

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5527 of 2015(O&M)
Date of Decision-13.11.2018

M/s Richardson Cruddas 1972 Ltd. Mumbai ... Petitioner

Versus

Kaithal Cooperative Sugar Mills Kaithal District Kaithal

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vivek Sethi, Advocate
for the petitioner.

Mr. Sumit Mahajan, Sr. Advocate with
Ms. Ramneeq Kaur, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 07.03.2014 passed by Additional District Judge, Kaithal, whereby execution petition was disposed of and the objections filed by the objector/judgment debtor were dismissed by observing that since huge public amount is involved and the proceedings have been carried out in a very casual manner, resulting in huge financial losses to the decree holder, therefore, it would be appropriate that the office of Managing Director of the decree holder would look into the matter and would initiate appropriate disciplinary action against the erring officials who are responsible and negligent in delay in execution of award.

[2]. Respondent/decreed holder filed the execution petition in pursuance of order dated 03.10.2011 passed by the Arbitrator for recovery of arbitral amount by attaching the property and putting the same on auction.

[3]. Decree holder contested the execution petition on the ground that the execution under Arbitration and Conciliation Act, 1996 is not maintainable. The award was passed under the old Act and without making award Rule of the Court, no such execution could have been filed.

[4]. After hearing learned counsel for the parties, Additional District Judge, Kaithal passed the impugned order, whereby it was noticed that the award was passed on 03.10.2011 in favour of the decree holder and the provisions of new Act are not applicable to the facts and circumstances of the execution petition. It was also noticed that the decree holder has approached the Court under a mistaken advise, but since the petitioner is a co-operative society and public money is involved, therefore, in order to safeguard the interest of public at large, wrong Forum invoked by the decree holder was rectified by putting the petitioner/decreed holder at liberty to approach the competent Court of jurisdiction for the purpose of execution of award and for drawl of the decree for recovery of the amount under the award. It was held that in case the decree holder resorts to legal course before the competent Court in order to

execute the award by way of drawl of decree, in that eventuality, neither the objection of limitation, nor that of *res judicata* would be available to the objector as the decree holder had approached the wrong Forum under a *bona fide* manner. It was so observed that since public money is involved, therefore, question of limitation would not be a point of consideration and the same would not affect the rights of the decree holder and the decree holder would be entitled to approach the competent Court. While parting with the judgment, Additional District Judge, Kaithal also directed the Managing Director to look into the matter and initiate appropriate disciplinary action against the erring officials who would be found to be responsible in conducting the proceedings in negligent manner.

[5]. At the time of issuance of notice of motion on 27.08.2015, following order was passed:-

“Learned counsel for the petitioner by referring to paras no.7, 8 and 9 of the impugned order contends that the Court below has virtually condoned the delay by enabling the decree-holder to approach competent Court of jurisdiction for the purpose of execution of the award and for drawl of decree.

Learned counsel states that the legal right of the judgment-debtor in respect of limitation and res judicata have been curtailed without providing any opportunity of hearing to the judgment-debtor. Article 119 of the Limitation Act provides period of 30 days for moving an application for rule of the Court. Such limitation cannot be extended even

with necessary implication of Section 14 of the Limitation Act. Even law of Limitation is not to be affected in case of filing of fresh suit even with the permission of the Court on same cause of action.

Notice of motion for 18.02.2016.

Executing Court is directed to defer the proceedings beyond the date fixed by this Court.”

