

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

FAO-2419-2019 (O&M)

Date of Decision: September 26, 2019

Naresh Kumar and others

Appellants

Versus

Union of India and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the appellants.

JAISHREE THAKUR, J. (Oral)

This is an appeal that has been filed seeking to challenge the order of the District Judge Palwal whereby he had dismissed the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground of limitation.

In brief the facts are that the land of the appellants was acquired for the railways and compensation was assessed thereafter. Aggrieved against the award of the Arbitrator dated 26.11.2016, objections were filed under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Palwal on 18.12.2017, well beyond the period as specified under Section 34(3) of the 1996 Act.

A reading of Section 34(3) clearly allows a period of three months for objections to be filed with an additional period of 30 days thereafter under the proviso to the said Section. Thereafter there can be no

further extension. Reference has to be made to the judgments rendered in *M/s Simplex Infrastructure Limited vs. Union of India, 2019 (1) RCR (Civil) 205* and *'Municipal Corporation of Delhi vs. G.D. Builders 2005 (118) DLT 658' and Union of India vs. Popular Construction Co. 2001(8) SCC470.*

A perusal of the proviso of Section 34 of the Arbitration and Conciliation Act, 1996 reveals that an application for setting aside *may not be* made after three months have lapsed from the date on which the parties had received the arbitral award. Further as per the proviso, 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 30 days **but not thereafter** (emphasis supplied). In other words, objections have to be filed within a period of three months on receipt of the award and in case the objector is prevented/ cannot file the said objections within the specified period of three months, the Court may entertain the said objections along with an application within an extended period of 30 days and not thereafter. In essence the objector has to give sufficient cause as to why the objections were not filed within the prescribed period of three months.

While dealing with the similar situation, the Hon'ble Supreme Court in *M/s Simplex Infrastructure Limited vs. Union of India, 2019 (1) RCR (Civil) 205*, has held as under :-

"8. Section 34 of the Arbitration and Conciliation Act, 1996 provides thus:

"34. Application for setting aside arbitral award.-

(1) Recourse to a Court against an arbitral award may be

made only by an application for setting aside such award in accordance with sub-section (2) and sub-section(3)... (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."

Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section 3 of Section 34, would not be an application "in accordance with" that sub-section.

By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of 5 Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award.

The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use

*of the words "but not thereafter" in the proviso. **These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of upto thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.(emphasis supplied).***"

6. Similarly, the Delhi High Court in the judgment rendered in '**Municipal Corporation of Delhi vs. G.D. Builders 2005(118) DLT 658**', came to hold that proviso of Section 34(3) empowers the Courts to entertain an application within a period of 30 days on showing 'sufficient cause' for the delay and that power to condone under the proviso to Section 34(3) is analogous to the power that Section 5 of Limitation Act generally confers upon the Court. The only difference being that Section 34(3) limits the exercise of said power to a period of 30 days only even on proof of 'sufficient cause'. Para 7 of the said judgment is reproduced as under:

7. “ The only other aspect that needs to be examined is whether the petitioner has made out a case for condonation of 30 days delay in the filing of these petitions. The power to condone available under the proviso to Section 34(3) of the Act is analogous to the power which the provisions of Section 5 of the Limitation Act generally confer upon the court. Both the provisions require proof of sufficient cause before an order of condonation may be made. The only difference being that while the power under Section 5 is not limited to any period that may be condoned, the proviso to Section 34(3) limits the exercise of the said power to an optimum of 30 days even on proof of sufficient cause. What would

constitute 'sufficient cause' within the meaning of Section 5 of the Limitation Act has been the subject matter of numerous pronouncements of the Supreme Court and different High Courts in the country. It is unnecessary to refer to all such decisions, for a reference to some only of those rendered by the Supreme Court should suffice. ”

The Supreme Court recognized the fact that the proviso permitted an application to be filed beyond the period of three months within an application giving sufficient cause for not doing so by holding “*The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.*”

Consequently finding no merits, the present appeal stands dismissed.

September 26, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No