



FAO-1866-2022

-1-

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

(110)

FAO-1866-2022

Date of decision:- 14.10.2024

Shashi Bhushan and another

...Appellants

Versus

Government of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Shoaib Khan, Advocate, for the appellants.

...

SUVIR SEHGAL, J. (Oral)

1. Instant appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”), assailing order dated 08.10.2021, passed by the learned Additional District Judge, Panchkula, whereby objections filed by the appellants under Section 34 of the Arbitration Act have been rejected as being beyond the period of limitation.

2. Mr. Shoaib Khan, Advocate, submits that appellants’ land was acquired vide notification dated 03.05.2011, issued under Section 3(A)(1) of the National Highways Act, 1956 (for short “the NH Act”) for widening four-laning, etc. of National Highways No.73. The competent authority assessed the value of the land at Rs.25 lacs per acre, besides granting other benefits vide his award dated 03.06.2013. The appellants sought reference and the arbitrator passed an award under Section 3(G)(5) of the NH Act and rejected the reference on 27.09.2016. Appellants preferred objections, which as noticed

above, have been rejected as being time barred. Counsel has contended that the



FAO-1866-2022

-2-

learned Additional District Judge, Panchkula, has failed to appreciate the statutory provision and has erred in concluding that the objections were beyond the time period laid down in the Arbitration Act.

3. Notice of motion.

4. On asking, Mr. Vinish Singla, Advocate, accepts notice on behalf of National Highways Authority of India. On asking, Mr. Aman Bahri, Additional Advocate General, Haryana, accept notice on behalf of respondents No.2, 3 and 4. Counsel for the respondents have supported the order under challenge and urge that an appeal against an order dismissing the objections as time barred is not maintainable.

5. I have heard counsel for the parties and considered their respective submissions.

6. The legal position is well settled. In *Chintels India Limited Versus Bhayana Builders Private Limited (2021) 4 SCC 602*, Supreme Court has held that an order refusing to condone the delay in filing the application under Section 34 of the Arbitration Act, has the effect of finally disposing of the original petition. Such an order can, therefore, be treated as an award and hence is appealable under Section 37(1)(c) of the Arbitration Act. Consequently, the present appeal is held to be maintainable.

7. The facts are not in dispute. Award was passed by the Arbitrator on 27.09.2016, and its copy was prepared and supplied to the appellants on 10.11.2016. Appellants filed objections under Section 34 of the Arbitration Act on 04.01.2017 that were withdrawn by the appellants vide order dated 18.03.2017, which is reproduced hereunder:-



“Today case is fixed for filing of reply. However, Shri Mukesh Kumar counsel for the petitioner has suffered the statement to the effect that non compliance of provisions of section 34(5) of the Act, he has been instructed to withdraw the present petition on account of formal defect. He further requested that he may be permitted to withdraw the present petition with the liberty to file afresh on the same cause of action. Heard. Keeping in view the statement of counsel for petitioner, present petition is ordered to be dismissed as withdrawn. However, the petitioner is at liberty to file the fresh petition, if that would be permitted to him in accordance with law.

File be consigned to record room.

Compliance be made.”

8. A copy of the order dated 18.03.2017, was prepared and delivered to the appellants on 01.04.2017, and after serving a notice under Section 34(5) of the Arbitration Act, appellants filed objections afresh on 19.05.2017. The objections were initially filed without an application for condonation of delay, which was moved on 17.09.2018, and has been rejected vide order impugned herein.

9. Though, it is not relevant for the purposes of the adjudication of the instant appeal, but it may be noticed that Section 34(5) of the Arbitration Act is not mandatory. It has been held by the Supreme Court in ***State of Bihar and***



others Versus Bihar Rajya Bhumi Vikas Bank Samiti, 2018 (5) RCR Civil 332, that it is a procedural provision and its infraction is of no consequence.

10. Be that as it may, as the signed copy of the award was delivered to the appellants on 10.11.2016, the period of limitation for filing the objections would begin to run from the next day. The period from 04.01.2017 till 18.03.2017, and the time spent in obtaining the certified copy of the order would have to be excluded for the purposes of computation of limitation. A back of the envelope calculation shows that after excluding the above period, the objections preferred by the appellants were delayed by a few days beyond the period of three months, which is prescribed under Section 34 (3) of the Arbitration Act. The proviso that follows sub-section 3 of Section 34 provides that on sufficient cause being so, the Court may entertain the application for setting aside the award if the delay is not more than a period of 30 days beyond the prescribed period. Reference can be made to *Assam Urban Water Supply and Sewerage Board Versus Subash Projects and Marketing Limited, (2012) 2 SCC 624*. It is, therefore, clear that the proviso vests power in the Court to condone the delay upto a period of 30 days, after the prescribed period of three months has expired, on sufficient cause to be shown by the appellants.

11. An analysis of the impugned order shows that the Court has not examined the explanation for the delay given by the appellants in the application for condonation. The Court has erred in coming to the conclusion that the delay has to be calculated till the date of the filing of the application seeking condonation. The entire approach of the Court is erroneous. The date of the institution of the objections is the relevant date for determining the



FAO-1866-2022

-5-

prescribed period and not the date of the filing of the application. The impugned order, therefore, cannot be sustained.

12. As the finding has been recorded by the learned Additional District Judge, without appreciating the legal position, impugned order is set aside. Matter is remitted to the same Court to re-decide the application for condonation of delay and examine the sufficient cause given by the appellants in the application.

13. Appeal is disposed of.

14. Parties are directed to appear before the learned Additional District Judge, Panchkula, on 10.12.2024, for further proceedings in accordance with law.

(SUVIR SEHGAL)
JUDGE

14.10.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes