

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-75-CII-2020,
CM-77-CII-2020 in/and
FAO No. 69 of 2020(O&M)
Date of Decision:06.05.2022

Balram (since deceased) through legal heirs

.....Appellants

Versus

Government of India and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Digvijay Lamba, Advocate
for Mr. Jasmer Singh Rozera, Advocate
for the appellant.

LISA GILL, J(Oral).

CM-75-CII-2020

Application for making good deficiency in Court fee is allowed,
subject to just exceptions.

Application is disposed of.

FAO-69-2020 (O&M)

This appeal has been filed challenging order dated 06.05.2017
passed by District Judge, Palwal whereby petition under Section 34 of the
Arbitration and Conciliation Act, 1996 filed by the appellants has been
dismissed by the learned District Judge being barred by limitation.

Brief facts relevant for adjudication of the matter are that land
of the appellants was acquired pursuant to notification under Section 3(A) of

the National Highways Act, 1956 on 02.01.2007. It is submitted that the award in this case was first pronounced by the Competent Authority-cum-DRDA, Faridabad, with some of the land owners since challenging the same and ultimately the matter being disposed of with a direction to the Arbitrator to determine the market value of the acquired land in accordance with law after affording opportunity to the parties to lead evidence. All cases pertaining to the same notification and award were consolidated and decided by the learned Arbitrator-cum-Additional Deputy Commissioner, Palwal, vide Award dated 02.09.2015. Market value of the land in question was assessed as Rs. 62 lakhs per acre and appellants were also held entitled to compensation of 10% as applicable under Section 3G (2) of the Act.

Aggrieved from purported deficient compensation, petition under Section 34 of the Arbitration and Conciliation Act (for short 'the Arbitration Act'), was filed by the present appellants on 21.09.2016 after considerably delay.

Learned District Judge, Palwal, vide impugned order dated 06.05.2017, dismissed the appellants petition under Section 34 of the Arbitration Act, being barred by limitation.

Aggrieved therefrom, present appeal has been filed by the appellants.

Learned counsel for the appellants argues that the appellants are illiterate persons with a rural background being ignorant of their rights regarding recourse to law due to which petition under Section 34 of the Arbitration Act was not filed within the stipulated period, however the same should not be held against the appellants and the matter should be decided on merits. It is thus prayed that this appeal be allowed.

I have heard learned counsel for the appellants and have gone

through the file with his assistance.

It is relevant to note that Section 34 of the Arbitration Act provides for application for setting aside an arbitral award. The timeline for filing such an application is provided in Section 34 (3) of the Arbitration Act, which reads as under:-

“(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:

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.”

It is a settled position that there has to be a strict adherence to the prescribed timeline. Condonation of delay beyond the grace period of 30 days as stipulated in the proviso to Section 34 (3) of the Arbitration Act, is not permissible. Gainful reference, at this stage, can be made to judgement of Hon’ble Supreme Court in **Mahindra and Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod and others, Civil Appeal No. 11477 of 2014, d/d 16.12.2021**, wherein it has been held that where limitation is prescribed and the extent to which it can be condoned is circumscribed, delay cannot be condoned. It is specifically held that Section 5 of the Limitation Act, has no applicability.

In the present case, it is a matter of record and as has been noted by the learned District Judge, Palwal award was passed on 02.09.2015 in the presence of counsel for the parties. Appellants applied for certified copy of the said award on 09.09.2015. Certified copy of award dated 02.09.2015 was

received by the appellants on 05.10.2015 i.e., within one month and three days of passing the impugned award. Still petition under Section 34 of the Arbitration act, was filed on 21.09.2016, therefore to say that appellants were not aware of the court proceedings and thus could not file the petition in time is an argument devoid of merit and clearly not substantiated on record.

Learned counsel for the appellants is unable to point out any illegality or infirmity in order dated 06.05.2017 which calls for interference by this Court.

There is a delay of 670 days in re-filing of this appeal. Condonation thereof is sought on the ground that appeal was filed well within time but returned by the Registry with some objections including that of deficiency of court fees. Appellants, it is stated misplaced the file at their residence and as and when it was retrieved, appeal was re-filed. In this process, delay of 670 days occurred. Keeping in view the fact that matter has been adjudicated on merits, question of delay in re-filing of this appeal is rendered academic. Application is accordingly disposed of.

Present appeal is, accordingly, dismissed with no order as to cost.

06.05.2022

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.