IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-CARB-14-2022 (O&M)
DECIDED ON: 29.04.2022

Executive Engineer, Public Health Engineering Division No.2, Sonepat.

.....Appellant

Versus

Sh. Dev Raj Diwan

.....Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Tanisha Peshawaria, D.A.G., Haryana
for the appellant.

SANDEEP MOUDGIL, J.

CM-34-FCARB-2022

Prayer in this application is for condonation of delay of 26 days in filing the present appeal.

For the reasons mentioned in the application, which is supported by an affidavit of the appellant, same is allowed. Delay of 26 days in filing the present appeal, is hereby, condoned.

CM-32-FCARB-2022

Prayer in this application is for condonation of delay of 20 days in re-filing the present appeal.

For the reasons mentioned in the application, which is supported by an affidavit of the appellant, same is allowed. Delay of 20 days in re-filing the present appeal, is hereby, condoned.

FAO-CARB-14-2022

1. It is the order dated 19.11.2019 passed by the learned Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram which has come under challenge by way of instant appeal before this Court whereby the application under Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'), read with Section 5 of the Limitation Act, seeking condonation of delay of 326 days, has been dismissed.

2. Ms. Tanisha Peshawaria, Learned Deputy Advocate General, Haryana, submitted that the award was passed on 18.06.2018, whereby the respondent was awarded a sum of Rs.40,93,894/- along with interest @ 9% along with security deducted to be paid within 90 days.

The said award was assailed by the appellant before the Special Commercial Court vide application under Section 34(3) of the Act, 1996 read with Section 5 of the Limitation Act. The said application has been dismissed by the Special Commercial Court vide order dated 19.11.2019 which has now been impugned before this Court.

3. Learned State counsel submits that the Court below acted with grave illegality while not appreciating the fact that on receipt of certified copy of the award, the Legal Remembrancer and Administrative Secretary to Government of Haryana was requested to issue directions to the District Attorney, Gurugram for filing an appeal. The District Attorney, Gurugram vide his letter dated 24.02.2019, opined to file the appeal under Section 34

of the Act, 1996. It has been further submitted that the appeal was preferred and filed though with a delay of 326 days in filing the same.

4. An attempt has been made on behalf of the appellant raising a contention that the Arbitrator was appointed on 08.04.2016 and as per Section 29-A of the Act, 1996 as amended w.e.f. 23.10.2015, the period of 12 months lapsed on 08.04.2017 by which the award should have been made. It has been further submitted that even by mutual consent, period could be extended upto six months which expired on 08.09.2017, whereas the award has been passed much later on 18.06.2018.

5. Learned State counsel finally concluded the arguments with the plea that the delay in filing the appeal was not intentional which has occurred due to the circumstances beyond its control as the procedural formalities consumed reasonable time. In the circumstances, the delay could not be expected to be explained in a pedantic approach. In support of these assertions, learned State counsel placed reliance upon the judgment passed in ***'Union of India versus Popular Construction Co.,2002(1) RCR (Civil) 124 (SC)',*** considered the same question, which has held as under:-

> *'As for as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (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.*

Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub Section (2) and sub Section (3). Sub Section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34 (1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that :'36. Enforcement. "Where the time for making an application to set aside the arbitral award under Section 34 has expired the award shall be enforced and the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of a court". This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow' (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act. Similar view was reiterated in Commissioner of Customs, Central Excise Vs. Punjab Fibres Limited, (2008) 3 SCC.

6. Heard.

7. It is an admitted fact that there is a delay of 326 days which has been attributed to the departmental *inter se* communication made at various

levels to invoke Section 34(3) of the Act, 1996. It is in the fittest of facts to have a glance to the provisions of Section 34(3), which reads as under :-

> 34. Application for setting aside arbitral award-
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> "(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."

8. A bare perusal of the aforesaid statutory provision makes it crystal clear that the period of three months has been provided to make an application which is to be calculated from the date of receipt of the arbitral award. The said period of three months can be extended under the proviso to the aforesaid mandate by another 30 days, if sufficient cause is shown, to prevent from making such application within the stipulated period of three months.

9. In the instant case, the delay is much beyond the period of 120 days prescribed under the Act, 1996, though aid of Section 5 of the Limitation Act, 1963 has also been sought by the appellant. A careful reading of the judgment in ***Popular Construction Company's*** case (Supra), leave no iota of doubt that where a special act has the mechanism providing

to deal with the period of limitation, the help Section 5 of Limitation Act would not be applicable inasmuch the Act, 1996 is a complete code in itself. Similar is the view rendered by the Apex Court in ***'M/s Consolidated Engineering Enterprises Vs. Principal Secretary (Irrigation Department) and others, (2009) (Suppl) AIR (SC) 396***, categorically holding that the period of limitation provided under Section 34(3) of the Act, 1996 cannot be extended by taking the aid of the Limitation Act, 1963.

10. As far as the explanation whatsoever given by the appellant for such inordinate delay as a *bona fide* error as well as being unintentional, is concerned, such an usual explanation is not acceptable wherein the file consumed almost one year due to considerable degree of procedural red tape in the process. The State governments cannot be absolved of its obligation to ensure that it perform the duty with diligence and commitment. Condonation of delay is not a matter of right but an exception which cannot be permitted to give undue advantage for anticipated benefit to the government departments particularly in a case where due diligence has not been shown and it has been negligent where the matter pertains to the pecuniary loss to the public exchequer. Another principle to be borne in mind is *qua* the equity and justice which might have been acquired by the opposite party due to such huge delay on the part of the State government. The Supreme Court in a judgment ***'Government of Maharashtra (Water Resources Department) Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., 2021(6) SCC 460'*** set aside the condonation of delay holding that in a fit case in which a party has otherwise acted *bona fide* and not in a negligent manner, a short delay beyond such period can, in the discretion of Court, be condoned,

always bearing in mind that other side of picture is that opposite party may have acquired both in equity and justice, what may now be lost by first party's inaction, negligence or laches. In that case a delay of 75 days beyond the period 60 days provided by the Commercial Courts Act was held to be a long delay and condonation was declined.

11. We are of the firm view after going through the facts and giving thoughtful consideration to the submissions made by the learned State counsel that the explanation putforth by the appellant falls woefully short of making out any sufficient cause and therefore, the Special Commercial Court below after having appreciating the record and the law rightly declined the condone the delay of 326 days. Therefore, the order under challenge dated 19.11.2019 does not suffer from any illegality or infirmity to warrant any interference by this Court. Hence, the appeal is dismissed.

12. Since the main appeal has been dismissed, all the pending miscellaneous application(s), if any, rendered infructuous.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

29.04.2022
ps-I

Whether speaking/reasoned Yes/No
Whether reportable Yes/No