

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

+ Civil Revision Petition No.4295 of 2017

% Date: 09-04-2018

M/s Hyderabad Precision Mfg. Co. Pvt. Ltd.,
Hyderabad, Rep. by its Managing Director
... Revision Petitioner/
Respondent No.1/Claimant

Vs.

\$ 1. The Union of India,
Rep. by the Senior General Manager,
Ordnance Factory Khamaria, O.F.K. Estate,
Jabalpur, Madhya Pradesh

2. Retd. Justice Sri Reddappa Reddy
(R.2 not necessary)

... Respondents/
Petitioner/Arbitrator

! Counsel for Petitioner: Smt. N.Sasikala

Counsel for Respondent No.1: Mr. K.Lakshman,
Asst. Solicitor General

Counsel for Respondent No.2: ---

< Gist:

> Head Note:

? Cases referred:

1. Civil Appeal No.3313/2018, decided on 27-3-2018.

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Order: (per V.Ramasubramanian, J.)

Aggrieved by the order of the Principal District Court, Ranga Reddy, condoning the delay of 21 days in filing the main petition under Section 34 of the Arbitration and Conciliation Act, 1996, the award-holder has come up with the above civil revision petition.

2. Heard Smt. N.Sasikala, learned counsel for the petitioner. Mr. K.Lakshman, learned Assistant Solicitor General of India, takes notice for the 1st respondent-Union of India. The 2nd respondent was the sole Arbitrator and hence notice to him is dispensed with.

3. In relation to the sale and supply of Fuse Empty for 23 mm Schilka Ammunition, made by the petitioner to the Ordnance Factory of the Union of India, a dispute arose and the matter was referred to arbitration by a sole Arbitrator. The Joint Secretary to Government in the Department of Public Enterprises was nominated as the sole Arbitrator. However, the petitioner herein filed an application before this Court under Section 11. The said application was allowed and the 2nd respondent herein was appointed as the sole Arbitrator.

4. The Arbitrator passed an award dated 22-10-2014 directing the Union of India to pay a sum of Rs.1,40,77,390/-

towards the price of the goods sold and delivered, together with a sum of Rs.80,00,650/- towards interest up to the date of the award and a sum of Rs.3,00,000/- towards costs. Future interest was also awarded at the rate of 12% per annum from the date of the award.

5. Claiming that the signed copy of the award passed on 22-10-2014 was received by them on 30-10-2014, the Union of India filed an application in M.J.C.No.319/2014 on the file of the X Additional District Judge at Jabalpur, Madhya Pradesh, on 28-11-2014.

6. The petitioner herein objected to the jurisdiction of the Jabalpur Court and hence the Union of India withdrew the original petition with permission to file a fresh petition before the competent Court at Hyderabad. The permission to withdraw with liberty, was granted on 29-01-2016 and the certified copy of the said order was delivered on 10-02-2016.

7. On 30-4-2016, the Union of India filed a fresh petition in Arbitration O.P.(SR) No.8644/2016, on the file of the Principal District Court, Ranga Reddy District, along with an application in I.A.No.1490/2016 to condone the delay of 21 days in filing the O.P. This application was allowed by the Court below, forcing the petitioner to come up with the above revision.

8. The main contentions of the learned counsel for the petitioner are:

(i) that the actual delay in filing a petition under Section 34 was not 21 days, but beyond the condonable period of 30 days under the proviso to sub-section (3) of Section 34,

(ii) that at any rate, the District Court at Ranga Reddy does not have jurisdiction to entertain a petition under Section 34 and

(iii) that in any case, even the delay of 21 days was not properly explained.

9. We have carefully considered the aforesaid contentions.

10. There are no disputes with regard to the timeline of events, which is as follows:

(i) The award was passed on 22-10-2014.

(ii) The signed copy of the award was received on 30-10-2014.

(iii) An original petition under Section 34 was presented before the District Court, Jabalpur, on 28-11-2014, well within the period of limitation prescribed for filing an application under Section 34.

(iv) On 29-01-2016, the Union of India was permitted by the Court at Jabalpur to withdraw the original petition with liberty to present the petition in the competent Court at Hyderabad.

