in filing the objections under Section 34 could at all be condoned, even if, the award rendered by the Arbitrator purport to be a nullity. Just to set the record straight, I may point out that no such objection was ever raised by the State, throughout the proceedings before the Arbitrator, which were duly contested.

14. However, there is yet another question that continues to beseech an answer; Whether the delay that had occurred in filing the objections under Section 34(3) was by design or default? Ex facie, the insensitivity with which the matter was pursued on behalf of the State is writ large on the face

of the record. Resultantly, the State's interest was a complete casualty. Thus, as even suggested by the learned State counsel, this Court is constrained to direct the competent authority to inquire into the matter and fix the culpability of the erring officials. The inquiry in this regard shall be completed within a period of six months from the date of receipt of the certified copy of this order. And the copy of the report shall be placed on record of this case by the appellants.

In conspectus of the above, no interference is warranted in the order rendered by the learned Additional District Judge, Patiala. The appeal being devoid of merit is accordingly dismissed.

February 14, 2017
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
YES