

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-CARB-12-2018 (O&M)

Date of Decision: December 06, 2018

Haryana Shehri Vikas Pradhikaran

...Appellant

Versus

M/s Mahashiv Promoters Pvt. Ltd. and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE.**

HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present: Mr. Vishal Garg, Advocate, and
Mr. Satish Singla, Advocate,
for the appellant.

Mr. Tribhuvan Dahiya, Advocate,
for respondent No. 1.

KRISHNA MURARI, C.J. (ORAL)

The issue involved for adjudication in this appeal is in respect of applicability of Section 5 of the Limitation Act, 1963, to the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act').

The appellant has challenged the order dated 06.03.2018 passed by the Additional District Judge-cum-Judge, Special Commercial Court, Gurugram, rejecting the application filed under Section 34 of the

1996 Act, for setting aside the arbitral award dated 24.01.2017 passed by the sole arbitrator.

Admittedly, the petition filed against the arbitral award, under Section 34 of the 1996 Act, was beyond the period prescribed and, thus, barred by time. It was accompanied by an application under Section 5 of the Limitation Act for condonation of delay, which was dismissed by the Additional District Judge-cum-Judge, Special Commercial Court, Gurugram. The petition under Section 34 of the 1996 Act was filed on 09.02.2018, i.e. after a period of more than one year of passing of the arbitral award on 24.01.2017.

In the case of Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others, (2008) 7 SCC 169, it stands settled by the Apex Court that proviso to Section 34(3) of the 1996 Act being a specific legislation excludes applicability of general provisions contained in Section 5 of the Limitation Act and the Court, therefore, has no discretion to extend limitation beyond the period prescribed in proviso to Section 34(3) of the 1996 Act, even if sufficient cause is shown for it. In para 20 of the judgment, it has been held as under:-

“20.When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should

be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.”

Since, the provisions of Section 5 of the Limitation Act are not attracted to the proceedings under Section 34 of the 1996 Act and in the case at hands the objections were filed beyond the period prescribed under Section 34(3) of the 1996 Act, after a period of more than one year, we do not find any infirmity or error of law being committed by the Court below which can be said to be manifest in rejecting the application for condoning the delay in filing the objections as also the objections under Section 34 of the 1996 Act, warranting interference by this Court. The appeal, as such, is bereft of merit and, accordingly, stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

December 06, 2018

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Whether Speaking/Reasoned:

✓ YES / ~~NO~~

Whether Reportable:

✓ YES / ~~NO~~