

OD-7

AP/120/2021
IA NO: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

P.K.THAKUR AND CO PVT LTD
VS
STEEL AUTHORITY OF INDIA LTD

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 18th February, 2022.

Appearance:
Mr. Soumajit Majumder, Adv.
Mr. Siddartha Banerjee, Adv.
Mr. Sudipta Nayan Ghosh, Adv.

Mr. Dhruva Ghosh, Sr. Adv.
Mr. Sarathi Dasgupta, Adv.
Mr. Arijit Basu, Adv.

The Court : This is an application under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an award dated 1 October, 2019 (the award).

A preliminary point of limitation is raised on behalf of the respondent. For the purposes of this application, the indisputable facts of the case are that the award was passed on 1 October, 2019. It is alleged that, the petitioner received a copy of the award on 3 October, 2019. The prescribed three months period under Section 36(3) of the Act expired on 3 January, 2020. On 2 February, 2020, the further 30-day period contemplated under the proviso to Section 36(3) the Act also expired. It is alleged on behalf of the petitioner that, the application under Section 34 of the Act was affirmed on 29 November, 2019, but for reasons

beyond the control of the petitioner the same was filed only on 23 March, 2021. Thus, the application under Section 34 of the Act was filed after a period of more than one year and long after the 120 days period contemplated under Section 34 (3) of the Act had expired.

It is submitted on behalf of the respondent that this application is not maintainable and the same ex-facie barred by limitation.

On behalf of the petitioner it is contended that even though the application was affirmed as far back as on 25 November, 2019, the same could not be filed for reasons beyond the control of the petitioner. In this context, a supplementary affidavit on behalf of the petitioner has also been filed to contend that, the junior Advocate-on-Record who had filed this application had been unable to file the same in November, 2019 since he did not have an office within the territorial limits of the Original Side Jurisdiction of this Court.

I have considered the submissions of the parties.

In my view, that there is no scope for condonation of the delay save and except as provided for under the proviso to Section 34(3). The Act is a self-contained Code. Moreover, the proviso to Section 34(3) read with language of Section 5 of the Act prohibits a Court from entertaining an application under Section 34 after expiry of the stipulated time period. This position of the law has been repeatedly reiterated by different Courts including the Supreme Court in *Mahindra and Mahindra Financial Services Limited vs. Maheshbhai Tinabhai Rathod and Ors.* 2021 SCC Online 1315. In, *Union of India vs. Popular Construction Company (2001) 8 SCC 470* it has been held as follows:

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to subsection (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

In view of the aforesaid, I am of the view that there is no scope for entertaining this application which is ex-facie barred by limitation and not maintainable.

Accordingly, AP 120 of 2021 stands dismissed.

Needless to mention all interlocutory applications are also dismissed.

However, there shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)