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

**FAO-CARB-39 of 2018 (O&M)**
Date of Decision: 23.10.2018

M/s Gurgaon Packaging Pvt. Ltd. and another …..Appellants

versus

M/s Scholastic India Pvt. Ltd. …..Respondents

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

Present : Mr. Anuj Kumar Sharma, Advocate, for the appellants.

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**KRISHNA MURARI, C.J.(oral)**

By means of this appeal, the appellants have challenged the judgment and order dated 15.01.2018 passed by Additional District Judge, Gurugram rejecting the application filed by the appellants under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the arbitral award dated 28.12.2016 passed by the sole arbitrator.

2. Shorn of unnecessary details, facts relevant for the purpose are that a dispute between the appellants and the respondent arising out of a contract was referred to the sole arbitrator who made an award dated 28.12.2016. Admittedly, both the parties filed objections to the said award under section 34 of the Act which were consolidated and decided by a common judgment impugned in this appeal. This appeal is directed only against the impugned judgment and order rejecting the application for setting aside the arbitratal award filed by the appellants.

3. This fact is not in dispute that the appellants had filed an application for setting aside the award under section 34 of the Act which was subsequently withdrawn from the Court on 01.04.2017 and subsequently again an application out of which the present proceedings arises was filed on

05.04.2017 duly accompanied by an application under section 5 of Limitation Act seeking condonation of delay in making the application.

4. Learned counsel for the appellants contends that the Court below has committed a manifest error of law in rejecting the application under Section 5 of the Limitation Act and dismissing the application made under Section 34 of the Act as barred by time. It is further submitted that sufficient cause was shown for condoning the delay which had occurred in making the application and the Court below committed an illegality in holding that the delay is not liable to be condoned as application under section 34 of the Act made earlier was withdrawn unconditionally without seeking any permission from the Court for filing it afresh.

5. We have considered the arguments advanced by learned counsel for the appellants and perused the record.

6. It may be relevant to quote Section 34(3) of the Arbitration and Conciliation Act, 1996 which reads as under:-

> "34. Application for setting aside arbitral award.—
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> 3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

7. The issue which arises for our consideration is whether the period prescribed for filing objections under section 34(3) of the Act can further be extended on sufficient cause being shown by invoking the provisions of Section 5 of the Limitation Act.

8. A plain and simple reading of the aforesaid provision makes it clear that the legislature provides limitation of three months from the date a copy of the arbitral award is received by the party of making an application under section 34 of the Act for setting aside the award. The application can be entertained by the Court beyond a further period of 30 days only provided the applicant is able to demonstrate that it was prevented from making the application within the period of three months by sufficient cause.

9. The issue with respect to applicability of the provisions of Section 5 of the Limitation Act for extending the limitation beyond the period prescribed by Section 34 of the Act is no longer res-integra and came for consideration before the Hon'ble Apex Court in case of ***Union of India v. Popular Construction Co. AIR 2001 SC 4010.*** The issue has been answered by the Hon'ble Apex Court as under:-

> "5. The issue will have to be resolved with reference to the language used in Sections 29(2) of the Limitation Act, 1963 and Section 34 of the 1996 Act. Section 29(2) provides that:
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> "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."
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> 6. On an analysis of the section, it is clear that the provisions of Sections 4 to 24 will apply when:
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> (i) there is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and
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> (ii) the special or local law does not expressly exclude those Sections.
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> 7. There is no dispute that the 1996, Act is a 'Special law' and that Section 34 provides for a period of limitation different from the prescribed under the Limitation Act. The question then is-is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:
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> 34. "Application for setting aside arbitral award-(1) xxx xxx xxx xxx xxx
>
> (2) xxx xxx xxx xxx xxx

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral Award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

8. Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5".

**7.** The Hon'ble Apex Court relying upon the Constitution Bench judgment in *Vidyacharan Shukla* v. *Khubechand Baghel*, AIR 1964 SC 1099 observed in paragraphs 10, 11 & 12 as under:

> "10. This decision recognizes that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in *Hukum Narain Yadav* v. *Lalit Narain Mishra* : ((1974) 2 SCC 133 : AIR 1974 SC 480).
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> > "If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act"
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> 11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.
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> 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."

10. The same view stands reiterated by the following observations made by the Hon'ble Apex Court in the case of ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others (2008) 7 SCC 169*** :-

> "**19.** A bare reading of sub-section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the court.
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> **20.** Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. 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......................."

Hon'ble Apex Court further went on to observe in paragraph-53 as under:-

"**53.** Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act."

11. The issue having been settled by the decisions of the Hon'ble Apex Court in cases of ***Union of India v. Popular Construction Co.*** (supra) and ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department*** (supra), the argument advanced by learned counsel for the appellant that provisions of the Limitation Act will be applicable in proceedings under section 34 of the Arbitration and Conciliation Act, 1996 and Court below has committed a manifest error of law in refusing to condone the delay, is rendered without any force and is not liable to be accepted.

12. Needless to observe that though the application made by the appellants under section 34 of the Act has been dismissed as barred by limitation by the Court below on the ground that there exists no sufficient cause to condone the delay is erroneous inasmuch as the provisions of Section 5 of the Limitation Act are not applicable to the proceedings under section 34 of the Act and thus there was no occasion to consider the genuineness of the explanation submitted for delay and once the application was made even beyond the period which could have been extended under the said proviso, the application for setting aside the award was to be simply dismissed as barred by limitation.

14. In view of the aforesaid facts and discussion, the appeal stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

23.10.2018
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| Whether speaking/reasoned | √Yes/No |
| Whether reportable | √Yes/No |