

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

FAO-622-2020 (O&M)

Date of decision: 08.01.2020

Estate Officer, UT Chandigarh

..... Appellant

versus

Smt.Jaswinder Kaur and another

.....Respondents

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Ms.Aakanksha Sawney, Advocate and
Ms.Shubreet Kaur Saron, Advocate Advocate for the appellant

Deepak Sibal, J. (Oral)

Through the present appeal challenge is made to the order dated 11.10.2019 passed by the Additional District Judge, Chandigarh dismissing the appellant's application filed by it under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) on the ground of delay.

The essential noticeable facts are that a dispute between the parties with regard to the payment of unearned increase in the value of a plot was referred to be settled through the mode of arbitration. Through award dated 22.02.2019 the Arbitrator directed respondent no.1-Jaswinder Kaur to pay to the appellant unearned increase in the value of the plot for the period 12.02.1976 to 26.11.1987 whereas the appellant's claim was from 12.02.1976 to 14.12.2014.

The aforesaid award was received by the appellant on 22.02.2019 and on 01.07.2019 the appellant filed an application under Section 34 of the Act for setting aside the Award. Along with the

application the appellant filed another application seeking therein condonation of delay of 38 days.

According to the appellant, as per Section 34(3) of the Act the application for setting aside the Award could have been filed within 3 months from the date of receipt of the award i.e. by 21.05.2019 and in accordance with the proviso to Section 34(3), on sufficient cause shown, such application could have been filed within 30 days thereafter i.e. by 20.6.2019. However, the appellant was precluded from filing its application due to the ensuing summer vacations in the District Courts at Chandigarh from 01.06.2019 till 30.06.2019 and therefore, the same was filed on the first day of the re-opening of the Courts i.e. on 01.07.2019. Thus, it was submitted that for the delay in the filing of its application, the appellant was not at fault. Protection under Section 4 of the Limitation Act, 1963 (for short, the 1963 Act) was also claimed. It was further submitted that the delay took place due to administrative exigencies and therefore should be condoned.

Through the impugned order the Additional District Judge, Chandigarh dismissed the application seeking condonation of delay and resultantly the application under Section 34 of the Act.

Learned counsel for the appellant submitted that the application for setting aside the Award could not be filed by the appellant in time due to administrative exigencies. It was further submitted that after adding to the prescribed period of limitation of three months the grace period of 30 days the appellant could have filed its application by 20.06.2019 but since from 01.06.2019 to 30.06.2019 there were summer vacations in the District Courts at Chandigarh the application could and was filed on the first day

after reopening of the Courts i.e. on 01.07.2019. According to her as per Section 4 of the 1963 Act, the period of summer vacations during which the appellant was precluded from filing its application should be excluded.

It would be advantageous to refer to Section 34(3) of the Act and Section 29(2) of the 1963 Act. They read 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:

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.”

“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 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) 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 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 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 Act. Resultantly, application of Section 5 of the 1963 Act is also excluded and therefore an application filed under Section 34 of the 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 received by the appellant on 22.02.2019. As per the prescribed period of limitation an

application for setting aside the award could have been filed by 21.05.2019 and on sufficient cause shown, such application could have been entertained if it was filed on or before 21.06.2019. However, the same was filed on 01.07.2019 and therefore was clearly barred by time.

The submission of learned counsel for the appellant that the delay in filing of its application should be condoned on the ground that the appellant was precluded from filing the same due to summer vacations in the District Courts at Chandigarh needs to be outrightly rejected in light of the admission by learned counsel for the appellant that at all times during the summer break there was a vacation Judge who was deputed to hold Court for hearing of urgent matters.

Even otherwise in the facts of the present case the benefit of Section 4 of the 1963 Act would not be available to the appellant. Section 4 of the 1963 Act reads as under:-

“4. Expiry of prescribed period when court is closed.- Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

The benefit of Section 4 of the 1963 Act would be available to a party only if the prescribed period of limitation is expiring during the Court vacations and that in such a circumstance the party files its suit, appeal or application on the first day of the reopening of the Court.

In the case in hand, the award was received by the appellant on 22.02.2019. The prescribed period of limitation to file its application under Section 34 of the Act was three months. That being so, such period expired on 21.05.2019 on which date the District Courts at Chandigarh were admittedly not closed for vacations. Therefore, the appellant is not entitled

to claim any benefit under Section 4 of the 1963 Act.

In Assam Urban Water Supply & Sew. Board v. M/s Subash Projects & Marketing Ltd., 2012(2) SCC 624, the Supreme Court while dealing with an identical issue opined that the benefit of Section 4 of the 1963 Act would not be available to an applicant under Section 34 of the Act if the Court where such application was required to be filed was not closed for vacations or otherwise on the date of expiry of the prescribed period of limitation i.e. 3 months from the date of receipt of the award.

The relevant observations made by the Supreme Court in Assam Urban Water Supply & Sew. Board's case (supra) are as under:-

“12. Section 4 of the 1963 Act reads as under :-

“4. Expiry of prescribed period when court is closed.- Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.-A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

13. The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed. The crucial words in Section 4 of the 1963 Act are 'prescribed period'. What is the meaning of these words? Section 2(j) of the 1963 Act defines 'period of limitation' which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act. Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in

proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not 'prescribed period' for the purposes of making the application for setting aside the arbitral award. 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, 'prescribed period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

In view of the above, no merit is found in the present appeal and the same is hereby dismissed.

No costs.

08.01.2020

gk

**(Deepak Sibal)
Judge**

Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No