IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.545 of 2017

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Dedicated Freight Corridor Corporation Of India Ltd. (A PSU under Ministry of Railway), through its Chief Project Manager, Dedicated Freight Corridor Corporation of India Ltd., Swarna Complex, 2nd Floor, Susuwahi Near Union Bank of India, P.S.-Lanka, District-Varanasi (U.P.) 221011.

... ... Appellant

Versus

1. The State of Bihar through Collector, Kaimur at Bhabhua.
2. The Arbitrator-cum-Commissioner, Patna Division, Patna.
3. Sri Birendra Kumar Singh, son of Late Ramdeo Singh, resident of Village-Sakri, Circle-Kudra, District- Kaimur.

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Ashok Kumar Keshari, Advocate
For the State	:	Mr. Arun Kumar Bhagar, AC to AAG-12
For the Respondent no.3	:	Mr. Anjani Kumar Sinha No. 1, Advocate
For the Respondent no. 4 & Intervenor	:	Mr. Din Bandhu Singh, Advocate
	:	Mr. Santosh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

17 22-08-2023 Heard learned counsel for the parties.

2. The instant Miscellaneous Appeal has been filed against the order dated 14.02.2017 passed by learned District Judge, Kaimur in Civil Miscellaneous No. 40 of 2016 whereby the said civil miscellaneous case has been dismissed as time barred under Section 34 of the Arbitration & Conciliation Act, 1996.

3. The Civil Miscellaneous No. 40 of 2016 was filed before the learned District Judge, Kaimur at Bhabhua for setting aside the order dated 22.08.2015 and Award dated 03.11.2015

passed in arbitration proceeding under Section 34 of the Arbitration & Conciliation Act, 1996. The District Judge, Kaimur at Bhabua rejected the miscellaneous case on the ground that the said case is time barred. The order and Award was passed on 22.08.2015 & 03.11.2015 respectively and as per section 34 of the arbitration & conciliation act, 1996, the civil miscellaneous case was filed on 08.06.2016 after lapse of much more than 120 days.

4. In ***Union of India Vs. Popular Construction Co.*** reported in ***(2001) 8 SCC 470***, the court considered the question of applicability of provisions contained in Section 5 of the Limitation Act to the proceedings under Section 34(3) of the Arbitration and Conciliation Act, 1996. The provisions contained in Section 34 of the Arbitration and conciliation Act, 1996 came up for consideration. Relevant provisions contained in the Section 34(3) is extracted hereunder :-

> *" 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:*

> *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 30 days, but not thereafter."*

5. *Proviso* to Section 34(3) provides three months period for making an application. The Court, if satisfied on sufficient cause shown, may entertain the application within a further period of 30 days, but not thereafter.

6. In the case of ***Popular Construction Co. (Supra***), the Hon'ble Supreme Court has held as under:

> *"8. Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5".*
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> *11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the*

applicability of the provisions, by necessary implication stood excluded.

12. As far 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."

7. It has been held that the *proviso* to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act. However the expression in Section 34 "but not thereafter" would amount to express exclusion within the meaning of Section 29 of the Limitation Act.

8. 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, there are not expressly excluded by such special or local law."*

9. Learned counsel for the appellant submits **Section 34(3) of the Arbitration and Conciliation Act**. Learned court below has failed to appreciate that counting of limitation should be from the date of the award is received and not from the date the Award is made. Further, the learned lower court failed to court the time consumed in obtaining the certified copy of the order and Award. Learned counsel for the appellant relied upon the decision of Hon'ble Apex Court in case of ***The State of Bihar & Ors. vs. Janardan Prasad Singh & Anr.*** *reported in* ***2005 (2) PLJR 230*** wherein Section 5 of the Limitation Act is applicable to this case. Learned counsel referred the said case in paragraph 20 of the said decision *reported in* ***2005 (2) PLJR***

230, which reads as under:-

> *"20. To the same effect is the judgment of this Court in Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma [(1996) 10 SCC 634].*
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> *13. In Nand Kishore v. State of Punjab [(1995) 6 SCC 614] this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123] this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor. In this context it was observed:*
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> *"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such*

discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such case, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammeled by the conclusion of the lower court."

10. On the other hand, learned counsel for the respondents submits that the miscellaneous case against the order dated 22.08.2015 and Award dated 03.11.2015 filed before the learned district judge on 08.06.2016 much after the delay of 120 days. Learned counsel for the respondent has further submitted that *proviso* to Section 34 of the Arbitration &

Conciliation Act, 1996 provides that the application within a further period of 30 days but not thereafter it means totally exclusion of Section 5 of the Limitation Act. It is submitted by the learned counsel for the respondent that the period of limitation to challenge the award is to be computed from the date of the receiving of the Award by an aggrieved person. The said order and award passed on 22.08.2015 & 03.11.2015 respectively. Admittedly, sanction letter from the concerned office was received on 11.01.2016 and the said Award was challenged in Civil Miscellaneous Case No. 40 of 2016 on 08.06.2016 much after 120 days i.e. after 147 days from the date of receiving of sanction letter from concerned authority.

11. In this regard, it would be apposite to advert to ***Rohitsah Kumar and others vs. Om Prakash Sharma and others*** *reported in* ***(2013) 11 SCC 451***, which reads as under:

> *"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 it has said; even if there is some defect in phraseology used in framing the statute"

(Relevant Paras 25 to 32 and 35)

12. On appreciation of the decision laid down by the Hon'ble Supreme Court reported in ***2001 (3) BBCJ 151 SC Para 14 & 16*** reads as under:

"14. Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge and Award is absolute and unextendable by Court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process".5 This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

"5. Extent of judicial intervention.

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

"16. 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 emphasised by the provisions of Section 36 which provide that "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 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". 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.”*

13. I am of the view as per the decision of the Hon’ble Supreme court, petition under *Section 34 of the Arbitration & Conciliation Act, 1996* would not be maintainable after lapse of 120 days. After 120 days, Section 5 of the Limitation Act would not be applicable to this case.

14. In the aforesaid facts, I do not find any irregularity and jurisdictional error in the judgment and order passed by the learned District Judge under Section 34 of the Arbitration & Conciliation Act and as such the Miscellaneous Case is time barred.

15. Accordingly, this Miscellaneous Appeal is dismissed and the order passed by the District Judge, Kaimur at Bhabua is affirmed.

(Khatim Reza, J)

Gaurav Kumar/-

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