

STATE OF HARYANA AND ORS. ...APPELLANTS

VERSUS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the Act") assailing order dated 17.04.2023 passed by the learned Additional District Judge, Chandigarh whereby application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 215 days in preferring objections under Section 34 of the Act, has been dismissed. Appeal is accompanied with an affidavit for condonation of delay of 192 days.

2. Factual matrix leading to the filing of the appeal is that a bid submitted by respondent No.1 for supply of tyres was accepted by the State Transport Department, Haryana and purchase order was placed for supply of 1000 tyres with approximate cost of Rs.1,59,58,000/-. The tyres supplied by respondent No.1 were found to be defective and when it was asked to replace them, free of cost, in terms of Clause 18 of the terms and conditions of the tender, respondent No.1 refused to do so. The appellants initiated steps to encash the bank guarantee. Respondent No.1 filed a petition under Section 11 (6) of the Act for appointment of an Arbitrator which was accepted and an Arbitrator-respondent No.2 was appointed. After considering the claims of both

the parties, Arbitrator-respondent No.2 passed Award dated 24.09.2021

(Annexure P-5) in favour of respondent No.1.

3. Objections under Section 34 were instituted before the learned Additional District Judge, Chandigarh, on 28.07.2022 along with an application under Section 5 of the Limitation Act, 1961, which has been rejected vide order under challenge here.

4. Sh. Aman Bahri, Addl. AG, Haryana has argued that there is a non-compliance of Section 31 (5) of the Act as signed copy of the award was not supplied to the appellants. He urges that as there were various procedures to be complied with, there was a delay in the institution of objections which has not been appreciated by the learned Additional District Judge, Chandigarh while rejecting the application seeking condonation.

5. I have considered the contentions of the State counsel and have examined the documents appended with the appeal, with his able assistance.

6. The argument of the State counsel is sans merit as no such objection has been taken by the State before the learned Additional District Judge, Chandigarh. A perusal of the impugned order shows that after the award was passed on 24.09.2021, its copy was received on 29.09.2021. Thereafter, the delay in filing the objection, according to the appellants, has taken place because the file was referred to different departments and was dealt with by many official authorities for completion of internal proceedings.

7. Section 34 (3) of the Act provides a period of limitation of 03 months from the date of receipt of a signed copy of the award for preferring objections, which may further be extended by another period of 30 days, if the party challenging the award is able to show sufficient cause. The law in this regard is well-settled and reference can be made to the judgments rendered by the

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Construction Company 2001 AIR SC 4010; M/s Consolidated Engineering Enterprises Versus Principal Secretary, Irrigation Department and others (2008) 7 SCC 169; M/s Simplex Infrastructure Limited Versus Union of India 2019 (1) RCR (Civil) 205 and Mahindra and Mahindra Financial Services Limited Verus Mahesh Bhai, Tina Bhai Rathod and others (2022) 4 SCC 162.

It has been clearly held that as limitation is prescribed in Section 34, *ibid*, the extent to which it can be condoned is circumscribed and Section 5 of the Limitation Act, 1961 is not applicable to condone the delay beyond the period prescribed under Section 34 (3) of the Act. Adverting to the position in the instant case, as signed copy of the award was received by the appellants on 29.09.2021, the period for filing objections has to be calculated from the said date. It is evident from the record that objections were filed on 28.07.2022 and there has been a delay of 215 days in their filing, which was well beyond the period of 120 days as stipulated in the Act.

8. In view of the settled legal position, this Court is of the view that the learned Additional District Judge, Chandigarh was justified in declining the condonation of the delay in the preferring the objections. Consequently, there is no merit in the appeal, which is, hereby dismissed.

9. Application for condonation of delay is also dismissed as the main appeal has been found to be meritless.

12.02.2024
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(SUVIR SEHGAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No