

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 304 of 2019****Order reserved on 04.07.2019****Order passed on 17.07.2019**

Dayashankar, S/o Heeralal, aged about 40 years, R/o. Chote Dumarpali,
Tahsil Kharsiya, District Raigarh (C.G.)

---Petitioner**Versus**

1. Sub-Divisional Officer-cum-Land Acquisition Officer, Kharsiya, District Raigarh (C.G.)

2. Chief Engineer, National Highways Tribunal, Raipur through Sub-Division, Kharsiya (Executive Engineer, Public Works Department), National Highways, Division Raigarh (C.G.) (Applicants No. 1 & 2)

3. Additional Commissioner, Bilaspur Division, Bilaspur (C.G.)

---Respondents

For Petitioner : Mr. Vivek Kumar Tripathi, Advocate.

For Respondents No. 1 & 3 / State
: Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

For Respondent No. 2 : Mr. Vaibhav P. Shukla, Assistant Solicitor General of India.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

(1) Whether the provisions contained in Section 14 of the Indian Limitation Act, 1963 would apply for excluding the time spent in prosecuting the application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (henceforth "AC Act, 1996) in a court having no jurisdiction as well as certified

copy of the arbitral award can be said to be signed copy of the award within the meaning of Section 31 (5) of the AC Act, 1996 are the twin questions that arise for consideration in this writ petition in the following factual backdrop :-

(2) Petitioner's land was subjected to acquisition by National Highway Authority of India under the provisions contained in the National Highways Act, 1956 (henceforth "NH Act, 1956") and ultimately land acquisition award was passed on 27.09.2016.

(3) Feeling aggrieved and dissatisfied with the award so passed by the competent authority, petitioner herein filed an application for determination of amount of compensation under Section 3 H (5) of the NH Act, 1956 before the Arbitrator-cum-Additional Commissioner, Bilaspur appointed by the Central Government under Section 3G(5) of the Act of 1956, which was allowed by the learned Additional Commissioner –cum- Arbitrator on 18th October, 2017. Aggrieved against that order respondents No. 1 & 2 have preferred an application under Section 34(2) of the AC Act, 1996 for setting aside the arbitral award before the District Judge, Bilaspur, which was returned holding it has no jurisdiction, then it was preferred before the District Judge, Raigarh in which on 22.05.2018, learned District Judge, Raigarh passed an interim order staying the award subject to certain conditions, which was questioned by the petitioner herein stating that application filed under Section 34 (2) of the AC Act, 1996 is hopelessly barred by limitation as provided under Section 34 (3) of the Act, 1996 and by keeping the objection of the petitioner in abeyance *qua* limitation, application for interim relief was granted. This Court

in Writ Petition (227) No. 496 of 2018 (***Dayashankar Vs. Sub Divisional Officer-cum-Land Acquisition Officer***) on 28.02.2019 set aside the said order and directed the District Judge, Raigarh to consider the question of limitation afresh after hearing the parties in accordance with law.

(4) By the impugned order dated 14.03.2019, learned District Judge, Raigarh has held that application filed under Section 34(2) of the AC Act, 1996 for setting aside the arbitral award is within the period of limitation further holding respondents No. 1 & 2 to be entitled for the benefit of Section 14 of the Limitation Act, 1963 and the certified copy of arbitral award was supplied to the petitioner on 17.01.2018. Questioning that order, the instant writ petition under Article 227 of the Constitution of India has been preferred by the petitioner herein.

(5) Shri Vivek Kumar Tripathi, learned counsel appearing for the petitioner would submit that learned District Judge, Raigarh is absolutely unjustified in holding the application under Section 34 (2) of the AC Act, 1996 to be within the period of limitation as prescribed in Section 34 (3) of the AC Act, 1996; and further erred in giving benefit of Section 14 of the Limitation Act to respondents No. 1 & 2 and, therefore, the impugned order is liable to be set aside.

(6) On the other hand, learned counsel appearing for respondents No. 1 & 2 would support the impugned order.

