

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.120 of 2018

1. The State Of Bihar through the Collector, Khagaria.
2. The District Land Acquisition Officer, Khagaria.

... .. Appellants

Versus

1. Kaushalendra Kumar Singh sons of Late Raj Kishore Prasad Singh.
2. Amrendra Prasad Singh sons of Late Raj Kishore Prasad Singh.
3. Shailendra Prasad Singh sons of Late Raj Kishore Prasad Singh.
4. Smt. Kumud Rai daughter of Late Raj Kishore Prasad Singh.
5. Abhay Kumar Singh son of Late Shiv Shankar Prasad Singh.
6. Smt. Sarita Singh, daughter of Late Shiv Prasad Singh, All are Resident of Village- Sadanandpur, Police Station Ballia, District- Begusarai.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Uday Shankar Sharan Singh, (G.P. 19)
	:	Ms. Dr. Shobha Choubey, (AC to G.P. 19)
	:	Mr. Rakesh Kumar Chandram, (A.C. to G.P. 19)
For the Respondents	:	Mr. Chhote Lal Narain Singh, Advocate
	:	Mr. Proamod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 18-08-2023

Re.: I.A. No. 02 of 2022

Heard learned counsel for the appellants and learned
counsel for the respondents.

2. Learned counsel for the appellants seeks
permission to correct the provision of law in I.A. No. 02 of
2022. Permission is granted.

3. This interlocutory application has been filed
under Section 74(1) of The Right to Fair Compensation and
Transparency in Land Acquisition Rehabilitation and



Settlement Act, 2013 (hereinafter referred to as the Act of 2013) for condonation of delay which has occurred in filing of this appeal.

4. Before dealing with the limitation matter, it is necessary to deal Section 74 of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Settlement Act, 2013 (hereinafter to be referred as Act of 2013), which reads as follows:

“74. Appeal to High Court. –

(1) The Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2) Every appeal referred to under subsection (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

Explanation.—For the purposes of this section, “High Court” means the High



Court within the jurisdiction of which the land acquired or proposed to be acquired is situated.”

5. It is clear from the Section itself that the proviso provides that if the appeal is not filed within the period of sixty days, it allows to be filed within a further period not exceeding sixty days.

6. Admittedly, this appeal has been filed after more than 120 days (60 + 60 days) from of the date of Award i.e., after 132 days. The date of Award is 04.04.2018 and the date of filing of this appeal is 14.08.2018. The time consumed in obtaining of the certified copy i.e., 5 days is excluded from the total days consumed after the date of Award and it comes to 127 days, which is 7 days more than 120 days.

7. The question of applicability of the provisions contained in Section 5 of the Limitation Act, 1963 (hereinafter referred to as the Act of 1963) read with the proceedings under Section 74(1) of the Act of 2013 is required to be decided.

8. The same provision is mentioned in Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996). The relevant provision contained in Section 34 of the Act of 1996 is extracted which



is as follows:

*“**34.** Application for setting aside arbitral award.—*

(1) 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).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that] –

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters



submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

¹*[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—*

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.



Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

²*[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is



appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

¹[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]”

9. Learned counsel for the respondents vehemently opposed the prayer for condonation of delay in filing of the instant First Appeal and relied upon the decisions in the case of ***Union of India vs. Popular Construction Co.*** reported in ***(2001) 8 SCC 470*** as well as ***Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission and others*** reported in ***(2010) 5 SCC 23***. In the case of ***Chhattishghar State Electricity Board*** (Supra),



paragraph No. 20 reads as follows:

“20. Section 125 provides for an appeal to this Court against any order or decision of the Tribunal which can be filed within 60 days from the date of communication of the decision or order of the Tribunal. The limitation placed on the jurisdiction of this Court is that the appeal can be entertained only on one or more of the grounds specified in Section 100 of the Code of Civil Procedure. Proviso to Section 125 empowers this Court to entertain the appeal within a further period not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period. In other words, an appeal under Section 125 can be filed within a maximum period of 120 days if this Court is satisfied that there was sufficient cause for not filing the same within 60 days from the date of communication of the decision or order appealed against.”

10. Learned counsel for the respondents has further relied on a decision of the Hon’ble Supreme Court in the case of ***Rohitash Kumar and others vs. Om Prakash Sharma and others*** reported in ***(2013) 11 SCC 451***, which reads as follows:



*“**B.** Interpretation of Statues – Basic Rules – Literal or strict construction – Held, a section is to be interpreted by reading all of its parts together and Court can neither add, nor subtract even a single word especially when the literal reading of the same produces an intelligible result otherwise that would not amount to interpretation, but legislation – Court cannot assume that legislature while enacting statute has committed a mistake; it must proceed on the footing that legislature intended what is has said; even if there is some defect in phraseology used in framing the statute*

(Paras 25 to 32 and 35)”

11. The Court comes to the view that proviso to Section 74(1) of the Act of 2013 merely provided for a period within which the Court could exercise its discretion that would not have been sufficient to exclude Section 4 to 24 of the Limitation Act. However, expression in Section 74(1) of the Act of 2013 “further period not exceeding 60 days” would amount to express exclusion within the meaning of Section 29 (2) of the Limitation Act, 1963.

12. The provisions contained in Section 29 Clause 2 of the Limitation Act, 1963 deals with savings, which is extracted hereunder:-

“29. Savings:-

(2) Where any special or local law prescribes



for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

13. Considering the submissions of both the parties and also the aforesaid decisions, I am of the view that after 120 days, Section 5 of the Limitation Act shall not be applicable. Hence, this appeal is incompetent, which has been filed after lapse of 120 days and the application of Section 5 of the Act of 1963 is precluded.

14. In the aforesaid facts and circumstances of the case, I.A. No. 02 of 2022 is dismissed.

15. Consequent upon dismissal of I.A. No. 02 of 2022, this First Appeal is also dismissed as time barred.

(Khatim Reza, J)

Shanu/-

U			
---	--	--	--