(v) On 30-4-2016, the Union of India filed the original petition before the District Court, Ranga Reddy District.

11. The limitation for filing a petition under Section 34 is 3 months and the Court has the power to condone the delay up to 30 days. Very recently, the Supreme Court reiterated in **Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel**¹, that the period of limitation prescribed under Section 34(3) would commence only from the date of delivery of the signed copy of the award, to the party making the application for setting it aside. Therefore, there cannot be a dispute about the fact that the limitation for filing a petition under Section 34 would commence only on 30-10-2014, the date on which the Union of India received a signed copy of the award dated 22-10-2014.

12. In any case, there is no dispute about the fact that the Union of India filed a petition under Section 34 before the District Court at Jabalpur on 28-11-2014, which was well within the period of limitation, both from the date of the award and from the date of delivery of the signed copy of the award. Therefore, the stop-clock stopped running on 28-11-2014.

13. However, on an objection raised by the petitioner herein with regard to territorial jurisdiction, which was also sustained by the District Court, Jabalpur, the Union of India sought permission to withdraw the petition with liberty to present it before the Court having jurisdiction. This application for withdrawal with liberty was allowed on

¹ Civil Appeal No.3313/2018, decided on 27-3-2018

29-01-2016. The certified copy of the said order was made available on 10-02-2016.

14. Therefore, the question that would fall for consideration is as to what happens to the period from 28-11-2014 to 10-02-2016. If this period from 28-11-2014 to 10-02-2016 is excluded, then the period of limitation may have to be calculated in the following manner:

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|--------|---|------------|
| (i) | Date of receipt of the signed copy of the award: | 30-10-2014 |
| (ii) | Date of filing of the petition before the Jabalpur Court: | 28-11-2014 |
| (iii) | Number of days from 30-10-2014 to 28-11-2014: | 29 days |
| (iv) | Date of receipt of the certified copy of the order of the Jabalpur Court: | 10-02-2016 |
| (v) | Date of filing of O.P. before the District Court, Ranga Reddy District: | 30-4-2016 |
| (vi) | Number of days from 10-02-2016 to 30-4-2016: | 80 days |
| (vii) | Therefore, the number of days taken to file the O.P. [Col.No.(iii)+Col.No.(vi) [80+29]: | 109 days |
| (viii) | The limitation for filing O.P.: | 90 days |
| (ix) | Therefore, delay in filing [109-90]: | 19 days |

15. The contention of the learned counsel for the petitioner is that when the mistake was on the part of the Union of India in filing a petition under Section 34 before a Court which did not have jurisdiction, the Union of India was not entitled to wait for the receipt of the certified copy of the order of the Jabalpur Court dated 29-01-2016. Therefore, according to the learned counsel for the petitioner, the period

from 29-01-2016 up to 10-02-2016 should not have been excluded. If this period of 12 days from 29-01-2016 to 10-02-2016 is included in the total number of days, then the Union of India will be guilty of presenting the original petition before the Ranga Reddy District Court only on the 121st day (109+12). A delay beyond 30 days cannot be condoned and hence the presentation of the petition after the 120th day, according to the learned counsel for the petitioner, made the petition liable to be rejected.

16. But we do not think so. Though an Arbitral Tribunal, is not bound, in the light of Section 19(1) of the Act, by the Code of Civil Procedure or the Indian Evidence Act, 1872, the provisions of the Limitation Act, 1963 apply to arbitrations as they apply to proceedings in Court. This is by virtue of Section 43(1) of the Act.

17. By virtue of Section 12(2) of the Limitation Act, 1963, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree or order appealed from, is to be excluded while computing the period of limitation. Similarly, under Section 12(3) of the Limitation Act, the time requisite for obtaining a copy of the judgment shall also be excluded, where a decree or order is appealed from or sought to be revised or reviewed. Therefore, on the analogy of sub-sections (2) and (3) of Section 12, the Union of India was

justified in seeking the exclusion of the period from 29-01-2016 to 10-02-2016.

