

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Appeal No. 10 of 2018**

M/s Master Engineering Concern, (Contractor & Engineers) Through its Proprietor : Kumud Ranjan Banerjee, aged 63 years, S/o Late Ketokee Ranjan Banerjee, Opposite LIC building, G.T. Road, (West) Asansol-713304 (WB), Mo. No. -09732009517, 09434009517

---- Appellant**Versus**

Union of India, Respresented by Sr. DEE (TRD), South East Central Railway, Raipur, Police Station Golbazar, Tahsil, Civil & Revenue District Raipur (C.G.)

Mo. No. : Not known

---- Respondent

For Appellant : Shri R.K. Agrawal, Advocate.

For Respondent : None appears on behalf of the respondent, though served.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/05/2018**

(1) An arbitral award was delivered on 4.11.2015 by the arbitrator duly appointed by the parties, which was received by the appellant on 12.11.2015. He filed an application for setting aside the award, under Section 34(3) of the Arbitration & Conciliation Act, 1996 (henceforth "Act, 1996") along with application for condonation of delay in filing the said application on 18.04.2016 before the District Judge, Bilaspur.

(2) The District Judge, Bilaspur, by its impugned order dated 05.01.2018, rejected the application under Section 34(3) of the Act, 1996 read with Section 5 of the Limitation Act, 1963 holding that delay in filing the application under Section 34 (3) of the Act, 1996 cannot be condoned as it is beyond the period prescribed for

condonation of delay in the provisions contained in Section 34(3) of the Act, 1996.

(3) Feeling aggrieved & dissatisfied with the impugned order, instant arbitration appeal under Section 37(1)(f) of the Act, 1996 has been filed questioning the same.

(4) Learned counsel appearing for the appellant would submit that impugned order is bad and unsustainable in law, in fact original award was not received by the appellant.

(5) None present for the respondent, though served.

(6) I have heard learned counsel appearing for the appellant and perused the order impugned with utmost circumspection.

(7) In order to ascertain the correctness of the plea raised at the bar, it would be appropriate to notice 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.”

(8) A careful perusal of the aforesaid provision would show that the limitation prescribed is three months and the court is empowered to condone the delay for a period of another 30 days thereof i.e. total 3 months + 30 days; and thereafter further delay cannot be condoned by the Court.

(9) 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 an special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressed excluded by such special or local law. Where 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

1 (2008) 7 SCC 169

of the Limitation Act stands excluded because of the provision of Section 29(2) of the Limitation Act.”

(10) 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 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.”

(11) The principle 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** (Writ Appeal No. 349 of 2016 decided on 22.08.2016).

(12) In light of the principle of law laid down by their Lordships of the Supreme Court in the matter of **Consolidated Engineering** (supra), if the facts of the present case are examined, it would appear that the award was passed on 4.11.2015, which was delivered to the appellant on 12.11.2015 and the application under Section 34(3) of the Act, 1996 was filed on 18.04.2016, as such, it was not filed within the period of limitation prescribed under the provisions of Section 34(3) of the Act, 1996. Thus, I am of the opinion that appellant's application was clearly hit by Section 34(3) of the Act, 1996 and the learned District Judge has rightly held that the Court is not empowered to condone the delay of more than 30 days beyond the period of three months.

(13) In view of the aforesaid discussion, I do not find any illegality in the order of learned District Judge rejecting the application under Section 34(3) of the Act, 1996 filed by appellant.

(14) Accordingly, the arbitration appeal being without substance is liable to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

HHATTISGARH, BILASPUR

Arbitration Appeal

No.

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of 201

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M/s. Maa Jay Ambey Rice Mill Neora, District Raipur
(C.G.),

Through the partner Praveen Agrawal, Age 52 years,
S/o Shri

Shyam Sunder Agrawal, R/o Tilda-Neora, P.S. Neora,
District

- Raipur (C.G.) Applicant

Appellant

Versus

1.

Madhya Pradesh Civil Supply Corporation Ltd.

