

2023:PHHC:053143
FAO No. 953 of 2022 (O&M) [1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 953 of 2022 (O&M)
Date of decision: 17th April, 2023

Suresh

Appellant

Versus

State of Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Bilas Gupta, Advocate for the appellant.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') is filed aggrieved of dismissal of objections under Section 34 of the 1996 Act as time barred. The appeal is accompanied by applications for condonation of delay in filing and refiling of the appeal.

2. The brief facts are that land of the applicant/appellant was acquired under the National Highways Act, 1956 for development of National Highway No. NE-11 Eastern Peripheral Express Highway Faridabad. The appellant was dissatisfied with the compensation determined by competent authority and arbitration was initiated at his instance. The proceedings culminated in award dated 18.2.2016. The

appellant on 28.9.2017 filed the objections under Section 34 of the 1996 Act accompanied by an application under Section 5 of the Limitation Act, 1963 (for short, 'the 1963 Act') for condoning the delay in filing the objections. The objections were dismissed on 1.10.2017 as time barred, hence the present appeal.

3. Learned counsel for the appellant submits that Additional District Judge erred in not condoning the delay in filing the objections.

4. In the impugned order, it is recorded that award was announced in the presence of learned counsel for the parties. The appellant had received the payment in pursuance to the arbitral award on 17.6.2016.

5. The ground taken by the appellant in the application for condonation of delay filed before Additional District Judge was that she was not having the knowledge of limitation for filing the objections. The ground taken in appeal before this court, on one hand is that the appellant gained knowledge of the arbitral award in first week of August, 2017, applied certified copy and filed objections. On the other hand, the ground taken is that the appellant could not file the objections in time as she was taking care of her husband who suffered paralytic attack and was under medication from a *vaid*. Both the stands taken are contradictory. The case set up that the appellant gained knowledge of the arbitral award in August, 2017 falls on the face of it in view of the fact that the appellant had received compensation awarded by arbitrator on 17.6.2016. There is no evidence annexed that husband of the appellant suffered from paralytic attack.

6. There is another aspect of the matter. The sufficient cause being put forth for condonation of delay is being changed as per convenience. Firstly, it was put forth before the Additional District Judge that the appellant was not aware of the limitation and the ground taken in the appeal is that the appellant had not gained knowledge of the award till first week of August, 2017. In the same breath, it is pleaded that the delay in filing the objections occurred due to ill health of the husband of the appellant. The reasons put forth are concocted just to cover the delay.

7. The law is well settled that application under Section 5 of 1963 Act is ousted by proviso to Section 34(3) of the 1996 Act. Reference in this regard is made to the judgments of the Supreme Court in ***Union of India v. Ms. Popular Construction Co., AIR 2001 SC 4011*** and ***M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Department. and others, (2008) 7 SCC 169.***

8. As per Section 34(3) of the Act the objections can be filed within three months of receipt of arbitral award and under proviso to Section 34(3) delay upto thirty days in filing the objections can be condoned.

9. It was not the case of the appellant that delay was upto thirty days and covered under proviso to Section 34(3) of the 1996 Act. The condonation of delay under Section 5 of the 1963 Act was sought on the ground that the appellant was not aware of limitation period.

10. It was rightly held in the impugned order that delay in filing the objections under Section 34 of the 1996 Act can be condoned only as

per proviso to Section 34(3) and not under Section 5 of the 1963 Act. The appellant has neither pleaded nor averred that delay was less than thirty days. No case is made out for interference in impugned order under Section 37 of the 1996 Act.

11. In view of the above discussion, the appeal is dismissed.
12. Since the main case has been dismissed, the pending application(s), if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

17th April, 2023
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No