

FAO No. 8196 of 2017 (O&M)

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 8196 of 2017 (O&M)
Date of decision: 10th January, 2023

Om Parkash and others

Appellants

Versus

DRO-cum-Land Acquisition Collector /competent authority under National
Highway Act, 1956 and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tanmoy Gupta, Advocate for the appellants.
Mr. Mukand Gupta, Advocate for Mr. D. K. Singal,
Advocate for respondent No.2.

AVNEESH JHINGAN, J (Oral):

This appeal is filed aggrieved of order dated 8.3.2017
dismissing the objections under Section 34 of the Arbitration and
Conciliation Act, 1996 (for short, 'the Act') as time barred.

The facts in brief are that land of the appellants was acquired.
The matter was referred to the arbitrator. The award was passed on
2.9.2015. The objections were filed on 11.4.2016.

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.”

The Supreme Court in ***Union of India v. Ms Popular Construction Co., AIR 2001 SC 4011; M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169*** and ***Chintels India Ltd. v. Bhayana Builders Pvt. Ltd., 2021 AIR (SC)1014*** held that Section 5 of the Limitation Act is excluded by Section 34(3) of the Arbitration Act, 1996 and that delay beyond 30 days after expiry of limitation period cannot be condoned.

Learned counsel for the appellants submits that the appellants were not aware of the award hence the delay occurred in filing the objections.

It is an undisputed fact that the objections were filed after 120 days. The contention that the appellants were not aware of the award was specifically dealt with by Additional District Judge by stating that the award was announced in the presence of counsel for the appellants. The said fact has not been disputed in appeal. Moreover, it was further noted that as the application for applying certified copy was made on 9.9.2015 which was delivered on 15.9.2015 and even from the receipt of certified copy, the appeal was filed beyond 120 days.

It is settled position of law that Section 5 of the Limitation Act cannot be invoked for condoning the delay in filing objections under Section 34 of the Act. In the present case, the delay is beyond the period

provided in the proviso to Section 34(3) of the Act for condoning the delay.

It would not be out of place to mention that the reason given for condoning delay was factually found wrong.

No interference is called for with the impugned order.

The appeal is dismissed.

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

[AVNEESH JHINGAN]
JUDGE

10th January, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |