

**235 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CM-10938-CII-2021 in/and
FAO-1923-2021 (O&M)
Date of Decision: 13th February, 2023**

The Punjab State Co-operative Supply and Marketing Federation Limited
and another

... Appellants

Versus

M/s Mahadev Rice Mills and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. APS Mann, Advocate for the appellants.

AVNEESH JHINGAN , J.(Oral)

1. Aggrieved of order dated 3.10.2019 dismissing of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), the present appeal is filed.

2. Brief facts of the case are that on 4.10.2008, the appellants entered into custom milling agreement with the respondent. There was dispute between the parties, the arbitration proceedings culminated into award dated 17.9.2015.

3. The facts as per the appellant are that copy of award passed on 17.9.2015 was received on 9.10.2015. The objections under Section 34 of the Act filed in August, 2016 were dismissed on 3.10.2019.

4. Heard learned counsel for the appellant at length. He is not disputing the fact that there was no application filed along with the

objections for condoning the delay or excluding the time period under Section 14 of the Limitation Act, 1963. Now a feeble attempt is made to explain the delay that on return of appeal filed against award, the objections were filed.

5. The issue is that whether in view of Section 34(3) of the Act and the proviso to it, delay beyond 30 days can be condoned is no longer *res integra*.

6. In ***Union of India v. M/s Popular Construction Co., AIR 2001 SC 4010***, the Supreme Court held as under :-

7. *There is no dispute that the 1996 Act is a 'Special law' and that Section 34 provides for a period of limitation different from the prescribed under the Limitation Act. The question then is - is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads :*

34 " Application for setting aside arbitral award - (1) xxx xxx xxx xxx (2)XXX XXX XXX XXX XXXX XXX (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."

12. As for 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.

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18. In the circumstances and for the reasons earlier stated we answer the question posed at the outset in the negative. The appeal is accordingly dismissed without any order as to costs.”

(Emphasis supplied)

6.1 In **M/s Consolidated Engg. Enterprises's case (supra)**, the Supreme Court held that:-

“10. A bare reading of sub-section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the Court. Section 29(2) of the Limitation Act, inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the schedule, the provisions of Section 3 shall apply as if such period was 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 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension upto specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand

excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.”

7. It is settled position of law that Section 34(3) of the Act excludes applicability of Section 5 of Limitation Act. In case in hand, delay in filing objections under Section 34 of the Act is beyond thirty days. Moreover, with appeal neither copy of order returning appeal is annexed nor details have been mentioned as to when appeal was filed, returned and the time consumed thereafter for filing the objections.
8. No interference is called for in the impugned order. Appeal is dismissed.
9. Since the main appeal is dismissed, pending applications, if any, rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

13th February, 2023
anuradha

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