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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment pronounced on: 12.12.2023*+ **FAO(OS) (COMM) 120/2019****U.P JAL VIDYUT NIGAM LTD**

... Appellant

versus

**C.G POWER & INDUSTRIAL SOLUTION
LTD.**

... Respondent

Advocates who appeared in this case:

For the Appellants : Mr. Pradeep Mishra and Mr. Daleep
Dhyani, Advs.
For the Respondents : Mr. Ramesh Singh, Sr. Adv. with Ms.
Monisha Handa and Mr. Mohit D. Ram,
Advs.

CORAM:**HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Court Hearing/ Hybrid Hearing]****JUDGMENT****TARA VITASTA GANJU, J.:****TABLE OF CONTENTS**

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**PREFACE:**

1. This Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the “Act”] assailing the Order/Judgment dated 12.04.2019 passed by the learned Single Judge of this Court [hereinafter referred to as the “Impugned Judgment”].
2. By the Impugned Judgment, the Application of the Appellant under Section 14 of the Limitation Act, 1963 [hereinafter referred to as the “Limitation Act”] to condone a delay of 6263 days in filing a Petition under Section 34 of the Act, was dismissed. Resultantly, the Petition filed under Section 34 of the Act of the Appellant was also dismissed.
3. A Coordinate Bench of this Court had stayed the operation of the Arbitral Award subject to deposit of a sum of Rs. 2 Crores by the Appellant before this Court. The said sum was subsequently deposited by the Appellant with the Registry of this Court.

BRIEF FACTS:

4. The facts in brief are:
 - (i) The Appellant herein notified tenders for the execution of Power House Electrical equipment at District Saharanpur which was awarded to the Respondent and a contract dated 28.09.1988 [hereinafter referred to as the ‘Contract’] was executed between the parties.
 - (ii) Disputes arose between the parties which were referred to Arbitration. Both parties appointed their respective Arbitrators and



the Arbitrators appointed a third Arbitrator [hereinafter referred to as the “Arbitral Tribunal”].

- (iii) The Arbitral Tribunal pronounced an Award on 15.03.2001 at Delhi in favour of the Respondent for Rs. 95,74,733/- along with 12% interest [hereinafter referred to as the “Arbitral Award”] payable upon the expiry of 60 days from the date of Arbitral Award.
- (iv) The Appellant filed objections to the Arbitral Award on 02.07.2001 under Section 34 of the Act before the Civil Judge, Saharanpur [hereinafter referred to as “Section 34 Petition”]. The objections were returned on 26.08.2003 to be filed before the District Judge, Saharanpur. Subsequently, the District Judge, Saharanpur on 11.04.2011 transferred the case to the Additional District Judge, Saharanpur.
- (v) The Section 34 Petition was dismissed in default on 15.07.2013 and thereafter was restored. It was once again dismissed in default on 22.11.2016. Resultantly, the Respondent filed an Execution Petition before the District Judge, Saharanpur for execution of the Arbitral Award.
- (vi) In the meantime, an Application of stay of execution proceedings filed by the Appellant was rejected by the Court on 06.01.2018. This lead to the Appellant filing a Petition under Article 227 of the Constitution of India before the High Court of Judicature at Allahabad to challenge the order dated 06.01.2018.
- (vii) By its order dated 19.02.2018, the Petition was allowed by the Allahabad High Court subject to certain conditions. It was directed that the Restoration Application filed by the Appellant be heard and



decided within two weeks and if the Restoration application is allowed, the Section 34 Petition be decided within three months. It was further directed that the Parties shall not seek any adjournment and that till the Restoration Application is decided, the proceedings before the Executing Court shall remain in abeyance.

- (viii) The Trial Court allowed the Application for Restoration on 14.03.2018, thus reviving the Section 34 Petition. Subsequently, on 02.05.2018, the Appellant filed an Application for withdrawal of the Section 34 Petition with liberty to file the same before a Court of competent jurisdiction which was allowed by the District Court at Saharanpur on 03.05.2018.
- (ix) The Appellant initially filed the Section 34 Petition on 08.05.2018 before the District Judge, Patiala House Courts, New Delhi. Subsequently on 04.08.2018, the Section 34 Petition was returned to be filed before the High Court in view of the fact that the District Judge lacked pecuniary jurisdiction to entertain the Section 34 Petition.
- (x) The record shows that Section 34 Petition was filed before a Single Judge of this Court on 25.08.2018. The Section 34 Petition was accompanied by an Application under Section 14 of the Limitation Act seeking the exclusion of 6263 days, which were spent in proceedings before a Court which lacked jurisdiction.
5. As stated above, the Impugned Judgment was stayed by an Order of the Coordinate Bench of this Court on 10.07.2019, subject to deposit of a sum of Rs. 2 Crores in this Court, which was deposited by the Appellant. Subsequently, upon an Application filed by the



Respondent, a Coordinate Bench of this Court, directed that the amount deposited could be withdrawn against a solvent security provided to the satisfaction of the Registrar General of this Court. However, no security has been presented by the Respondent for such withdrawal.

6. Both parties presented their arguments and the Judgment in the matter was reserved. Parties were directed to file their Written Submissions, which have since been filed by the parties.

CONTENTIONS OF THE APPELLANT:

7. Learned Counsel for the Appellant has stated that the Appellant is entitled to the exclusion of the period during which it was prosecuting the Section 34 Petition before the Courts at Saharanpur and thereafter before the Patiala House Courts, New Delhi.
- 7.1 The Appellant has contended that it was pursuant to legal advice received in view of the decision of the Supreme Court in *Bhandari Udyog Ltd. Vs. Industrial Facilitation Council & Anr.*¹, that the Appellant filed the Application for withdrawal of the Petition which was pending before the District Court at Saharanpur to be filed before the Courts at New Delhi. It was further contended that this was done by the Appellant on its own accord and the Respondent did not raise any objection in this context, before the District Court at Saharanpur.
- 7.2 The Appellant has further stated that the only question for consideration before this Court is whether the time spent during

¹ AIR 2015 SC 1320



these proceedings till the Petition was filed before a Single Judge of this Court has to be excluded in computation of time permitted under Section 34(3) of the Act. The Appellant has contended that it was pursuing the case in a *bona fide* manner and diligently. However, based on wrong advice, the Section 34 Petition was filed before the Patiala House Courts, New Delhi instead of this Court.

- 7.3 The Appellant has relied upon the judgment of the Supreme Court in ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department & Ors.***², to submit that the applicability of Section 14 of the Limitation Act is not excluded under Section 34(3) of the Act. Additionally, it was contended that Section 14 of the Limitation Act has to be interpreted and adopted liberally to advance the cause of justice.

CONTENTIONS OF THE RESPONDENT:

8. Learned Senior Counsel appearing on behalf of the Respondent submits that in the first instance the Appellant had filed the Section 34 Petition before the Court of Civil Judge, Saharanpur, which was dismissed twice due to non-prosecution. Even after withdrawing the same from the Court of Additional District Judge at Saharanpur, the Appellant filed the Section 34 Petition before the Court of Patiala House Courts, New Delhi again knowing fully well that the said Court lacked pecuniary jurisdiction to entertain the Section 34 Petition.
- 8.1 The Section 34 Petition before the Patiala House Courts, New Delhi was prosecuted by the Appellant despite the objection of lack of

² (2008) 7 SCC 169



jurisdiction of the Court under Order VII Rule 10 CPC having been taken on 02.06.2018 by the Respondent. It was only after the objection of the Respondent was allowed by the District Court on 04.08.2018, after the lapse of 63 days, steps were taken by the Appellant for filing the Section 34 Petition before this Court.

- 8.2 Relying upon the judgments of the Supreme Court in *Madhavrao Narayanrao Patwardhan v. Ramkrishnagovind Bhanu and Ors.*³, *Deena (Dead) Through LRs v. Bharat Singh (Dead) Through Lrs. & Ors.*⁴, *Indian Oil Corporation Ltd. Vs. The Great Eastern Shipping Co. Ltd. & Anr.*⁵ and of this Court in *M/s K.G. Khosla & Co. v. The Trustees of the Port of Bombay*⁶, it is submitted that the Appellant has been unable to show that it was prosecuting the earlier petition at Saharanpur and Patiala House Courts, New Delhi, with due diligence and in good faith. Hence, the Application filed by the Appellant was correctly dismissed.

ISSUE:

9. The issue before this Court is, thus, whether for the purposes of calculating the limitation under Section 34(3) of the Act, the delay of 6263 days can be excluded and condoned by this Court in terms of Section 14 of the Limitation Act.

ANALYSIS:

10. To better appreciate the contentions of the parties, Section 14 of the Limitation Act is reproduced below:

³ (1959) SCR 564

⁴ (2002) 6 SCC 336

⁵ 2021 SCC Online Del 2852

⁶ ILR (1970) 2 Delhi 60



*“14.Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the **plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which,** from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, **where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.** (3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation:- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted; (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”*

[Emphasis is ours]

11. Section 14 of the Limitation Act has been enacted by the legislature to exempt a period covered by litigious activity and to protect a litigant against the bar of limitation when a proceeding is dismissed on account of a technical defect instead of being decided on merits. The intent is to prevent a litigant from being saddled with an adverse decision, which is, on account of the fact that the Court did not have the jurisdiction to entertain the case.



11.1 The Supreme Court in **Consolidated Engineering** case while elaborating on the principles laid down in **Madhavrao Narayanrao** has pithily put the conditions which must be satisfied for applicability of Section 14 of the Limitation Act, which are below:

“21.....

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court....”

11.2 It has further been held in the **Consolidated Engineering** case that to attract the provisions of Section 14 of the Limitation Act, all five pre-conditions have to co-exist. It is not enough if only some of these pre-conditions are present, all these must exist side by side.

12. So what is good faith? The Supreme Court in **Madhavrao Narayanrao** case has clarified that since the Limitation Act provides for its own definition of good faith, the definition as contained in General Clauses Act, 1897 would not apply.

12.1 Good faith is defined in Section 2(h) of the Limitation Act as:

“2. Definitions. – In this Act, unless the context otherwise requires-

....

(h) “good faith”—nothing shall be deemed to be done in good faith **which is not done with due care and attention;**”

[Emphasis is ours]

12.2 The **Madhavrao Narayanrao** case while discussing the term ‘due care and attention’ in the context of Section 14 of the Limitation Act has held that what needs to be seen is whether the Plaintiff



(Appellant herein) has brought on the record any evidence to show that he was prosecuting the previously instituted suit with due diligence.

13. The measure of due diligence and prosecuting in good faith is to be decided on the facts of each case. The Supreme Court in the ***Consolidated Engineering*** case has explained this principle in a succinct manner below :

“31.To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this judgment have to co-exist [Ed.:See para 21, above.]. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essential prerequisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith.”

[Emphasis is ours]



14. Applying the principles set forth in the *Consolidated Engineering* case and the *Madhavrao Narayan Rao* case, what needs to be seen as to whether the pre-conditions as reproduced in paragraph 11.1 above ‘co-exist’ in the facts and circumstances of the present case.
- 14.1 Since both prior and subsequent proceedings are civil proceedings being prosecuted by the Appellant, the first pre-condition is satisfied. The earlier and later proceedings both relate to the subject matter of challenge to the Arbitral Award and both are being prosecuted in a Court, hence, pre-conditions (4) and (5) as enunciated in the *Consolidated Engineering* case also stand satisfied.
15. Pre-condition (3) sets forth that the failure of the prior proceeding should be due to a defect of jurisdiction or such similar cause. It is contended by the Appellant in the Application filed under Section 14 of the Limitation Act, that during the course of arguments before the District Courts at Saharanpur, the Judgment of the Supreme Court in the *Bhandari Udyog* case was pointed out, and it is based on this Judgment that the proceedings were withdrawn from the Courts at Saharanpur to be filed in Delhi, since the Arbitral proceedings were held at Delhi.
- 15.1 The English translation of the Application filed by the Appellant before the Courts at Saharanpur has been annexed with the Appeal paper book. The Application, however, does not mention the *Bhandari Udyog* case at all. It states that advice has been received that the jurisdiction is of the Court where the award was passed. The relevant extract of the Application is below:



“COURT OF DISTRICT JUDGE, SAHARANPUR
MISC. CASE NO. 131 OF 2015

U.P. Jal Vidyut Nigam Versus M/s. Crompton Greaves

Sir,

It is submitted that the Applicant has filed the above case for setting aside the award dated 15.03.2001 passed by the Arbitrators under Section 34 of Arbitration and Conciliation Act. In the said case the question of jurisdiction is involved. At the time of filing the claim the Petitioner has received the legal advice and the Applicant on the basis of the said legal advice has filed the above case before the Hon'ble Court and further proceedings are going on in the matter. However, now the Applicant has received legal advice that the Hon'ble Court has no jurisdiction to hear the above case and the jurisdiction to file the case for setting aside the award passed by the Arbitrator should have been before the court under whose jurisdiction award has been passed. In the light of aforesaid facts and in the interest of justice the said case be returned to the Petitioner as per the legal advice so that he can file the said case before the competent court...”

[Emphasis is ours]

- 15.2 In any event, the facts in the ***Bhandari Udyog*** case are inapplicable to the present case. The Supreme Court in the ***Bhandari Udyog*** case, while discussing the issue with respect to jurisdiction under Section 42 of the Act, has held that since arbitral proceedings were conducted within the jurisdiction of a Court, which is subordinate to the High Court which has entertained an Application under Section 11 of the Act, the Award can be challenged only before a High Court.
- 15.3 Admittedly, the arbitration proceedings were held at New Delhi. Be that as it may, since the Contract executed between the parties has not been filed before this Court, not enough material has been made available to adjudicate upon pre-condition (3) which states that ‘*the failure of the prior proceeding was due to defect of jurisdiction or*



other cause of like nature'. However, in view of our findings below, this does not require to detain us any further.

