

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION NO.2192 OF 2018

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This revision petition is filed against the order passed by the learned Principal District Judge, Nalgonda in I.A.No.838 of 2014 in unregistered Arb.O.P.SR.No.2201 of 2014 dated 07.12.2017.

The petitioner filed an application, under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act" for brevity), on 22.08.2014 contending, in paragraph No.9 of the petition under the head "Limitation", that the award was served to the petitioner on 23.04.2014. In the affidavit filed in support of I.A.No.838 of 2014, whereby the petitioner requested the Court to receive the O.P. after condoning the delay of 30 days, the petitioner again stated that he had received a copy of the award on 23.04.2014.

The learned Principal District Judge, Nalgonda, in his order dated 07.12.2017, observed that a copy of the award was despatched on 15.02.2014; it must have been received by the Advocate on 21.02.2014; and computing 120 days from that day, the limitation prescribed under Section 34(3) of the Act would have expired on 21.06.2014.

Sri J.Suresh Babu, learned counsel for the petitioner, would place reliance on the judgment of the Supreme Court, in **Benarsi Krishna Committee v. Karmyogi Shelters Private Limited**¹, in support of his submission that furnishing a copy of the award to

¹ (2012) 9 SCC 496

the counsel would not suffice; limitation is to be reckoned only from the date on which a copy of the award was served on the party; and, since a copy of the award was not furnished to the petitioner, the application filed by him under Section 34 of the Act on 22.08.2014 cannot be said to be belated. On the other hand, the learned Standing Counsel for National Highways Authority of India (NHAI), would submit that, having admitted both in the petition and in the affidavit that a copy of the award was received by him on 23.04.2014, the petitioner cannot now be heard to contend that a copy of the order was never served on him; the petitioner had, conveniently, chosen 23.04.2014 as the date on which a copy of the award was served, only to overcome limitation; computing four months backwards from 22.08.2014 (when he actually filed the O.P.), the last date for filing the O.P. is 23.04.2014; and the Court below was justified in dismissing the application to condone the delay, and in refusing to entertain the O.P.

As the petitioner admitted having received a copy of the award, we asked Sri J.Suresh Babu, learned counsel for the petitioner, to show proof of its receipt on 23.04.2014. Learned counsel would, however, express inability to produce any such proof. Having admitted receipt of a copy of the award, the *onus* is on the petitioner to establish that he received the copy only on that day, and not on any day prior thereto; from whom he received such a copy and when; and the basis on which he has asserted that he received a copy of the award on 23.04.2014. In the absence of any evidence being placed on record by the petitioner, to show the mode and manner of service of a copy of the award on him on

23.04.2014, we find considerable force in the submission of the learned Standing Counsel for the NHAI that 23.04.2014 was taken only to overcome limitation. In the absence of any evidence to show that the petitioner had received a copy of the award only on 23.04.2014, and not on any day prior thereto, we see no reason to exercise jurisdiction under Article 227 of the Constitution of India to entertain this revision.

The Civil Revision Petition fails and is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

27th July 2018
RRB

