

FAO No. 4048 of 2018 & connected case [1]

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Date of decision: 21st February, 2023

(1) FAO No. 4048 of 2018

Surender Singh

Appellant

Versus

Union of India and others

Respondents

(2) FAO No. 4065 of 2018

Surender Singh

Appellant

Versus

Union of India and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Yadav, Advocate for the appellant.
Mr. Sushil Kumar, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of above mentioned two appeals as the parties are common and similar relief is sought.
2. For the sake of convenience, facts are being taken from FAO No. 4048 of 2018.
3. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') aggrieved of dismissal of objections under Section 34 of the Act.
4. The facts in brief are that land of the appellant was acquired for construction of Railway Line under the Dedicated Freight Corridor project.

The compensation was determined for the acquired land. Feeling dissatisfied, claim was raised and arbitrator appointed. The arbitration proceedings culminated into award dated 7.10.2016.

5. There is no dispute that the appellant gained knowledge of award on 10.8.2017. He applied for certified copy on 12.8.2017, same was supplied on 14.8.2017 and objections were filed on 3.1.2018.

6. Learned counsel for the appellant submits that delay of fifty days in filing objections be condoned invoking Section 5 of the Limitation Act.

7. Learned counsel for Union of India opposes the prayer of the appellant. He relies upon the provisions of Section 34(3) of the Act to submit that delay beyond thirty days from stipulated limitation in the Act cannot be condoned.

8. Section 34(3) of the Act is reproduced below:

“(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.”

9. Section 34(3) of the Act provides limitation of three months for filing the objections from receipt of arbitral award. As per proviso, the Court can condone the delay upto thirty days if satisfied that the applicant

was prevented by sufficient cause.

10. 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? The issue is no longer *res integra* and has been dealt by the Supreme Court in ***Union of India v. Ms Popular Construction Co., AIR 2001 SC 4010*** and ***M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169.***

11. In **M/s Popular Construction Co.'s case (supra)**, 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) and (2) xx xx xx

(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."

xx xx xx

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)

12. In **M/s Consolidated Engg. Enterprises' 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.”

13. It is not disputed that the objections were filed beyond 120 days. The use of phrase ' but not thereafter' in proviso of Section 34(3) of the Act makes it unequivocal that delay beyond thirty days cannot be condoned.
14. In view of the settled position of law, Section 5 of the Limitation Act would not apply as language of Section 34(3) of the Act leaves no scope for applicability of Section 5 of the Limitation Act.
15. No interference is called for with the impugned order.
16. The appeals are dismissed.
17. Since the main appeals are dismissed, pending application, if any, is rendered infructuous.
18. Photo copy of the order be placed on the file of connected case.

[AVNEESH JHINGAN]

JUDGE

21st February, 2023

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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No