

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No. 50 of 2019

Union of India through General Manager, South Eastern Central Railway, Bilaspur represented by Deputy Chief Engineer (Con.) SECR, Raipur, District Raipur (C.G.)

---- Appellant

Versus

M/s. Todarmull Infrastructures Pvt. Ltd. (Engineers & Contractors) Regd. Office- 18/254, Bharat Cottage, Shankar Nagar, Raipur (CG) Through its Managing Director Shri Suresh Santwal.

---- Respondent

For the Appellant :- Mr. H.S. Ahluwalia, Advocate

For the Respondent :- Mr. Abhishek Vinod Deshmukh Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

19.11.2019

Heard.

1. This appeal is directed against the order dated 09.09.2019 passed by the Commercial Court, Raipur by which, the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short " the Act of 1996") for setting a side the award has been dismissed as barred by limitation Act.
2. The factual matrix, relevant for decision of the controversy in this case are in narrow encompass stated as infra.

3. The appellant herein invited bid for certain works of extension. In response thereto, the respondent submitted his bid and the same was accepted leading to an agreement between the parties which was signed on 24.02.2014. Later on, dispute and differences having arisen between the parties, agreement was terminated on 09.09.2015 by the appellant. The respondent-contractor invoked arbitration clause. The sole arbitrator adjudicated the dispute and passed an award for a sum of Rs. 1,16,23,825/- along with interest @ 10% per annum in favour of the contractor. The sole arbitrator also directed the appellant to bear its own cost and also to pay Rs. 4,00,000/- towards cost to the respondent-contractor. Counter claim of the appellant was also dismissed.
4. After receipt of the copy of award, the appellant moved an application under Section 33 of the Act before the sole arbitrator seeking correction of award dated 13.12.2018. However, the sole arbitrator rejected the said application holding that the application was barred by limitation. Thereafter, the appellant challenged the award by moving an application under Section 34 of the Act before the Commercial Court.
5. The respondent raised a preliminary objection with regard to the maintainability of application under Section 34 of the Act on the ground that the application was filed beyond the period of limitation, as provided under Section 34(3) of the Act. According to the respondent, the period of limitation was required to be counted from the date of receipt of Arbitral award and not from the date on which application under Section 33 of the Act was rejected. The contention of the respondent before the Commercial

Court was that as the application under Section 33 of the Act was not disposed off on merit but dismissed as barred by limitation, the limitation would not begin to run from the date of disposal of request but from the date of receipt of arbitral award. This contention of respondent found favour and the application was dismissed as barred by limitation, giving rise to this appeal.

6. Learned counsel for the appellant would argue that the provisions of section 34(3) of the Act are plain and unambiguous that if a request has been made under Section 33 of the Act, limitation for filing application under Section 34 of the Act would begin to run from the date on which that request is disposed off by Arbitral Tribunal irrespective of whether it has been disposed of on merit or has been dismissed as barred by limitation. His submission is that the sole Arbitrator committed illegality in rejecting the application under Section 33 of the Act as barred by limitation. It is his contention that in view of provision contained in section 43 of the Act, the Arbitrator had power to condone the delay beyond 30 days as provided under Section 33 of the Act and therefore, the Arbitrator ought to have condoned the delay and decided the application on its own merit. His further contention is that the rejection of application under Sections 33 of the Act, in all circumstances, will give him fresh cause of action to challenge the award and therefore, under any circumstance, the period of limitation would begin to run only from the date of rejection under Section 33 of the Act and not from the date of receipt of the Arbitral award. In support of his contention, he placed reliance on the decisions in the cases of **Superintending Engineer/Dehar**

Power House Circle Bhakra Beas Manangment Board(PW) Slapper and Another vs. Excise and Taxation Officer, Sunder Nagar/Assessing Authority passed in SLP (C) No. 15281 of 2019 and in **Rajendra Singh Parihar vs. State of Chhattisgarh and Another** passed in Criminal Misc. Petition No. 1457 of 2019.

7. On the other hand, learned counsel for the respondent would argue that the appellant did not move any application for correction and interpretation of award within a period of 30 days, as provided under Section 33 of the Act, but the application itself was beyond 30 days. Relying on several authorities, he would submit that the Arbitrator invested with limited jurisdiction, has no power to condone the delay in moving application under Section 33 of the Act. He would argue that an application under Section 33 of the act, beyond the period of limitation was liable to be ignored. Merely because the arbitrator rejected the application holding that it was barred by limitation, it could not be treated as disposal of the request as understood under Section 34 of the Act. Therefore, the period of limitation will have to be counted only from the date of receipt of the arbitral award and not from the date on which request of correction of award is rejected without consideration on merit. In support of this submission, reliance has been placed on the judgment of High Court of Delhi in the matter of **Union of India and Anther vs. Saboo Minerals Pvt. Ltd. 2003(71)DRJ 166.**

He would further submit that it is settled view that the period of limitation, as provided under Section 33 of the Act, could not be condoned as the Arbitrator exercises limited jurisdiction

and without express authority conferred under the law to condone delay beyond 30 days, the Arbitrator has no power to condone the delay in filing application under Section 33 of the Act.

8. We have heard learned counsel for the parties and perused the record.
9. The only issue arises for consideration before us is whether application for setting aside award filed by the appellant before Commercial Court was within limitation. For this purpose, we consider it appropriate to refer to the relevant provisions contained in Section 34(3) of the Arbitration Act, which is extracted herein below;-

Section 34(3) of the Act of 1996:-

“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”

10. A fair, rational and logical interpretation of aforesaid provision would be that ordinarily, the period of limitation of filing application under Section 34 of the act, would begin from the date on which the party making application had received the arbitral

award. However, the aforesaid provision also deals with a situation where instead of moving an application under Section 34 of the Act directly, the party aggrieved has taken recourse to section 33 of the Act by moving an application for correction and interpretation of the award. In such a situation, the period of limitation would begin to run from the date on which that request had been disposed of by the Arbitrator.

The Court dealing with application under section 34 may condone delay and entertain the application within a further period of 30 days, but not thereafter.

11. In the present case, the appellant moved application seeking correction of award after stipulated period of limitation of 30 days, as provided under Section 33 of the Act, which the arbitrator rejected as not maintainable on 07.03.2019. This order was not a disposal of request on merit but as the application itself was beyond the period of limitation prescribed under Section 33 of the Act, it was closed.
12. In the matter of **Union of India and Another vs. Saboo Minerals Pvt. Ltd**, it has been held that where the disposal of request is not on merits but the application under Section 33 of the Act has been rejected on the ground that it was beyond the period of limitation, the provision of Section 34(3) would not come to the aid of the aggrieved party. In other words, if request itself is filed beyond the period of limitation, provisions of section 34(3) will have no application.

13. The learned Commercial Court relaying on the aforesaid decision has come to the conclusion that as the application under Section 33 of the act, itself was filed beyond period of limitation, Section 34(3) will not apply and for the purpose of counting limitation of three months for filing application under Section 34, the relevant date would be the date of receipt of arbitral award by the party making the application and not the date on which the application under Section 33 of the Act has been dismissed as barred by limitation.
14. Though learned counsel for the appellant sought to challenge the legality and validity of the order passed by the Arbitrator, rejecting the application under Section 33 of the Arbitration Act, in these proceedings, we need not go into that aspect. The appellant did not challenge the order rejecting his application under Section 33 of the Act., The appellant accepted the said order and later on, filed an application under Section 34 of the Act challenging the award passed on 13.12.2018 and received on 18.12.2018.
15. In the result there is no merit in the appeal and the appeal is therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge