

FAO No. 7458 of 2014

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 7458 of 2014 (O&M)

Date of decision: 9th March, 2023

M/s Romesh Power Products Pvt. Ltd.

Appellant

Versus

M/s Uttar Haryana Bijli Vitran Nigam Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Anju Arora, Advocate for the appellant.
Ms. Avinash Mandla, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of dismissal of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), the appellant is in appeal under Section 37 of the Act.

2. The brief facts are that the dispute between the parties was referred to an arbitrator which culminated in *ex-parte* award dated 15.7.2010. During execution proceedings, in January, 2011 the appellant gained knowledge of the *ex-parte* award and filed objection in the execution petition. On 19.4.2012, objections under Section 34 of the Act accompanied with an application for condoning delay of 643 days was filed. The application for condonation of delay was dismissed on 2.4.2014. The court held that Section 5 of the Limitation Act is not applicable, hence the present appeal.

3. Learned counsel for the appellant submits that the delay was unintentional. The appellant came to know of the *ex-parte* award in January, 2011 and on receiving copy of award filed objections in the execution petition. It is contended that the appellant after pursuing objections in execution petition, filed application under Section 34 of the

Act.

4. Learned counsel for respondent No. 1 defends the impugned order. She relies upon the decision of the Supreme Court in *Union of India v. Ms Popular Construction Co., AIR 2001 SC 4011*.

5. It is not disputed that the appellant gained knowledge of the *ex-parte award* in January, 2011 and also received the copy of the award. Even if the limitation is taken from January, 2011, the application under Section 34 of the Act was filed beyond the period of 120 days i.e. 90 days of limitation and 30 days period which can be condoned under the proviso to Section 34(3) of the Act.

6. There is no dispute on the proposition of law that Section 5 of the Limitation Act is not applicable in view of the unambiguous language of Section 34(3) of the Act.

7. The Supreme Court in *Ms Popular Construction Co.'s case (supra) and M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169* held that applicability of Section 5 of the Limitation Act is excluded by Section 34(3) of the Act and that delay beyond 30 days after expiry of limitation period cannot be condoned.

8. No interference is called for with the impugned order.

9. The appeal is dismissed.

10. Since the main appeal is dismissed, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

9th March, 2023
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1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes