

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

FAO- 4152-2013 (O&M)

Date of Decision: October 15, 2019

M/s ICON Management Security and Detectives

Appellant

Versus

Union of India and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K.S. Khehar, Advocate
for the appellant.

Mr. Parminder Singh, Advocate
for respondents No. 1.

Mr. Madan Mohan, Advocate
for respondent Nos 2 to 4.

JAISHREE THAKUR, J. (Oral)

1. The appellant is aggrieved against the dismissal of his objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the Addl. District Judge, Sonapat on the ground that there was a delay in filing the same.

2. In brief, the facts are that the appellant was allotted security contract at BSNL Sonapat, however, on account of a dispute the matter was referred to an Arbitrator in terms of the contract. The Arbitrator gave his award on 15. 03.2012 whereby the claim was dismissed. Aggrieved against the said dismissal of the claim petition, the appellant herein preferred

objections under Section 34 of the Arbitration and Conciliation Act, 1996, which were dismissed by the Additional District Judge Sonapat on the ground that the same had not been filed within the period of limitation. Aggrieved of the same, the instant appeal has been filed.

3. Mr. Karan Khehar, learned counsel for the appellant would contend that the Arbitrator passed his award on 15th of March, 2012 and the signed copy of the award was received on 20th of March 2012 by the appellant. The appellant being an ex-Army personnel had no knowledge of law and had to engage a lawyer who would then proceed to challenge the award. The appellant found a Delhi-based lawyer who took the case file on 14th June, 2012, however, could not file the same since the Courts were closed on account of summer vacations. It is only on the re-opening of the Courts after summer vacations, the petition was filed. It is contended that the application under Section 34 was filed with an application for condoning the delay in filing the objections within the specified period of three months. However, the Addl. District Judge dismissed the objections under Section 34 on the ground that sufficient reasons had not been made out for condoning the delay.

4. Mr. Parminder Singh Kanwar and Mr. Madan Mohan, learned counsel appearing on behalf of the respondents submit that Section 34(3) of the Arbitration and Conciliation Act, 1996 has to be construed very strictly. The objections have to be filed within a period of three months from the date of receipt of the award, which expired on 19th of June, 2012, however, the objections were filed on 16th of July, 2012. He placed reliance on a judgment rendered in '*Assam Urban Water-supply and Sewerage Board vs.*

Subhash Projects and Marketing 2011(2) SCC 624' to argue “*that extendable period of 30 days by the Court under the proviso to Section 34 (3) after expiry of three months period of limitation is thus not the prescribed period.*”

5. I have heard learned counsel for the parties and with their assistance have gone through the case law. The facts are not in dispute- the award of the Arbitrator passed on 15th of March, 2012 was served upon the appellant on 20th of March, 2012. In terms of Section 34(3), the appellant had a period of three months to file his objections which would expire on 19th of June, 2012. However, objections were filed with an application for condonation of delay on 16th of July, 2012 which were dismissed as being time-barred. 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 which the parties had received the arbitral award. Further as per the proviso 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 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, meaning thereby, 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. ”

7. In the instant case, the appellant herein had filed the objections and the application seeking condonation of delay within the extended period of 30 days from the expiry of three months with a reasonable explanation given. The application for the delay in filing within three months was explained, that the appellant on 02.05.2012 had handed over the papers to his lawyer to objections to set aside the award passed by the Arbitrator in the High Court at Chandigarh, as it was the High Court who had appointed the Arbitrator and therefore the High Court would also have the power to set aside the same. It was only on 31.05.2012 the counsel at Chandigarh informed him to file the case at Sonapat or Rewari and the file was handed over to the counsel at Rewari to file the same but after a lot of consultation with the advocates, it was opined that the District Court at Sonapat has the jurisdiction over the subject matter. The appellant took the file from counsel

in District Court, Rewari on 12.06.2012. Thereafter, the appellant started searching for a counsel to file his petition and handed over the case file to the counsel to file his case at District Court, Sonapat on 14.06.2012. Therefore, the statutory period of limitation expired during summer vacations and the counsel for the appellant came to file the case on first day of opening of the District Court after summer vacations. The term 'sufficient cause' has been a subject matter of consideration in several judgments of the Supreme Court and one of them being that the litigant should not be put to hardship on account of his counsel. Consequently, this Court is satisfied that '*sufficient cause*' has been given as to why the objections could not be filed within a specified time as provided under Section 34 of the Arbitration and Conciliation Act, 1996. However, since these were filed within the extended period of 30 days as per the proviso to section 34(3), therefore, the order dated 01.06.2013 is set aside and the matter is remanded back to the Addl. District Judge, Sonapat to give the decision afresh on merits expeditiously.

8. As regards the judgment of *Assam Urban Water-supply and Sewerage Board (supra)* cited by the respondent, the same is distinguishable and not applicable to the facts of the present case as the Supreme Court was seized of the question whether Section 4 of the Limitation Act of 1963 would also be applicable to extension of time when the courts are closed. In the case referred to above, objections were filed beyond the period of three months and additional 30 days as the courts were closed, whereas in the instant case objections have been filed within the three months and 30 days. 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.*

9. Parties are directed to appear before the Addl. District Judge, Sonapat on 19.11.2019.

10. Appeal stands disposed of in above terms.

October 15, 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No