

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 131 of 2018

Smt. Jasmin Raj Singh, W/o. Late Nelson Kumar Soleman, Aged About 42 Years, R/o. Lal Bahadur Shastri Ward, Jal Vihar Colony, Bhatapara, District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Petitioner

Versus

1. Arbitration Tribunal Through Mrs. Ameeta Chheda Arbitrator, 207 Parasrampur Chambers Anand Road, Malad (W) Mumbai- 64, Maharashtra
2. Mahindra And Mahindra Financial Services Limited, Branch Office- Main Road Baloda Bazar, District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Respondents

For Petitioner : Mr. Siddharth Dubey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28.03.2018

Heard

1. The present petition is against the order dated 27.11.2017 whereby the application to set aside the award dated 10.03.2014 by the District Judge Baloda Bazar has been dismissed.
2. Learned counsel for the petitioner submits that an award was passed on 10.03.2014 at Mumbai against the petitioner for non-payment of loan and recovery thereof. Subsequently, two writ petition was preferred before this Court wherein liberty was granted to the petitioner to prefer the necessary application. Subsequent thereto, an application under Section 34 of the Arbitration & Conciliation Act was preferred alongwith an application under Section 5 of the Limitation Act. It is submitted that the reasons of delay which was enumerated in Section 5 of the Limitation Act should have been considered irrespective of the application of provisions of Section 5 of the Limitation Act. It is

further contended that no notice was given for the proceeding of arbitration and without notice the award was passed. Subsequently, when the application to set aside the award was filed before the Court below i.e. District Judge, Baloda Bazar, wherein petitioner is residing and the agreement was also executed, the Court should have considered and decide the same by condoning the delay.

3. Perused the petition. The order dated 27.11.2017 is under challenge. The Court below has dismissed the petition on the ground that an application to set aside the award under Section 34 is grossly delayed.
4. Sub-section 3 of Section 34 of the Arbitration & Conciliation Act, 1996 reads as under :

“34. Application for setting aside arbitral award. -

(1) ...XX...XX...XX....

(2) ...XX...XX...XX...

(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.”

5. The petition preferred before this Court also is as vague as it could be as it do not disclose as to when the petitioner actually came to know of the date when the award was passed or when such award was received, such date would be a crucial factor. Reading of the

application under Section 34 of the Arbitration & Conciliation Act, which was preferred before the Court below, the similar averments have been made; however, it is not clear as to when the award came into notice of the petitioner or had received the award. The order impugned records that the execution was preferred on 09.01.2015 wherein the petitioner appeared on 19.02.2015, in such case, it can be presumed that he had the notice of the award in the month of February, 2015 itself. The application moved under Section 5 of the Limitation Act before the District Court contains the date of 21.11.2015. Therefore, the application to set aside the award was not filed within three months after elapse of the date of knowledge of the award or with an extended period of 30 days as stated in the proviso. Therefore, the impugned order cannot be stated to be illegal or arbitrary.

6. In a result, the petition has no merit and accordingly it is dismissed.

Sd/-
(Goutam Bhaduri)
Judge