[6]. Learned counsel for the petitioner on the strength of **Go Sewa Sadan Tathera and another Vs. Punjab Khadi Gramudyog Sangh and another, 1985 RLR 386, Binod Bihari Singh Vs. Union of India, 1993 AIR (SC) 1245, Indian Rayon Corporation Ltd. Vs. Raunaq and Company Pvt. Ltd., (1988) 4 Supreme Court Cases 31** and **Jugalkishore Asati Vs. State of M.P., 1979 AIR (M.P.) 89** submitted that under Section 14(1) of Arbitration Act, 1940 and under Article 119(a) of the Limitation Act, 1963, the application for making award Rule of the Court if filed beyond 30 days, would be time barred and would be without jurisdiction. The period of limitation for obtaining the judgment in terms of award or for setting aside the award would be 30 days under Article 119 of the Limitation Act from the date of service of the notice. The period of limitation has to be determined on legal principles in terms of Article 119(b) of the Limitation Act. Such application could have been moved within 30 days of the service of the notice of the making of award. Article 119(a) of the Limitation Act would be attracted and not Article 137 of the Limitation Act. For condonation of delay, protection, if any,

available under Section 14 of the Limitation Act would be subject to sufficiency of cause that too, after notice to the decree holder.

Learned counsel referred to the ratio laid down in

Commissioner, M.P. Housing Board and others Vs. M/s

Mohanlal and Company, 2016(4) RCR (Civil) 140 to the extent

of submitting that scheme of limitation provided under 1996 Act is

different than 1940 Act. Exclusion of time spent in arbitration

proceedings can only be allowed under Section 37 of the

Arbitration Act and not under Section 14 of the Limitation Act as

the special provision has the precedence over the Limitation Act.

[7]. On the other hand, learned counsel for the respondent

by referring to **New Gramin Milk Cooperative Society Limited**

Vs. General Manager, Delhi Milk Scheme, Government of

India, (2010) 15 Supreme Court Cases 259 submitted that the

delay in filing the application for making award Rule of the Court

can be considered with the exclusion of time spent in the

proceedings in a *bona fide* manner. Sections 14(2) and 5 of the

Limitation Act would be attracted. By referring to the facts of the

aforesaid case, learned counsel submitted that the facts of the

case are more or less similar where decree holder was under the

impression that the award could be directly executed and under

such impression, execution petition was filed. Executing Court

rejected the execution petition on the ground that the matter was

governed by the Arbitration Act, 1940 and under the provision of

the said Act, the award unless made a Rule of the Court

could not be executed. Thereafter, the decree holder filed an application under Sections 14 and 17 of the Arbitration Act for making a drawl of the decree in terms of award. By filing application under Section 5 of the Limitation Act, the time spent by the decree holder in prosecuting the execution proceedings on previous occasion was sought to be excluded. In the facts and circumstances of the case, the concept of condonation of delay was answered on the basis of availing the wrong Forum by the decree holder, presuming the award to be executable under the new Act of 1996.

[8]. Having considered the submissions made by learned counsel for the parties, I am of the view that the Additional District Judge has not adverted to the aforesaid legal position propounded by the parties herein before this Court. The executing Court has also not opined as to whether filing of any application under Sections 14 and 5 of the Limitation Act was necessary for condonation of delay of the period which was availed by the decree holder in the wrong Forum having no jurisdiction to entertain the execution petition. On the one hand, executing Court has observed that the Court was having no jurisdiction under the new Act in executing the award without making the same Rule of the Court, at the same time, the Court has allowed the decree holder to file appropriate application for making Rule of the Court by condoning the delay of its own without giving notice to the judgment debtor.

[9]. At this stage, this Court cannot opine as to whether the decree holder was sufficiently prevented from making appropriate application under Sections 14 and 17 of the Arbitration Act for making award Rule of the Court, but a prior notice has to be given to the decree holder for filing his objection to the condonation of delay in accordance with law.

[10]. At this stage, without making any opinion on merits of the case, it would be desirable to set aside the impugned order dated 07.03.2014 passed by Additional District Judge, Kaithal and direct the Additional District Judge, Kaithal to re-visit the order after taking into consideration the precedents on the subject and pass appropriate order in accordance with law. It is clarified that the statement of facts recorded hereinabove would not come in any way for passing fresh order by the Additional District Judge, Kaithal in accordance with law and the executing Court shall pass the order without being influenced by the observations recorded hereinabove.

[11]. For the reasons recorded hereinabove, this revision petition is disposed of.

(RAJ MOHAN SINGH)
JUDGE

13.11.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No