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

FAO No. 4504 of 2016 (O&M)
Date of decision: February 6, 2019

Bharat Sanchar Nigam Ltd.

...Appellant

Versus

Sh. K.K. Kakkar and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Anil Rathee, Advocate,
for the appellant.

Mr. Kamal Sharma, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. The appellant herein is aggrieved against the order of the Additional District Judge dated 13.5.2016, dismissing the objections petition filed under Section 34 of the Arbitration and Conciliation Act 1996 against the award of the sole arbitrator dated 14.02..2013.

2. In brief the facts as alleged are that BSNL, the appellant herein, floated a tender for hiring of light commercial vehicles on long-term use in Jalandhar area in August 2004 for the period 1.11.2004 to 31.10.2005. The respondent was a successful bidder in the above-mentioned tender and in the terms of the contract was asked to submit documents of minimum 9 vehicles of models not older than the year 2001. However, as the said documents were not supplied despite repeated reminders—rather the

contractor stopped providing the vehicles w.e.f. 20.2.2005. On this the contract was terminated by order dated 24.5.2005 and the security amount of ₹2,50,000/- was forfeited. The appellant was also forced thereafter to hire vehicles from the open market. Since the payment for the use of vehicles had not been made despite using the same for a period of three months, a claim was raised by the respondent—contractor for a sum of ₹4,29,208/- along with 8% per annum. In the claim, it was contended that the appellant had illegally terminated the contract on the ground that relevant documents were not supplied regarding the model of the car, despite using them. It was stated that the respondent had stopped supplying cars to BSNL since it had not made payment for the use of the cars for three months. A claim was raised by the respondent -contractor pursuant to which an arbitrator was appointed vide 4.7.2012 to determine the dispute.

3. The appellant was given time to controvert the claim and complete evidence. The arbitrator allowed the claim of the respondent herein which award came to be challenged before the District Judge under Section 34 of the Arbitration And Conciliation Act 1996. The District Judge dismissed the objections and upheld the award. Aggrieved against the dismissal of objections, the instant appeal first appeal has been preferred.

4. Mr. Anil Rathee, learned advocate appearing on behalf of the appellant, argues that the objections have wrongly been dismissed, while laying great emphasis on the plea that the claim was raised beyond the period of limitation. It is argued that it was incumbent upon the arbitrator to decide the question of limitation, even though no such plea was set up as a

defence before the Arbitrator.

5. Per contra, Mr. Kamal Sharma, learned counsel appearing on behalf of the respondent submits that the claim was rightly raised since the appellant had used the cars for a period of three months and had not made any payment for such use. It is contended that all relevant papers were supplied, however, it is the department itself which did not process the same. It is also argued that the plea of limitation was never raised before the arbitrator or even the District Judge and now the appellant is estopped from doing so.

6. In view of the pleadings of the parties and the submissions so made, the following questions of law arise for consideration in this appeal.

1. Whether the question of limitation can be taken at any stage of the proceedings?
2. Whether it was incumbent upon the Arbitrator to decide the question of limitation even though no such plea was set up as a defence?

7. In order to answer the above framed questions, it would be relevant to re-produce Section 3 of the Limitation Act 1963, which reads as under:

> **3. Bar of limitation.—**
> *(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*
> *(2) For the purposes of this Act— (2) For the purposes of this Act—"a suit is instituted— (a) a suit is instituted—"*

(i) in an ordinary case, when the plaint is presented to the proper officer; (i) in an ordinary case, when the plaint is presented to the proper officer;"

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and"

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator; (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;"

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted— (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—".

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded; (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;"

(ii) in the case of a counter claim, on the date on which the counter claim is made in court; (ii) in the case of a counter claim, on the date on which the counter claim is made in court;"

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

8. Further, Section 43 (1) of the Arbitration and Conciliation Act, 1996, which deals with the question of limitation, reads as under:-

"43. Limitation.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) xx xx

(3) xx xx

(4) xx xx"

9. As per Section 43 of the Arbitration and Conciliation Act, the provisions of the Limitation Act shall apply to arbitration proceedings as it applies to the proceedings in Court. Section 3 (1) of the Limitation Act 1963, clearly specifies that every suit instituted, appeal preferred, an application made after the prescribed period *shall be dismissed though limitation has not been set up as defence (emphasized supplied).* Meaning thereby, a suit filed beyond the period of limitation should not be entertained and Section (3) (1) of the Limitation Act casts a duty upon the Court to dismiss such a suit or appeal, if filed after the period of limitation.

10. The issue, whether a suit which has been filed beyond the period of limitation ought to be dismissed, even though the plea of limitation has not been set up as a defence, has been settled in a judgment rendered in **Kamlesh Babu & Ors. Versus Lajpat Rai Sharma & Ors. 2008 (R.C.E. (Civil) 872**. In Kamlesh Babu's case, it has been held that "*Apart from Section 3 (1) of the Limitation Act, even Order 7 Rule 11 (d) of the Code of Civil Procedure casts a mandate upon the court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, and in this case by the law of limitation. Further, as far back as in 1943 the Privy Council in the case of* ***Lachhmi Sewak Sahu V. Ram Rup Sahu & Ors. [AIR 1944 Privy Council 24]*** *held that a point of limitation is prima facie admissible even in the court of last resort, although it had not been taken in the lower courts.*"

11. In the case in hand, the agreement that was entered into between the parties pertains to supply of vehicles which was entered into in August, 2004 but the contract was terminated by order dated 24.5.2005 and the security amount of ₹2,50,000/- was forfeited. The claim of the respondent—contractor for a sum of ₹4,29,208/- along with interest @ 8% was raised only in the year 2012, when the matter was referred to the Arbitrator. The respondent contractor claimed that the vehicles in question had been used for a period of three months, however, no payment was made to him.

12. Learned counsel for the appellant submits that the contract was terminated as far back as on 24.5.2005 by which the security amount was forfeited and the claim made for use of vehicles has been made beyond the period of limitation. It is argued that at best, it is a claim for recovery of money and the limitation to make such a claim would be three years.

13. The arguments as raised have merit considering that there is nothing on the record to show as to why the respondent kept silent for an inordinate length of time. The claim for recovery of money has to be made within a period of three years, which is not present in the instant case. Therefore, even though the plea of limitation had not been taken up before the Arbitrator or the District Judge deciding the objections, the argument certainly has merit that it was a duty cast upon the Arbitrator to see whether the claim that had been made was barred by limitation or not. Therefore, this Court has no hesitation in holding that the suit filed beyond the prescribed period of limitation is liable to be dismissed, even though the

plea of limitation had not been set up as a defence. Thus, both the questions framed stand answered accordingly.

For the reasons afore-stated, the appeal is allowed, the impugned award is set aside and the objections filed by the appellant are hereby allowed.

February 6, 2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes