

HIGH COURT OF CHHATTISGARH, BILASPURWP227 No.496 of 2018

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

-----Petitioner

Versus

1. Sub-Divisional Officer-cum-Land Acquisition Officer, Kharsiya, District Raigarh (CG)
2. Chief Engineer, National Highways Tribunal, Raipur through Sub-Division, Kharsiya (Executive Engineer, Public Works Department), National Highways, Division Raigarh (CG)
3. Additional Commissioner, Bilaspur Division, Bilaspur (CG)

---- Respondents

For Petitioner	: Mr.Awadh Tripathi, Advocate
For Respondents No.1 and 3:	Mr.Rahul Jha, Government Advocate
For Respondent No.2	: Mr.G. Gopakumar, Assistant Solicitor General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/02/2019

1. Taking exception to the order dated 22.5.2018 passed by learned District Judge, Raigarh in MJC No.32/2018 granting interim relief in favour of respondents No.1 and 2, this writ petition has been preferred by the petitioner herein.
2. Mr.Awadh Tripathi, learned counsel for the petitioner, would submit that application under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter called as "the Act of 1996") filed by respondents No.1 and 2 was hopelessly barred by limitation as provided under Section 34 (3) of the Act of 1996, yet keeping the objection of the petitioner *qua* limitation in filing the application for setting aside the award, application for interim relief has been granted, which is unsustainable and bad in law.

3. Mr.B. Gopa Kumar, learned Assistant Solicitor General for respondent No.1, would support the impugned order.
4. I have heard learned counsel for the parties considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. In this case, the award was passed by the competent authority on 27.9.2016, feeling aggrieved against that award, the petitioner herein filed an application for determination of amount of compensation under Section 3H (5) of the National Highways Act, 1956 (hereinafter called as "the Act of 1956"), which was allowed by learned Additional Commissioner, Bilaspur Division, Bilaspur on 18th October, 2017 (Annexure P/5). Feeling aggrieved against that order, respondents No.1 and 2 filed an application under Section 34 (2) of the Act of 1996 before learned District Judge, Raigarh, in which on 22.5.2018 learned District Judge has passed interim order staying the award subject to certain conditions, which has been questioned by the petitioner herein. Learned District Judge himself in the impugned order has recorded a finding that question of limitation is pending consideration before the Court, but respondents No.1 and 2 are not likely to be non-suited on the plea of limitation and proceeded to hear the application for interim relief and passed the impugned order without considering the plea of limitation.
6. In the considered opinion of this Court, once a plea of limitation has been raised by the petitioner herein questioning that application under Section 34 (2) of the Act of 1996 is not within a period of limitation prescribed under Section 34 (3) of the Act of 1996, it was incumbent on the part of learned District Judge while entertaining the application under Section 34

(2) of the Act of 1996 firstly to consider the question of limitation and depending upon outcome of the result, he should have proceeded with the application for interim relief, which has not been done as plea of limitation goes to the route of the matter.

7. Accordingly, the impugned order is set aside. The matter is remitted to learned District Judge, Raigarh to consider the question of limitation raised by the petitioner herein and depending upon outcome of the said issue of limitation to proceed further with the matter in accordance with law expeditiously.
8. The writ petition is allowed to the extent indicated hereinabove. No cost(s). A copy of order be sent to learned District Judge by E-mail/Fax.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-