

**267 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CM-6573-CII-2020 in/and
FAO-2387-2020 (O&M)
Date of Decision: 13th April, 2023**

Amar Singh and others ... Appellants
Versus

The Land Acquisition Collector/DRO and another ... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr.Shiv Kumar, Advocate for the appellants.

AVNEESH JHINGAN , J.(Oral)

1. This appeal under Section 37 of Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') is filed aggrieved of dismissal of objections under Section 34 of the 1996 Act as time barred. This appeal is accompanied by an application for condonation of delay in filing and refiling of the appeal.

2. Brief facts are that land of the applicant/appellant was acquired under the Act for development of National Highway No. NE-11 Eastern Periphery Express Highways Faridabad. The appellants were dissatisfied with the compensation determined by competent authority and arbitration was initiated at their instance. The proceedings culminated in award dated 5.2.2016. The appellant on 10th April, 2017 filed the objections under Section 34 of the 1996 Act accompanied by an application under Section 5 of the Limitation Act, 1963 (for short 'the 1963 Act') for condoning the delay in filing the objections. The objections were dismissed on 2.7.2019 as time barred, hence, the present appeal.

3. Learned counsel for the appellant submits that Additional District Judge erred in not condoning the delay in filing the objections.

4. In the impugned order, it is recorded that award was announced in the presence of learned counsel for the parties. The appellant had received the payments in pursuance to the arbitral award on 6.5.2016.

4. It would be appropriate to note that the only ground raised in this appeal for challenging the impugned order dismissing the objections as time barred is ground 12 which is reproduced below :-

‘That the Learned Additional Judge, failed to taken into consideration provisions of the Arbitration and Reconciliation Act and wrongly rejected the objections filed by the appellants on the technical ground of limitation. Hence, the finding of the Ld. Additional District Judge are liable to be set aside.’

5. It would be relevant to note that in application under Section 5 of 1963 Act, it was pleaded that appellants were not aware of limitation for filing objections and that delay was not intentional.

6. The law is well-settled that application of Section 5 of the 1963 Act is ousted by proviso to Section 34(3) of the 1996 Act. Reference in this regard is made to Supreme Court judgment in **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.**

7. The date of receipt of arbitral award by the appellant has not been disclosed. The most relevant fact has been withheld by the appellant in appeal. It is not the case set up that objections under Section 34 of the 1996 Act were filed without annexing the copy of the award.

8. As per Section 34(3) of the Act the objections can be filed within three months of receipt of arbitral award and under proviso to Section 34(3) delay upto thirty days in filing objections can be condoned.

9. It was not the case of the appellant that delay was upto thirty days and covered under proviso to Section 34 (3) of the 1996 Act. The condonation of delay under Section 5 of the 1963 Act was sought on the ground that the appellants were not aware of limitation period.

10. It was rightly held in impugned order that delay in filing the objections under Section 34 of 1996 Act can be condoned only as per proviso to Section 34(3) and not under Section 5 of 1963 Act. The appellant has neither pleaded nor averred that delay was less than thirty days. The date of receipt of copy of award has been withheld. No case is made out for interference in impugned order under Section 37 of the 1996 Act.

11. In view of the above discussion, the appeal is dismissed.

12. Since the main case has been dismissed, the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

13th April, 2023

anuradha

Whether reasoned/speaking Yes