16. Pre-condition (2) as set forth in the Judgment of ***Consolidated Engineering*** case states that the prior proceeding had been prosecuted with due diligence and in good faith by the Appellant.
- 16.1 An analysis of the sequence of events in the present case suggests just the opposite. An Arbitral Award came to be passed on 15.03.2001 against which the Section 34 Petition was filed on 02.07.2001, after a lapse of 110 days. The Section 34 Petition filed before the District Judge at Saharanpur was transferred twice, first from the Civil Judge to the District Judge on 26.08.2003 and subsequently, from District Judge to the Additional District Judge on 11.04.2011. By now, more than ten years had lapsed from that date the Section 34 Petition had been filed. The reasons for such transfers or the pendency have not been explained by the Appellant.
- 16.2 More, significantly, the Section 34 Petition was dismissed in default on two occasions as well. Subsequent to the Petition being restored the first time, it was transferred for a third time on 03.09.2015 and thereafter dismissed in default a second time on 22.11.2016. Once again, no explanation is forthcoming.
- 16.3 The fact that the Petition was dismissed in default on two occasions is a fact which in itself, shows complete lack of due diligence in its prosecution.
17. In the meanwhile, since the Section 34 Petition was dismissed in default for the second time, the Respondent filed proceedings to execute the Arbitral Award. An Application for stay of execution



proceedings was filed by the Appellant which was dismissed. Consequently, the Appellant filed a Petition under Article 227 of the Constitution of India before the Allahabad High Court to challenge this order of dismissal.

- 17.1 A consent order was passed by the Allahabad High Court on 19.02.2018. The directions passed by the Allahabad High Court on 19.02.2018 also go a long way in showing the prosecution of the case. These include two references to not seek an adjournment and a timeline fixed for decision on both the Restoration Application and the Section 34 Petition (if restored). The relevant extract is below:

“After some argument, learned counsel for the parties agree for disposal of the instant petition in the following terms :-

*(a) The impugned order dated 6.1.2018 be set aside and the **restoration application be directed to be decided within two weeks from the date of production of certified copy** of this order.*

*(b) **The parties will not seek any adjournment.***

*(c) In case restoration application is allowed, the main petition, i.e., Misc. Case No. 2 of 2004, under Section 34, shall be decided within **3 months, without granting unnecessary adjournments.**”*

[Emphasis is ours]

18. The Restoration Application of the Appellant was allowed on 14.03.2018. It is not as if the matter ended there. After the Appellant withdrew the case from District Judge at Saharanpur, it was filed before the District Courts at Delhi on 08.05.2018 which lacked pecuniary jurisdiction to entertain the case.
- 18.1 No explanation has been provided by the Appellant as to why the Section 34 Petition was filed before a Court in Delhi which lacked jurisdiction to entertain such Petition. In fact, except for stating that



the Respondent filed an Application for return of the Petition under Order 7 Rule 10 Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] before the District Courts, Delhi and thereafter the Appellant also filed an Application for withdrawal, no explanation is forthcoming.

- 18.2 Except for use of the words ‘*as per the advice received*’ in paragraph 2(r) of the Appeal, no reasons have been provided in the Appeal either.
19. The Application was allowed by the District Judge on 04.08.2018. The Section 34 Petition was filed then before the Single Judge of this Court on 25.08.2018. Thus, a challenge to an Arbitral Award dated 15.03.2001 came to be listed on 24.09.2018, after more than 17 years before the Single Judge of this Court.
- 19.1 The sequence of events as narrated above show a complete absence of due diligence. In addition, other than referring to these dates above, the Appeal is completely devoid of any reasons why the Section 34 Petition was pending adjudication in the Courts at Saharanpur for more than 15 years.
20. The conduct of the Appellant thus, clearly establishes that prior proceedings were not being prosecuted diligently or in good faith. The pre-conditions for such Application to be allowed as held by the Supreme Court in the ***Consolidated Engineering*** case and ***Madhavrao Narayanrao*** case also do not co-exist. The Appellant has been completely remiss in prosecution of this case.



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CONCLUSION:

21. In view of the foregoing, this Court finds no reason to interfere with the Impugned Judgment.
22. The Appeal is accordingly dismissed.

**(TARA VITASTA GANJU)
JUDGE**

**(RAJIV SHAKDHER)
JUDGE**

DECEMBER 12, 2023/SA