

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

FAO-CARB-29-2022 (O&M)

Date of decision : 07.09.2022

STATE OF PUNJAB

..... APPELLANT

VS

MAKHAN LAL AND ANR.

..... RESPONDENTS

**CORAM : HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ALOK JAIN**

Present :- Mr. Vikas Mohan Gupta, Additional Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (Oral)

CM-82-FCARB-2022

This is an application for exemption from filing certified/true typed copies of objection petition filed before Ld. Additional District Judge, Patiala and award dated 25.08.2018 (Annexure A/1).

Application is allowed as prayed for and filing of certified/true typed copies of objection petition and award dated 25.08.2018 is dispensed with. Annexure A/1 is taken on record subject to just all exemption.

CM-83-FCARB-2022 in/and
FAO-CARB-29-2022

Prayer in this application for condonation of delay of 112 in filing the appeal.

The reason, which has been assigned for delay of 112 days in filing the appeal, is primarily procedural where from one department to the other, the file has been shuffling for approval.

The said explanation is not acceptable as the period utilized beyond the period as has been prescribed under the Limitation Act, has to be explained on day to day basis which is missing in the present case. Thus, we do not find

any ground for accepting the present application.

On merits also, the order which is impugned in the present appeal dated 17.02.2022 allowing the application of respondent No.1 for dismissal of the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the appellant being barred by limitation, has been accepted. The plea, which had been taken by the appellant before the trial Court, was that the limitation of 90 days expired on 24.11.2018. Thirty days more have been granted in case there is any explanation put forth for the delay in filing the appeal. These thirty days expired on 24.12.2018. Since the Courts were closed for the winter break from 22.12.2018 till 01.01.2019, the objection petition had been filed immediately on opening i.e. 02.01.2019 and therefore, in the light of the provisions, as contained under Section 34 (3) of the Arbitration and Conciliation Act, 1996 the objection petition was within time and it could not be rejected on the ground of being beyond the period of limitation.

This contention has not been accepted by the trial Court in the light of judgment of the Hon'ble Supreme Court titled as "***Assam Urban Water Supply and Sewerage Board vs. Subash Projects and Marketing Ltd.***" (2012) 2 SCC, 624, where on similar facts, the Hon'ble Supreme Court referring to the same had, in para 13 and 14 while dealing with Section 4 of the Limitation Act, held as follows:

“(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 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.

(14) Seen thus, the applications made by the appellants on January 2, 2004, for setting aside the arbitral award dated

August 26, 2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time barred.”

The appeal, therefore, cannot survive in the light of the above.

An Argument has been sought to be raised by the learned counsel for the appellant relying upon the provisions of Section 10 of the General Clauses Act to contend that the limitation would not expire if the Court is closed on the date when the prescribed period comes to an end, the limitation would be deemed to be the date till the date the Court opens. If the case, application is filed on the date of opening of the Court, the same shall be within limitation.

The said plea also cannot be accepted in the light of the judgment of the Hon’ble Supreme Court in case titled ***as “Sagufa Ahmed and Ors. vs. Upper Assam Polywood Products Private Limited and Ors.” (2021) 2 SCC, 317,*** wherein it has been held that the period of appeal cannot be extended and the prescribed period would be the one which is specifically mentioned without including the extension period, if permissible. In other words, any period beyond the prescribed period during which the Court/Tribunal has discretion to allow a person to institute proceedings, cannot be taken as prescribed period.

In the light of the above two judgments even on merits, the appeal cannot survive and therefore, the same stands dismissed both on the grounds of it being barred by limitation and on merits as well.

CM-84-FCARB-2022

In view of the dismissal of the main case, the present application for stay does not survive and thus, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(ALOK JAIN)
JUDGE**

07.09.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No