18. Similarly, Section 14 of the Limitation Act, 1963 excludes the time during which a plaintiff or an applicant has been prosecuting with due diligence, another civil proceeding, whether in a Court of first instance or of appeal or revision, where such proceeding is prosecuted in good faith, in a Court, which from defect of jurisdiction is unable to entertain it.

19. As a matter of fact, the proper procedure that ought to have been followed by the Jabalpur Court was to return the application filed by the Union of India under Section 34 to enable them to represent it in the Court having jurisdiction. If this procedure had been adopted by the District Court, Jabalpur, the Court would have taken recourse to Order VII, Rule 10 CPC. In such an event, the Union of India would have been granted a specific period of time, say ten days or two weeks for presentation of the petition before the appropriate Court having jurisdiction.

20. It must be remembered that an application under Section 34 is to be accompanied by a signed copy of the award. The signed copy of the award was with the District Court, Jabalpur till 29-01-2016. Therefore, unless and until the certified copy of the order dated 29-01-2016 along with the original records had been returned to the Union of India, they could not have presented a fresh petition under Section 34 before the jurisdictional Court. It is the stand taken by the

Union of India that the original petition, the signed copy of the award and order dated 29-01-2016 were delivered to them only on 10-02-2016. Therefore, the contention that the Union of India ought to have filed the original petition under Section 34 in a Court at Hyderabad on 30-01-2016 itself, does not merit acceptance. The Union of India was right in seeking to exclude the period from 29-01-2016 up to 10-02-2016 while computing the period of limitation. Hence, the first contention of the petitioner is rejected.

21. The second contention of the petitioner is that it is only the Principal District Court in Hyderabad and not the District Court in Ranga Reddy District that had jurisdiction to entertain the petition under Section 34. This contention is primarily based upon the Affidavit filed by the Union of India before the Court in Jabalpur. In the Affidavit filed before the Court in Jabalpur seeking withdrawal of the petition under Section 34, the Union of India stated that they had no objection with regard to the contention that the Courts in Hyderabad alone have jurisdiction. Therefore, it is contended by the learned counsel for the petitioner that the District Court at Ranga Reddy District did not have jurisdiction to entertain the petition under Section 34.

22. But it is contended by Mr. K.Lakshman, learned Assistant Solicitor General, that the entire cause of action arose within the jurisdiction of the District Court, Ranga Reddy District and that the petitioner herein is also located in

Ranga Reddy District within the jurisdiction of the District Court at Ranga Reddy District.

23. But unfortunately, neither of the parties produced, either before the District Court at Ranga Reddy or before this Court, a copy of the Arbitration Agreement. From the material available on record, the only thing that could be gathered is that in terms of the Arbitration Agreement, the Union of India appointed a Joint Secretary to Government in the Department of Public Enterprises as the sole Arbitrator. But the petitioner herein moved an application before this Court under Section 11 and got the 2nd respondent appointed.

24. Though in view of Section 42, only the Court to which an application under Part-1 had been moved alone will have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement, the High Court of Judicature at Hyderabad does not have original jurisdiction to entertain an application under Section 34. Therefore, the parties are obliged to move the application under Section 34 only before the Principal Civil Court of original jurisdiction of the District having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit. If this principle that could be culled out from the definition of the word “Court” under Section 2(1)(e) is applied, the Union of India was right in moving the application before the District Court at Ranga Reddy. Section 42 will have no application, in

the sense that the Principal City Civil Court, Hyderabad, cannot be taken to be the Court where the first application was filed. The first application was filed under Section 11(6) before the High Court. Hence, the second contention of the learned counsel for the petitioner also does not merit acceptance.

25. The third contention of the learned counsel for the petitioner is that even the delay of 21 days is not properly explained.

26. But we do not think so. The present revision is filed under Article 227 of the Constitution of India. The jurisdiction of this Court under Article 227 is more restricted than its revisional jurisdiction under Section 115 CPC. Therefore, we do not wish to interfere with the exercise of jurisdiction by the Court below in condoning the delay of just 21 days. Hence, the civil revision petition is liable to be dismissed, accordingly, it is dismissed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.AMARNATH GOUD, J.

09th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

Civil Revision Petition No.4295 of 2017
(per VRS, J.)



09th April, 2018.
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