(7) I have heard learned counsel appearing for the parties, and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(8) In a land acquisition proceeding initiated for acquisition of the land of the petitioner, land acquisition award was passed by the competent officer under the provisions of NH Act, 1956 on 27.09.2016. Seeking determination of amount of compensation under Section 3 H (5) of the NH Act, 1956, the petitioner herein filed an application before the Arbitrator appointed by the Central Government under the NH Act, 1956. The said Arbitrator-cum-Additional Commissioner, Bilaspur passed an arbitral award on 18th October, 2017 and directed respondent No. 2 herein to revise compensation granted as per direction contained in the arbitral award. By virtue of the provisions contained in Section 31(5) of the AC Act, 1996, the learned Arbitrator was obliged to deliver the copy of arbitral award to each of the parties including respondents No. 1 & 2 herein while making the award, which he did not deliver, admittedly, to the parties, which is apparent from the order sheet recorded by the learned Arbitrator on 18.10.2017.

(9) Respondents No. 1 & 2 upon getting information about passing of the arbitral award by the learned Arbitrator, applied for supply of certified copy of award on 15.1.2018 in the office of Additional Commissioner-cum- Arbitrator, which they received on 17.1.2018 and, thereafter, they filed an application for setting aside the arbitral award under Section 34(2) of the AC Act, 1996 before the District Judge, Bilaspur on 3.2.2018. The District Judge, Bilaspur

by order dated 28.03.2018 held that the District Court, Bilaspur has no jurisdiction over the matter and returned it to be presented to the proper court i.e. District Court, Raigarh, which was represented to the District Judge, Raigarh on 12.04.2018 and now preliminary objection preferred in shape of Order 7, Rule 11 of the CPC, that application under Section 34(2) of the Act, 1996 is not maintainable and it is barred by Section 34(3) of the AC Act, 1996 has been rejected by the impugned order.

(10) Admittedly and undisputedly, signed copy of the award in compliance of Section 31(5) of the AC Act, 1996 was not delivered to respondents No. 1 & 2 herein. In terms of the provisions of Section 31 (5) of the AC Act, 1996, it is mandatory on the part of the arbitrator to deliver a signed copy to each of the parties to the arbitral proceedings. Sections 33 and 34 stipulate limitation period for taking recourse under these provisions, while Section 36 provides for enforcement of award under the Civil Procedure Code in the same manner as if it were a decree of the court. In other words, receipt of signed copy of the arbitral award is an important event in the arbitration proceedings. The period of challenging the award under Section 34 or for requesting the arbitrator for correction and interpretation of award and/or additional award shall start running from the date when a signed copy of the award is made available to the parties by the arbitrator, as such, provision contained in Section 31(5) of the Act, 1996 is mandatory.

(11) The Supreme Court in the matter of Union of India v. Tecco Trichy

Engineers & Contractors¹, has delineated the importance and effect of delivery of arbitral award and receipt thereof by the parties in terms of Section 31(5) read with Section 33 and 34 of the AC Act, 1996. Paragraphs 6 & 8 of the report state as under:-

“ 6. Form and contents of the arbitral award are provided by Section 31 of the Act. The arbitral award drawn up in the manner prescribed by Section 31 of the Act has to be signed and dated. According to sub-section (5). “after the arbitral award is made, a signed copy shall be delivered to each party”. The term “party” is defined by clause (h) of Section 2 of the Act as meaning “a party to an arbitration agreement”. The definition is to be read as given unless the context otherwise requires. Under sub-section (3) of Section 34 the limitation of 3 months commences from the date on which “the party making that application” had received the arbitral award. We have to see what is the meaning to be assigned to the term “party” and “party making the application” for setting aside the award in the context of the State or a department of the Government, more so a large organization like the Railways.

8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be “received” by the party. This delivery by the Arbitral Tribunal and receipt by the party of award sets in motion several periods of limitation such as an application for

1 (2005) 4 SCC 239

correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.”

(12) In the matter of **M/s. Hindustan Construction Co. Ltd. Vs. The Union of India**², the Supreme Court while considering the meaning of signed copy of the award within the meaning of Section 14(2) of the Arbitration Act, 1940 has held that signed copy of the award means when the document is an accurate or true and full reproduction of the original it would be a copy. Paragraphs 5,6 & 7 of the report state as under:-

“ 5. Now the word “copy” as such is not defined in the Indian [Evidence Act, 1 of 1872. But we get an idea of what a copy is from the provisions of S. 63 of the Evidence Act. That Section inter alia defines what secondary evidence means and includes, namely -(i) certified copies as provided in Section 76 of Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an

² AIR 1967 SC 526

accurate or true copy of the Original. In Webster's New World Dictionary, the word "copy" means "a thing made just like another, full reproduction or transaction. What the word "copy" in S. 14(2), therefore, requires is that it must be a full reproduction of the original and that it shall be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It was, therefore, a copy of the original, and the only question that remains is whether it was signed. For if it was signed, it would be a signed copy.

