

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 18th January, 2023

(1)	FAO No. 6088 of 2014	
Darshan Kumar		
	Versus	Appellant
HSAMB and another		
		Respondents
(1)	FAO No. 7441 of 2014	
Darshan Kumar		
	Versus	Appellant
HSAMB and another		
		Respondents
(3)	FAO No. 8780 of 2014	
Darshan Kumar		
	Versus	Appellant
HSAMB and another		
		Respondents
(4)	FAO No. 9629 of 2014	
M/s Tosham Shivam Co-op. Labour & Construction Society Ltd.		
	Versus	Appellant
HSAMB and another		
		Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Rana Advocate for the appellant(s).
Mr. Vishal Garg, Advocate for respondent No. 1.
Ms. Chhavi Sharma, Advocate for respondents No. 1 and 2
in FAO No. 7441 of 2014.

AVNEESH JHINGAN, J (Oral):

The afore-mentioned four appeals are filed aggrieved of dismissal of petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') as time barred. As the facts and issues are similar, all the appeals are being decided by a common order. For the sake of convenience, facts are being taken from FAO No. 9629 of 2014.

The appellant was allotted work for constructing Link Road from village Nangal Chaudhary Behror Road to Kalba. As per the terms and conditions of the agreement there was a clause providing for resolution of dispute through arbitration. Arbitration proceedings culminated in an ex-parte award dated 12.7.2010. The execution petitions were filed by decree holder and counsel for the appellant put an appearance on 28.5.2011 in the execution proceedings. On gaining knowledge of award, petition under Section 34 of the Act was filed on 15.10.2011. The Additional District Judge relying upon that the appellant gained knowledge of the award on 18.5.2011 but petition under Section 34 of the Act was filed on 15.10.2011 dismissed the petition as time barred, hence the appeal.

It is a trite law 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. Reference in this regard can be made to *Union of India v. Ms Popular Construction Co.,*

AIR 2001 SC 4011 and M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169.

Learned counsel for the appellant argues that there was no delay in filing the petition under Section 34 of the Act. Copy of the award was received in October, 2011 and thereafter immediately the petition was filed. The grievance is that the said aspect has not been considered by the District Judge.

Learned counsel for the respondents relies upon Section 3 of the Act with regard to deemed communication.

From the perusal of the impugned order, it is evident that a specific stand was taken by the appellant that copy of the award was supplied a week before. The Additional District Judge dismissed the petition as time barred by calculating ninety days from the date of filing of power of attorney of the counsel for the appellant in the execution proceedings. It was held that the appellant gained knowledge on 28.5.2011 when the counsel appeared in the execution proceedings.

As per Section 31(5) of the Act signed copy of award is to be delivered to each of the party. Section 34(3) stipulates limitation of ninety days for filing the application under section 34 of the Act. The ninety days are to be calculated from the date the party had received the arbitral award. The impugned order was passed without considering the provisions of Section 31 and 34 of the Act and also without recording a factual finding as to when the appellant had received copy of the award.

There is another aspect to be considered that the Additional District Judge dismissed the petition under Section 34 of the Act as time

barred and simultaneously had decided the petition on merits.

In view of the above, the impugned orders are not sustainable and is set aside. The matter is remanded back to the court concerned for passing fresh order after providing opportunity to the parties.

Needless to say that the court would first decide the issue of limitation.

The appeals are disposed of.

Photocopy of the order be placed on the file of each connected case.

[AVNEESH JHINGAN]

JUDGE

18th January, 2023
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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No