



FAO-1285-2023 (O&M)

-1-

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

(254)

FAO-1285-2023 (O&M)

DATE OF DECISION:- 19.09.2024

ROSHAN SINGH (SINCE DECEASED) THROUGH HIS LRS**...APPELLANT****VERSUS****GOVERNMENT OF INDIA AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Raj Kaushik, Advocate and
Mr. Piyush Aggarwal, Advocate
for the appellant.

Respondent No.1 deleted from array of parties vide order dated
31.05.2024.

Mr. Abhilaksh Gaiind, Advocate,
Mr. Rakesh Roy, Advocate and
Mr. Aman Kumar Sirswa, Advocate
for respondent No.2.

SUVIR SEHGAL, J. (Oral)**CM-4765-CII-2023**

1. The legal representatives of the deceased-appellant are permitted to be brought on the record.
2. Death Certificate as well as the amended Memo of Parties is also taken on record.
3. Application is disposed of.

CM-4766-CII-2023

4. Exemption, as prayed for, is granted.
5. Application is disposed of.

**Main case**

6. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) assailing order dated 26.10.2022 passed by the learned Additional District Judge, Jalandhar, whereby application filed by the appellant for condonation of delay in filing objections under Section 34 of the Arbitration Act has been dismissed.

7. Shorn of details, it is sufficient to notice that Roshan Lal, deceased appellant, was owner of a small parcel of land in village Aema Manget, Tehsil Mukerian, District Hoshiarpur, which was acquired by notifications issued under the National Highways Act, 1956 for widening and four laning of National Highway No.1-A. Compensation for the acquired land and superstructure was assessed by the competent authority, but dissatisfied with the same, the land owner filed a reference under Section 3G of the National Highways Act, 1956, which culminated in the passing of award dated 23.11.2016, Annexure A-4. The land owner filed objections under Section 34 of the Arbitration Act along with an application for condonation of delay, which has been rejected vide order impugned herein.

8. Counsel for the appellant has urged that the objection petition was moved within a period of 90 days from the date of receipt of the certified copy of the award, but the learned Additional District Judge erred in dismissing the objections by holding that they were barred by almost one year.

9. Counsel for respondent No.2 has, however, supported the impugned order.

10. I have heard counsel for the parties and considered their respective submission, besides examining the record summoned from the learned Arbitrator.



11. The controversy requiring determination by this Court is narrow and limited. It is as to when was the signed copy of the award passed by the Commissioner, Jalandhar Division delivered to the appellant. A perusal of the arbitral record shows that the learned Arbitrator reserved the order on 16.11.2016 in the presence of counsel for the parties. The award was announced on 23.11.2016 and the proceedings recorded by the earlier learned Arbitrator are reproduced hereunder:-

“No evidence was provided by the appellant qua collector’s rates of Rs.2 lacs/marla for shops and Rs.1.70 L for residential/houses. The super structure also also assessed by PWD (B&R) after giving a due notice in papers in the year 2005 where appellant failed to appear. Restrictions of PUDA Act of 10 meters, 30 meters & 100 meters also applicable in this case, which stands violated by the appellant.

Therefore, no merit in the appeal, which is DISMISSED. Since there is no illegality in the impugned order of Collector, which would prevailed.

To be communicated to the parties.

*Sd/-
23.11.2016”*

12. After the above proceeding was recorded, there is nothing on the record of the learned Arbitrator to show that the award was ever communicated to the parties. The version of the appellant is that he never came to know about the passing of the award and it was in the month of August, 2017, when he went to make inquiries that he came to know that the award had been announced. Stand of the appellant is that the copy of the award was applied for on 28.08.2017 and it was made available on the same day. The objections were preferred before the learned Additional District



Judge on 14.11.2017 along with an application for condonation of delay. However, the application was rejected without appreciating the statutory provisions. Counsel for the respondent No.2 is not in a position to rebut the stand of the appellant.

13. Section 31 (5) of the Arbitration Act mandates that after the arbitral award is passed, a signed copy shall be delivered to each party. Section 2 (1) (h) of the Arbitration Act provides that “party” means a party to the arbitral agreement. As per Section 34 (3) of the Arbitration Act, an application for setting aside of an arbitral award has to be made within a period of three months from the date when the party making the application has received the arbitral award. Proviso, thereto, provides for an additional period of 30 days, if the Court is satisfied that that the party was prevented by sufficient cause from moving the objection petition within the specified period. Interpreting these provisions, Supreme Court in ***State of Maharashtra and others Versus Ark Builders Pvt. Ltd. (2011) 4 SCC 616*** has held that both the provisions have to be read together. Summarizing the legal position, Supreme Court observed that if the law prescribes that a copy of the award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the award in question by the aggrieved party, then the period of limitation can only commence from the date on which the award was received by the party concerned in the manner prescribed by law.

14. In the absence of any contrary material on the record, the version of the appellant has to be accepted as correct. The appellant applied for a copy of the award on 28.08.2017, which was delivered to him on the same day. The



limitation would began to run from the day the certified copy was delivered to him. Objections were filed on 14.11.2017 and as such the bar of limitation would not apply. Learned Additional District Judge has erred in holding that the objections were barred by time. The impugned order passed by the learned Additional District Judge dismissing the application for condonation of delay, therefore, cannot be sustained.

15. In the light of the above discussion, the impugned order dated 26.10.2022 passed by learned Additional District Judge, Jalandhar is set aside and the objections are held to have been filed within the prescribed period. The objections filed by the appellant under Section 34 of the Arbitration Act are restored before learned Additional District Judge, who will proceed to hear the parties and decide them on merits in accordance with law.

16. Appeal is disposed of.

17. As the main case has been decided, pending applications stand disposed of.

18. Parties are directed to appear before the learned Additional District Judge, Jalandhar on 09.12.2024.

(SUVIR SEHGAL)
JUDGE

19.09.2024
kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No