

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.110 of 2018

- 1.State of Tamil Nadu rep. by its
Secretary to the Government,
Highways Department,
Fort St. George, Chennai - 9.
- 2.The Chief Engineer,
National Highways,
Chepauk, Chennai - 5.
- 3.The Superintending Engineer,
National Highways,
Omalar Main Road, Salem. .. Petitioners

Vs.

- 1.Annanmar Construction
rep. by its Partner A.Thirugnanam
- 2.Justice E.Padmanabhan,
Sole Arbitrator. ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 10.10.2009 subsequently amended on 06.12.2009 and 10.06.2013.

For Petitioners : Mr.S.T.S.Moorthy,
Addl. Advocate General
for Mr.A.Devnarendharan,
Govt. Advocate

For Respondents : Mr.S.Udayakumar for R1

ORDER

Challenging the award passed by the learned Arbitrator on 10.10.2009 subsequently amended on 06.12.2009 and 10.06.2013, this original petition has been filed.

2.Before going into the merits of this original petition, a preliminary objection is raised by the learned counsel appearing for the first respondent. It is submitted that the award was received by the petitioners on 12.06.2013 but the petition was filed only on 05.11.2014. In support of the contention, learned counsel made reliance upon the following decisions:

*(i) Union of India Vs. Popular Construction Co.,
((2001) 8 SCC 470)*

*(ii) State of Madhya Pradesh and Another Vs.
Anshuman Shukla ((2014) 10 SCC 814)*

3.Learned Additional Advocate General appearing for the petitioners would submit that the delay has occasioned due to the administrative and procedural requirement having been complied with belatedly. The subsequent delay in numbering the petition was because of the objections raised by the Registry in construing the copy of the award as not original.

4.Admittedly, the award was passed on 10.06.2013. The statement made through the counter affidavit filed by the first respondent with copy of the award was received by both parties on 12.06.2013 is not denied or disputed. This petition was filed on 05.11.2014. Thereafter, typed set of papers were filed on 22.12.2014. The original petition was numbered in this year. This was done pursuant to the order passed by this Court to number the petition subject to maintainability. Therefore, there is no explanation on behalf of the petitioners for the delay that has occasioned from 12.06.2013 at least till the date of completion of the limitation period under the statute.

5.Section 34 (3) of the Arbitration and Conciliation Act speaks

about the period of limitation. Three months period is outer limit subject to the rider that the Court has to satisfy that the applicant was prevented by sufficient cause from making an application within the aforesaid period. Even after such satisfaction, the power of the Court is to condone the delay for a further period of 30 days but not thereafter. Therefore, in clear and specific terms, the Act defines the role of the Court in exercising its discretion. Needless to state that the discretion has to be exercised within the contours of the Act. Thus the limitation not being a General Act has got no application against the provisions of the said Act. This issue has been considered by the Apex Court in **Union of India Vs. Popular Construction Co., ((2001) 8 SCC 470)**, in which the following paragraphs would be apposite:

12.As far 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.

13.Apart from the language, 'express exclusion' may

follow from the scheme and object of the special or local law:

"Even in a case where the special law does not exclude the provisions of [Sections 4 to 24](#) of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation".

14 Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under [Section 34](#) to challenge an Award is absolute and unextendable by Court under [Section 5](#) of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process".⁶ This objective has found expression in [Section 5](#) of the Act which prescribes the extent of judicial intervention in no uncertain terms :

"5. Extent of judicial intervention. - Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part."

15. The 'Part' referred to in [Section 5](#) is Part I of the 1996 Act which deals with domestic arbitrations. [Section 34](#) is contained in Part I and is therefore subject to the sweep of the prohibition contained in [Section 5](#) of the 1996 Act.

16. Furthermore, [section 34\(1\)](#) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub [Section 2](#) and sub [Section 3](#). Sub [Section 2](#) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in [Section 34](#), sub section (3) would not be an application "in accordance with" that sub section. 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. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

17. The appellant then sought to rely on a decision of this Court in Civil Appeal No. 1953 of 2000 - Union of India v. M/s Hanuman Prasad & Brothers¹, (2000) AIR SCW 3934 (2) to which one of us (Ruma Pal, J.) was a party. It is contended that the decision is an authority for the proposition that Section 5 of the limitation Act applied to objections to an award under the 1996 Act. It is true that in the body of that judgment, there is a reference to the 1996 Act. But that is an apparent error as the reasoning clearly indicates that the provisions of section 30 of the Arbitration Act, 1940 and not section 34 of the 1996 Act were under consideration. In order to clarify the position, we have scrutinised the original record of Civil Appeal No. 1953 of 2000 decided on 6th March 2000. We have found that that was indeed a case which dealt with an Award passed and challenged under the Arbitration Act, 1940. No

question was raised with regard to the applicability of the Limitation Act to the 1940 Act. The only issue was whether the High Court should have refused to condone the delay of 2 months and 22 days in filing the objection to the Award. This Court found that sufficient cause had been shown to condone the delay and accordingly set aside the decision of the High Court. This decision is as such irrelevant.

18. In the circumstances and for the reasons earlier stated we answer the question posed at the outset in the negative. The appeal is accordingly dismissed without any order as to costs.

6. The aforesaid decision has been quoted with approval by the subsequent decision of the Apex Court in **State of Madhya Pradesh and Another Vs. Anshuman Shukla ((2014) 10 SCC 814)**.

