

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4966-2022 (O&M)

Date of Decision: 6th January, 2023

Executive Engineer, PHE Department Sonapat

... Appellant

Versus

Kulbir Singh Chahal and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sharad Aggarwal, Assistant Advocate General, Haryana.

Mr. Raj Kapoor Malik Advocate for respondent No.1.

AVNEESH JHINGAN , J.(Oral)

1. Aggrieved of order dated 20.8.2022 passed by Additional District Judge, Sonapat dismissing the objection under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') as time barred, this appeal is filed.

2. Before dwelling on the issue of limitation relevant facts are that to settle dispute between the parties, Superintendent Engineer of Public Health and Engineering Department was appointed as Arbitrator. Award dated 18.6.2019 was passed. The signed copy was supplied to the appellant on 25.6.2019. The objections under Section 34 of the Act were filed on 5.11.2019. Considering that the objections were filed after delay of more than 30 days, the objections were dismissed as time barred.

“(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.”

3. 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.

4. Learned counsel for the appellant submits that there was a sufficient cause and delay be condoned invoking Section 5 of the Limitation Act.

5. Learned Counsel for the respondent has supported the impugned order.

6. 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. Enterprisses v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169.***

7. The Supreme Court in ***Chintels India Ltd. v. Bhayana Builders Pvt. Ltd., 2021 AIR (SC) 1014*** referring to the judgment in ***State***

and another, (2010) 12 SCC 210 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.

8. 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) makes it unequivocal that delay beyond thirty days cannot be condoned.

9. In view of the settled position of law that language of Section 34(3) of the Act leaves no scope for applicability of Section 5 of Limitation Act, no interference is called for in the impugned order.

10. Appeal is dismissed.

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

(AVNEESH JHINGAN)
JUDGE

6th January, 2023
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No