

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

ARBITRATION APPEAL 5 OF 2014

The State of Maharashtra,
Through Executive Engineer,
Public Works Division, Arvi,
Dist. Wardha

..... **APPELLANT**

...V E R S U S...

M/s. George Construction Company,
Civil and Structural Contractors,
3, Byaramji Road, Byaramji Town,
Nagpur

... **RESPONDENT**

Mr. M.K. Pathan, AGP for appellant.
Mr. N. Lalwani, counsel for respondent.

CORAM: ROHIT B. DEO, J.

DATE : 05.01.2021

JUDGMENT:

The State of Maharashtra is in appeal under section 37(1)b) of the Arbitration and Conciliation Act, 1996 ("Act") assailing the order dated 14.3.2006 rendered by the 3rd Adhoc Additional District Judge, Wardha in M.J.C. 27/2003 thereby rejecting the application preferred by the present appellant under section 34 of the Act objecting to the Arbitral Award dated 28.6.2000.

2. In view of the issues involved and the order which I propose to pass, the dispute may be noted only briefly.

Respondent is a company engaged in construction. The work of constructing the building of Government Polytechnic College, Arvi, District Wardha and ancillary work was allotted to the respondent vide agreement dated 5.11.1995, which contained an arbitration clause.

3. Disputes having arisen, at the request of the contractor, an Arbitral Tribunal, comprising three members, was constituted. The State of Maharashtra – appellant herein lodged two counter claims. The Arbitral Tribunal rendered Award dated 28.6.2000, and while the claim of the contractor was substantially allowed, the counter claims were rejected.

4. While the Award was rendered on 28.6.2000, it is irrefutable that copy of the Award was received by the appellant through the then Executive Engineer, Public Works Division, Arvi on 3.8.2000.

5. Section 34 of the Act provides that the limitation of three months to prefer an application for setting aside the Award

shall stand triggered from the date of receipt of the Arbitral Award. The appellant received the Award on 3.8.2000 and the three month's period to prefer the application under section 34 of the Act lapsed on 2.11.2000.

6. The appellant preferred an application under section 34 of the Act, before the Civil Judge Senior Division, Wardha on 31.10.2000. Labouring under an erroneous assumption that the limitation commences from the date of the Arbitral Award, the appellant preferred an application seeking condonation of two days delay in preferring the application. Ultimately, vide order dated 31.3.2003, the Civil Judge returned the application invoking power under Order 7 Rule 10 of Civil Procedure Code for presenting the same before the appropriate Court. The appropriate Court to present an application under section 34 is the Principal Civil Court of original jurisdiction in the District.

7. The applicant represented the application before the District Judge on 1.4.2003. However, the said application is heard and decided by the 3rd Adhoc Additional District Judge, Wardha who vide order dated 14.3.2006 rejected the application *inter alia* holding the same time barred.

8. The 3rd Adhoc Additional District Judge, Wardha framed point (i) which reads thus:

“(i) Is the application of the applicant time barred as contended by the non-applicant?”

The learned Judge noted that M.J.C. 107/2000 was preferred before the Civil Judge Senior Division, who rejected the plaint vide order 31.3.2003. The learned Judge then noted the provisions of sub-section 3 of section 34 which provides that the starting point of limitation shall be the date on which the Arbitration Award is received. However, in the next breath, the learned Judge observes that no application for condonation of delay is pending since the application for condonation of delay was preferred in M.J.C. 107/2000 filed before the wrong forum and which was disposed of on 31.3.2003. The learned Judge, therefore, held that the application is time barred.

9. The order impugned is clearly unsustainable. The learned Judge failed to note that if the receipt of the Arbitral Award is the starting point of limitation, the application preferred under section 34 of the Act, albeit before a wrong forum, was clearly within the period of limitation. The fact that the State of

Maharashtra laboured under an erroneous impression that the starting point of limitation is the date of the Arbitral Award, and therefore, preferred an application seeking condonation of two days delay, is immaterial. The State of Maharashtra did approach the Civil Judge Senior Division within time, and immediately approached the proper Court, i.e. on the day next on which the Civil Judge Senior Division returned the plaint in exercise of power under Order 7 Rule 10 of Civil Procedure Code. The State of Maharashtra was entitled to seek exclusion of period spent in pursuing the application before the wrong forum, in view of the provisions of section 14 of the Indian Limitation Act.

10. It is true that such an application was not preferred. However, the learned Judge could have, and ought to have, granted an opportunity to the State of Maharashtra to prefer an application for exclusion of period, since the facts on the face thereof demonstrated that the application preferred before the wrong forum, was within limitation.

11. The order dated 14.3.2006 rendered by the 3rd Adhoc Additional District Judge, Wardha in M.J.C. 27/2003 is set aside.

12. M.J.C. 27/2003 shall be heard and decided by the Principal District Judge, Wardha, who shall give an opportunity to the appellant herein to prefer an application under section 34 of the Arbitration and Conciliation Act, 1996, and shall further give an opportunity to the parties to adduce evidence on such application, if deemed fit and then shall decide the application, as expeditiously as possible, and in any event, within six months from the date of communication of this judgment.

13. The appeal is partly allowed in the aforestated terms.

Judge

Belkhede RS