सत्यमेव जयते

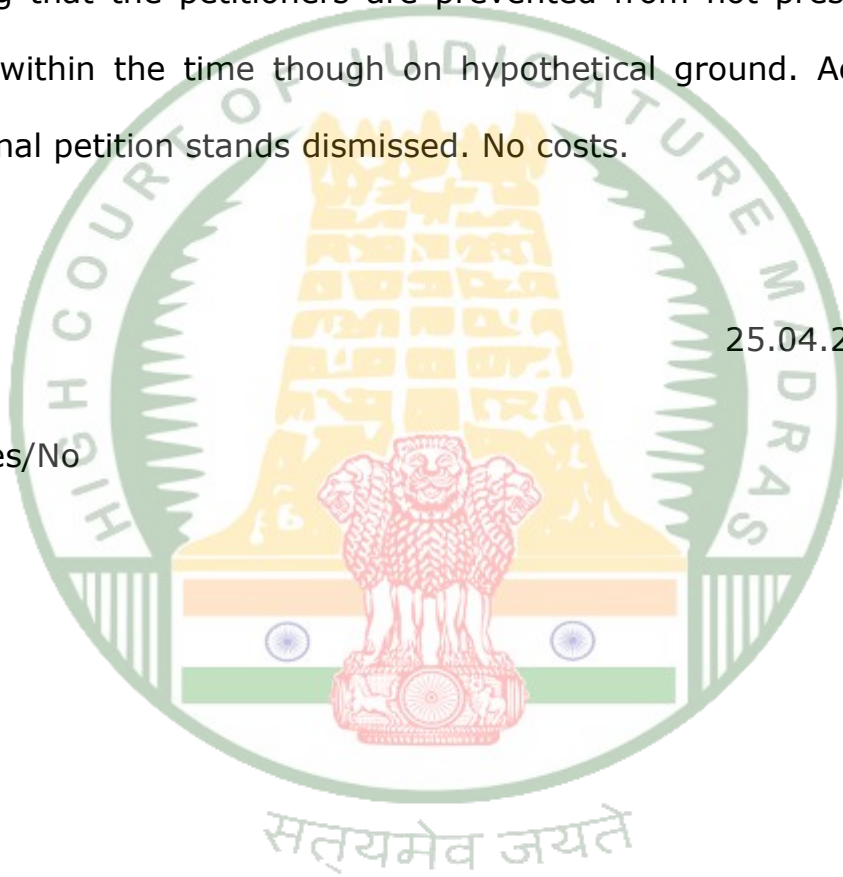
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7. In such view of the matter, this Court is constrained to dismiss the original petition as not maintainable having been filed beyond the maximum period that can be granted by this Court even after satisfying that the petitioners are prevented from not presenting the petition within the time though on hypothetical ground. Accordingly, the original petition stands dismissed. No costs.

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Index: Yes/No

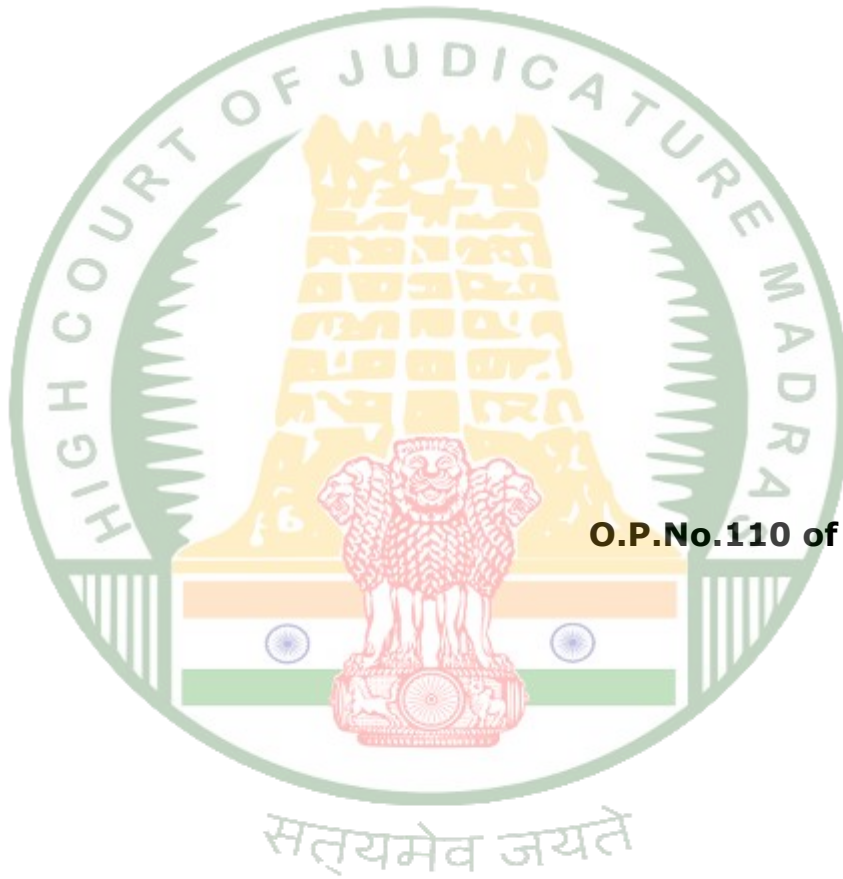
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M.M.SUNDRESH,J.

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