Through

Managing Director, Bhopal (M.P.)

2.

Chhattisgarh State Civil Supplies Corporation
Limited,

Through Managing Director - Raipur, Katchahary
Chowk,

Raipur, District - Raipur (C.G.)

3.

Shri M.K. Roaut (Arbitrator), Secretary Chhattisgrh
State

Food & Civil Supplies and Consumer Protection
Department

Dau Kalyan Singh Bhawan, Raipur (At present -
Mahanadi

Bhawan, Mantralaya Naya Raipur) District- Raipur
(C.G.)

..... Non-applicants

---- Respondent

s

Arbitration Appeal

No.

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of 201

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M/s. Gurudev Rice Mill, Gariyaband District- Raipur (C.G.),

Through the Proprietor Lalit Agrawal, Age 45 years, S/o Shri

Laxmi Narayan Agrawal, R/o Subhash Ward, Neora, No.15,

P.S. Neora, District – Raipur (C.G.)

Appellant

Versus

1.

Madhya Pradesh Civil Supply Corporation Ltd.

Through

Managing Director, Bhopal (M.P.)

2.

Chhattisgarh State Civil Supplies Corporation Limited,

Through Managing Director – Raipur, Katchahary Chowk,

Raipur, District – Raipur (C.G.)

3.

Shri M.K. Roaut (Arbitrator), Secretary Chhattisgrh State

Food & Civil Supplies and Consumer Protection Department

Dau Kalyan Singh Bhawan, Raipur (At present – Mahanadi

Bhawan, Mantralaya Naya Raipur) District- Raipur (C.G.)

..... Non-applicants

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---- Respondent

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For

Appellant

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Mr.

J.N. Nande

, Advocate.

For Respondent

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V.R. Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

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Both the arbitration appeals

involve common facts and

common question of law and, as such,

they are being heard and

disposed of

by this common order.

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The short question involved for consideration in

these

arbitration appeal

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is whether learned District Judge while

exercising his jurisdiction under Section 34 (2) of the

Arbitration

and Conciliation Act, 1996 (henceforth "Act, 1996")

is empowered

to condone the delay of more than 30 days in filing

the application

under Section 34(2) of the Act, 1996.

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Essential facts requisite to answer the question involved herein are as under :-

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The arbitral tribunal passed an award on 31.03.2006 in favour of the appellants herein granting an amount of Rs. 41,88,91.31/- & 9,94,796.25/-, respectively.

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.2)

The appellants, being dissatisfied with the award s, filed application for review before the arbitral Tribunal on 28.04.2006.

These applications were allowed by order dated 31.01.2007; and thereafter appellants again preferred second review petition

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before the Appellate Tribunal; that have been rejected by order dated 19.03.2007.

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Thereafter, challenging the arbitral award dated 31.03.2006,

and order allowing their review
application

dated 31.01.2007 and

rejecting their second review
application

dated 19.03.2007,

application under Section 34(
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) of the Act, 1996 was filed before

the learned District Judge on 13.11.2007 by the
appellants herein.

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By the impugned order dated 08.04.2016 &
11.04.2016,

respectively, learned District Judge has rejected the
said

applications filed by the appellant holding that
the

said

application

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are

hit by Section 34(3) of the Act, 1996 as the Court

is not empowered to condone the delay of more than
30 days

after prescribed period of three months.

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Calling in question the legality, validity and
correctness of

the aforesaid award and the order rejecting review
application

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arbitration appeal have

been preferred by the appellants

questioning the same.

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Mr. J.N. Nande, counsel for the appellants in both the cases

would submit that order passed by the learned

District Judge is

bad and illegal and, as such, delay can be condoned while

hearing the application under Section 34(

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) of the Act, 1996 and,

therefore, the learned District Judge is absolutely unjustified in

rejecting the application under Section 34(

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) of the Act, 1996 as

barred by limitation.

(Sanjay K. Agrawal)

Judge

D/-