IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(Heard through VC)

CR No. 4163 of 2022 (O&M)
Date of Decision: 17.10.2022

M/s Gun Carriage Factory

...Petitioner

Versus

M/s Jindal Rectifiers through its Manager

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Indresh Goel, Advocate
for the petitioner.

JAISHREE THAKUR, J.

1. The present civil revision under Article 227 of the Constitution of India has been filed for setting aside the impugned order dated 21.7.2022 passed by the District Judge, Faridabad.

2. In brief, the facts are that the petitioner herein is a Government of India Undertaking working directly under the control and supervision of the Department of Defence Production, Ministry of Defence. The petitioner floated two separate tender enquiries for purchase of 12 Volts, 1500 Amp. Diode rectifier through its Limited Tender Enquiry dated 22.12.2012 and the respondent firm was awarded the contract through Purchase Order Dated 9.8.2013. Another tender was floated for purchase of 12 Volts, 1500 Amp. Diode rectifier units in the year 2013 in which Purchase Order dated 24.4.2014 was also issued in favour of the respondent firm. The payments were received by the respondent firm, however, a complaint was made

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before the Micro, Small and Medium Enterprises Facilitation Council Haryana. An arbitrator was appointed, who proceeded with ex-parte proceedings and passed an ex-parte award dated 11.10.2018 against the petitioner herein. On passing of the award, the petitioner immediately collected all the necessary documents and approached the District Judge, Faridabad, by filing objections to the award passed by the Arbitrator, however, in this process, there was delay of 325 days in filing the objections, which came to be dismissed by the impugned order.

3. Learned counsel for the petitioner herein would raise a plea that the ex-parte award was not sustainable as the venue of the arbitration was exclusively at Jabalpur, but for the reasons best known, the Arbitrator proceeded to pass the award. It is submitted that in fact the entire payment has been made and, therefore, the award as such ought to be set aside. Learned counsel vehemently would argue that the delay in filing the objections was totally beyond the control of the Department and, therefore, the same ought to be condoned.

4. I have heard learned counsel for the petitioner and find that there is no infirmity in the order of the District Judge dismissing the objections on the ground of delay.

5. As per Section 34 of the Arbitration and Conciliation Act, 1996, an application for setting aside an award on any of the grounds as mentioned in Section 34 (2) of the Act is to be made within three months and the said period can be extended for a further period of thirty days on showing sufficient cause and not thereafter. The Supreme Court in the case of **M/s Simplex Infrastructure Ltd. Versus Union of India 2019 (1)**

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R.C.R. (Civil) 205, while dealing with the subject matter, clearly held as under:-

> *"Section 34 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 the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section 3 of Section 34, would not be an application "in accordance with" that sub-section. By virtue of Section 34 (3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of 5 Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words "but not thereafter" in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of upto thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay."*

Therefore, in view of the law well settled that objections to the award have to be filed within a period of limitation as prescribed under Section 34 (3) of the Arbitration and Conciliation Act, 1996, the objections as filed to the award have rightly been dismissed on account of delay. Furthermore, in the

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case of **State of Uttar Pradesh V. M/s Satish Chand Shivhare and Brothers 2022 (2) Apex Court Judgments (SC) 531,** it has been held that in case an appeal is found to be barred by limitation, as in the instant case, there is no question of any obligation on the part of the courts to go into the merit of the case. Therefore, the argument, as raised by learned counsel for petitioner that the award is not sustainable as it is an ex-parte award and the amount already stood paid, cannot be taken into consideration at this stage. There is no infirmity in the order so passed.

6. Consequently, the present revision petition is dismissed.

17.10.2022 **(JAISHREE THAKUR)**
prem **JUDGE**

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

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