6. This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary the word "sign" means "to write one's name on, as in acknowledging authorship, authorising action etc." To write one's name is signature. Section 3 (56) of the General Clauses Act No. 10 of 1897, has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. This provision indicates that signing means writing one's name on some document or paper. In *Mohesh Lal v. Busunt Kumaree*, (1881) ILR 6 Cal 340, a question arose as to what "signatures" meant in connection with S. 20 of the Limitation Act, No. IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that the document must be signed in such a way as to make it appear that the person signing it is the author of it, and

if that appears it does not matter what the form of the instrument is, or in which part of it the signature occurs.

7. We accept these observations and are of the opinion that so long as there is the signature of the arbitrator or umpire on the copy of the award filed in Court and it shows that the person signing authenticated the accuracy or correctness of the copy the document would be a signed copy of the award. It would in such circumstances be immaterial whether the arbitrator or umpire put down the words "certified to be true copy" before signing the copy of the award."

(13) Reverting to the facts of the case in light of mandatory requirement contained in Section 31 (5) of the AC Act, 1996 to deliver signed copy of award to the parties, it is quite vivid that the Arbitrator, admittedly, failed to supply signed copy of award to the parties including respondents No. 1 & 2, which they applied for certified copy on 15.1.2018 and got it on 17.1.2018 and preferred application before the District Court, Bilaspur on 03.02.2018, but that was returned by learned District Judge, Bilaspur by order dated 28.03.2018 as District Court, Bilaspur had no jurisdiction to hear that matter, which they again preferred before the jurisdictional District Court, Raigarh on 12.04.2018, as such, the limitation against respondents No. 1 & 2 for filing the application under Section 34(2) of the AC Act, 1996 would start running from the date of delivery of signed copy of the order, as in the instant case certified copy of the award was supplied to them on 17.01.2018. Since the signed copy of the award was not delivered to respondents No. 1 & 2 while making the award by Arbitrator, they applied for certified copy of the award on

15.01.2018 and obtained the same on 17.01.2018 and preferred the application under Section 34 of the AC Act, 1996 before the District Judge, Bilaspur on 3.2.2018 and on return of the application under Section 34 (2) of the AC Act, 1996, ultimately on 12.04.2018, they preferred application before the jurisdictional District Court i.e. District Judge, Raigarh on 3.2.2018, which was within the period of limitation as the limitation was available up to 16.04.2018 to respondents No. 1 & 2 herein and even otherwise period spent in the wrong court i.e. District Court, Bilaspur would be excludable by virtue of provisions contained in Section 14 of the Limitation Act.

(14) The Supreme Court in the matter of **Consolidated Engg. Enterprises v. Irrigation Deptt.**³ has clearly held that the benefit of exclusion of time under Section 14 of the Limitation Act is available where application under Section 34(3) of the AC Act, 1996 is pursued in the court without jurisdiction. Paragraph 23 of the report states as under:-

“ 23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the

3 (2008) 7 SCC 169

award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the power under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because

cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.”

(15) In view of the aforesaid legal analysis, in my considered opinion, Section 14 of the Limitation Act would apply in a proceeding under Section 34(2) of the AC Act, 1996 and time spent in prosecuting the application under Section 34 (2) of the AC Act, 1996 would be excluded while computing the period of limitation under Section 34(2) of the Act, 1996 and certified copy of the award can be treated as signed copy of the award for the purpose of Section 31 (5) of the AC Act, 1996.

(16) Concludingly, the District Judge, Raigarh is absolutely justified in rejecting the application under Order 7 Rule 11 of the CPC filed by the petitioner herein, in which I do not find any illegality in the order impugned warranting interference of this court under Article 227 of the Constitution of

India.

(17) In view of foregoing, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-