204 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6120 of 2014 (O&M)
Date of Decision:06.03.2020

PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD AND ANOTHER ...Appellants

Versus

M/S RAMAN RICE MILLS AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Naresh Gopal Sharma, Advocate for the appellants.

Mr. Pawan Kumar Bansal, Advocate for respondent No.3.

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DEEPAK SIBAL, J. (ORAL)

The instant appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short-the 1996 Act), is directed against the order dated 17.12.2013 passed by the Additional District Judge (Fast Track Court), Bathinda through which an application filed by the appellants under Section 34 of the 1996 Act was dismissed on the ground that the same was time barred.

The facts, in brief, which are required to be noticed for adjudicating upon the present appeal are that on 28.10.1994 the appellants entered into an agreement with the respondents as per which the respondents were to mill paddy for the appellants. Admittedly, the agreement provided that the disputes between the parties were to be settled through the mode of arbitration.

Disputes arose between the parties which were referred to be decided by an Arbitrator who after considering the claims/defences made by the parties gave his award on 08.10.2004 against which on 11.01.2005 the appellants filed an application under Section 34 of the 1996 Act before the Additional District Judge, Chandigarh. On 19.08.2008 the Additional District Judge, Chandigarh returned the application on the ground that the Courts at Chandigarh did not have jurisdiction to decide such application. However, liberty was granted to the appellants to file its application before the Court of competent jurisdiction at Bathinda. Thereafter, on 11.11.2008 the appellant filed the application at Bathinda which was dismissed through the impugned order on the ground that the same was beyond the period of limitation prescribed under Section 34 (3) of the 1996 Act.

Learned counsel for the parties have been heard.

A party which/who is aggrieved by an arbitral award can file an application under Section 34 of the 1996 Act seeking therein to set aside such award. Section 34(3) of the 1996 Act which provides for the limitation for filing of such application reads as under:-

> *"34 (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.*
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> *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."*

As per the afore-quoted provision an application under Section 34 of the 1996 Act can be filed within three months from the date when the aggrieved party has received the arbitration award. As per the proviso to Section 34 of the 1996 Act such application can be entertained if the same is filed within a further period of 30 days if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed period of three months.

At this stage it would be advantageous to refer to Section 29(2) of the Limitation Act, 1963 (for short, the 1963 Act). The same reads as under:-

> *"29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."*

Section 29(2) of the 1963 Act provides that where any special law prescribes a period of limitation for the filing of an application, suit or appeal which is different from the period of limitation prescribed by the schedule attached to the 1963 Act, the provisions of Section 3 of the 1963 Act shall apply as if the period of limitation provided under the special law was the period prescribed by the schedule attached to the 1963 Act. It is further provided therein that for the purpose of determining the period of limitation prescribed in the special law for the filing of any suit, appeal or application, the provisions of Sections 4 to 24 of the 1963 Act shall apply only to the extent they are not expressly excluded by such special law.

The Arbitration Act is a special statute dealing with adjudication of disputes through the mode of arbitration. In Section 34(3) of the 1996 Act, the usage of words that an application for setting aside 'may not be made after three months' and in the proviso to Section 34(3) of the 1996 Act that on sufficient cause shown an application can be entertained within a further period of 30 days 'but not thereafter' clearly reveal the legislative intent that the prescribed period of limitation to file objections under Section 34 of the 1996 is three months and that after such period an application for setting aside the Award can be entertained only if it is filed within a period of 30 days beyond the prescribed period of 3 months and that too on sufficient cause shown as to why such an application could not be filed within the prescribed period of limitation.

Usage of the afore-referred phrases in Section 34(3) of the 1996 Act, when read with Section 29(2) of the 1963 Act, clearly exclude the applicability of Sections 4 to 24 of the 1963 Act to the filing of an application under Section 34 of the 1996 Act. Resultantly, application of Section 5 of the 1963 Act is also excluded and therefore an application filed under Section 34 of the 1996 Act after 3 months and 30 days of the receipt of the award by the aggrieved party is required to be rejected being time barred.

In the case in hand the award in question was passed on 08.10.2004 and the application filed by the appellants under Section 34 of the 1996 Act at Chandigarh was on 11.05.2005 i.e. after the prescribed period of limitation of three months. Admittedly, no application seeking therein condonation of delay was filed at that time. On 19.08.2008 the Court at Chandigarh returned the appellant's application on the ground that it did not have territorial jurisdiction to adjudicate upon the same. However, liberty was granted to the appellants to present the application before the Court of competent jurisdiction at Bathinda. Thereafter the appellants took nearly three months in filing their application at Bhatinda as the same was filed only on 11.11.2008. At this time also no application for condonation of delay under Section 34(3) of the 1996 Act or Section 14 of the 1963 Act was filed.

The appellants' application under Section 34 of the 1996 Act earlier filed by them at Chandigarh and then at Bathinda was clearly beyond the prescribed period of limitation of three months. Neither at Chandigarh nor at Bathinda the appellants filed any application under Section 34(3) of the 1996 Act seeking therein condonation of delay. No application under Section 14 of the 1963 Act was also filed before the Bathinda Court.

In view of the above discussion no fault is found in the order impugned in the present appeal dismissing the appellants' application filed under Section 34 of the 1996 Act on the ground that the same was time barred.

Dismissed.

(DEEPAK SIBAL)
March 06, 2020 **JUDGE**
Jyoti-II Whether speaking/reasoned: Yes/No Whether Reportable: Yes/No