

S/L 11
07.12.2020
Court. No. 19
GB

C.O. 1457 of 2020

R. Piyarelall Iron & Steel Private Limited
Vs.
Fair Deal Supplies Limited

(Through Video Conference)

Mr. Abhijit Chatterjee,
Mr. Anunoy Basu.

...for the Petitioner.

Mr. Debdut Mukherjee,
Mr. Kaushik Banerjee,
Ms. Sudipta Paul,
Mr. Abhishek Agarwal.

...for the Respondent.

This revisional application has been filed by the award holder challenging an order passed in an arbitration between R. Piyarelal Iron & Steel Private Limited (Claimant) and Fair Deal Supplies Limited (Respondent). The order dated November 9, 2020 has been challenged on several grounds. First that the learned Arbitral Tribunal passed the order rejecting an application under Section 33(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “said Act”) refusing to correct certain typographical errors without considering the application under Section 5 of the Limitation Act, 1963 for the condonation of delay in filing the application for correction.

Mr. Chatterjee, learned senior advocate appearing on behalf of the petitioner submits that Section 43 (1) of the said Act makes the provision of Section 5 of the Limitation

Act applicable to all applications filed under the said Act. According to Mr. Chatterjee the Tribunal did not apply its mind to the grounds for condonation of delay as stated in the application nor did the learned Tribunal consider the decisions relied upon by Mr. Chatterjee in support of his contention before the learned Arbitral Tribunal. He submitted that Section 29 (2) of the Limitation Act would not be applicable, inasmuch as, Section 33 of the said Act did not contain a bar as to applicability of the provisions for condonation of delay under the general law. He further submitted that as there is no outer limit prescribed up to which the learned Arbitral Tribunal could extend the period of limitation for filing of an application of like nature, Section 5 of the Limitation Act would be applicable. He prayed for setting aside of the order dated November 9, 2020.

Mr. Mukherjee, learned advocate appearing on behalf of the opposite party submits that the provisions of Section 33(1) of the said Act would not be applicable in this case as the said application was filed beyond the period of 30 days as prescribed by the statute. According to him, the fact that the statute provides that the period of limitation to file an application under Section 33 (1) of the said Act was 30 days unless parties aggrieved to some other extended period, the same would mean that the learned Arbitral Tribunal did not have any power to extend the period of limitation in filing such an application. According to Mr. Mukherjee, that being

the legislative intent, the Court should strictly observe the same and the interpretation of the provision of Section 33 (1) should be construed strictly and be understood as a specific bar in extension of the period of limitation. He relied on the decisions of Delhi High Court in the matter of ***S.P.S. Rana Vs. MTNL and Ors.*** reported in ***2010 (1) ARBLR 344 (Delhi)*** and in the matter of ***Ircon International Ltd. Vs. Budhraj Mining and Construction Ltd.*** reported in ***2007 (4) ARBLR 159 (Delhi)***. He also relied on an unreported judgment of the Bombay High Court wherein the same principle was reiterated that the provision of Section 5 of the Limitation Act for condonation of delay in filing of an application under Section 33 (1) of the said Act would not be applicable.

I have heard the parties in details. Mr. Chatterjee has vehemently argues that the Hon'ble Apex Court has specifically held in the matter of ***State of Goa Vs. Western Builders*** reported in ***(2006) 6 Supreme Court Cases 239***, that as the said Act did not exclude applicability of Section 14 of the Limitation Act, 1963 the provisions of Section 14 could be taken recourse to in case of an application to be filed under the said Act. Similarly as the Section 5 of the Limitation Act, 1963 has not been excluded specifically on the contrary included under Section 43 the same principle should apply.

I have heard the contentions of the learned advocates for the respective parties, I have seen the nature of errors in

the award. It is an admitted position that the application for correction was not filed within the prescribed period of limitation. I do not wish to go into the merits of the reasons for the delay, inasmuch as, this Court finds that the nature of errors are exclusively typographical errors made by the Tribunal. The nature of errors are specifically mentioned at page 30 of this application. The name of the respondent was wrongly printed in the award as “Fair Deal Suppliers Private Limited” in stead of “Fair Deal Supplies Private Limited”. It is obvious that Fair Deal Supplies Private Limited, the opposite party is represented before this Court and they have also filed an application under Section 34. As such the apprehension of Mr. Chatterjee may not be totally correct that this error might prejudice the execution proceedings. The other mistakes in Serial No.3, Serial No.5, 6 and 8 are either spelling mistakes or grammatical errors, which will not affect the claimant as apprehended. The mistake in Serial No.5 with regard to the date is quite obvious and records will reveal otherwise. The same position applies to the mistake at Serial No.4 and 6. Mere typographical errors made by the Arbitral Tribunal are not likely to affect the execution proceedings as apprehended by the petitioner. The mandate of the learned Arbitral Tribunal was terminated. The opposite party has already filed an application under Section 34 of the said Act. The High Court Court is in seisin of that matter. There is a provision under Section 34 (4) of the said Act for a party to approach the said Court under

such circumstances. Similar liberty has already been granted by the learned Arbitral Tribunal to the petitioner, that is, the claimant may approach the High Court at Calcutta for appropriate relief in respect of the errors and in the event the High Court directs the Tribunal may resume its functioning and correct those errors. When such liberty has already been extended to the petitioner by the learned Arbitral Tribunal, this Court grants liberty to the petitioner to approach the Court before whom the application under Section 34 of the said Act is pending by filing an appropriate application.

Under such circumstances and with the above observations this revisional application is disposed of. However, the merits of the contentions of the opposite party with regard to the legality or sustainability of the award is not gone into by this Court.

Accordingly, C.O. 1457 of 2020 is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)