

2023:PHHC:068142
FAO No. 3541 of 2022 [1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 3541 of 2022 (O&M)
Date of decision: 11th May, 2023

Kapil

Appellant

Versus

Competent Authority and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Hardeep Singh, Advocate for
Mr. Ram Bilas Gupta, Advocate for the appellant.
Mr. Vivek Singla, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. The present appeal is filed aggrieved of dismissal of objections under Section 34 of the Arbitration & Conciliation Act, 1996 (for short, 'the Act') by the Additional District Judge, Faridabad vide order dated 9.3.2021.
2. The brief facts are that the dispute between the parties was referred to the arbitrator. The arbitration proceedings culminated into award dated 21.4.2018. The appellant applied for copy of the award on 10.5.2018 and was delivered on the same day. The objections were filed on 7.8.2018.
3. Learned counsel for the appellants submits that the Additional District Judge erred in dismissing the objection application under Section 34 of the Act as time barred as it was filed within ninety days.
4. Learned counsel for the respondents is not in a position to dispute the fact that if 10.5.2018 is taken as date of communication, the objection application was filed within ninety days.
5. After hearing learned counsel for the parties and perusing the pleadings, the only conclusion that can be arrived is that the objection application under Section 34 of the Act was filed within ninety days after

receipt of copy of the award. The Additional District Judge erred in passing the order dated 9.3.2021 dismissing the objection application under Section 34 of the Act as time barred.

6. From the perusal of the impugned order, it is forthcoming that the application was dismissed as time barred but at the same time merits of the matter were also commented upon.

7. In **S. V. Matha v. Lal Chand Meghraj and others**, (2007) 14 SCC 722, the Supreme Court held:

“We, however, feel disinclined to go into the merits of the controversy, as we are of the opinion that the Division Bench ought to have confined its decision only to the question dealt with by the learned Single Judge viz. the question of limitation. The Division Bench has dealt with the issue of limitation in paragraphs 18 and 19 of the impugned judgment and from a reading thereof, we observe that Application Nos. 1106-1108/2000 filed by the assignees in which notice had been issued on 19.4.1999 for 10.6.1999 by the Master were dismissed by the learned Single Judge by order dated 3.7.2000 without notice to the applicants i.e. the assignees. In this situation, the Division Bench was justified in holding that the order of the learned Single Judge was not sustainable. The learned counsel for the appellant, has, however, urged that no particulars had been spelt out in the application justifying the condonation of a delay of 971 days. We are of the opinion, however, that the applicants have explained the delay and we accordingly endorse the observations of the Division Bench on this aspect. As noted above, the learned Single Judge had dismissed the applications by order dated 3.7.2000 wholly on the ground of limitation. By the impugned judgment, the Division Bench has not only condoned the delay but taken a decision on merits as well. We are of the opinion that the second exercise was not justified as the only issue

before the Division Bench was the question of limitation. We, accordingly, set aside the judgment of the Division Bench to the extent that it goes on to the merits of the controversy but maintain it in so far that it deals with the question of limitation. Ipso facto the matters are restored to a re-hearing on merits.”

8. If the objection application was dismissed on the ground of limitation, there was no occasion for the court concerned to consider the matter on merits.
9. In view of the above, the impugned order is set aside and the matter is remitted back to the court concerned to decide the objection application under Section 34 of the Act on merits.
10. Needless to say that the matter would be considered without being influenced by the observations made on the merits of the matter in the impugned order.
11. The appeal is disposed of.

[AVNEESH JHINGAN]
JUDGE

11th May, 2023
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No