



2024:DHC:2628-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.04.2024

+ **FAO(OS) (COMM) 67/2023, CM Nos.17958/2023,
67038/2023 & 17005/2024**

**MYPREFERRED TRANSFORMATION AND HOSPITALITY
PVT LTD & ANR.** Appellants

Versus

FARIDABAD IMPLEMENTS PVT. LTD. Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajiv Nayar, Sr Advocate with Mr.
Harsh Kaushik, Ms. Adrija Mishra, Mr.
Saurav Seth, Advocates.

For the Respondent : Mr. Simran Mehta and Mr. Prakash Chand,
Advocates.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU**

JUDGMENT

VIBHU BAKHRU, J.

1. The appellants have filed the present appeal under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 07.02.2023 (hereafter *the impugned judgment*) passed by the learned Single Judge in OMP(COMM) No.316/2022 captioned *Mypreferred Transformation & Hospitality Pvt. Ltd. & Anr. v. Faridabad Implements Pvt. Ltd.*



2. The appellants had filed the aforementioned petition [OMP(COMM) No.316/2022] on 04.07.2022 for setting aside the Arbitral Award dated 04.02.2022 (hereafter *the impugned award*). Concededly, the petition was filed beyond the period of limitation as prescribed under Section 34(3) of the A&C Act. Accordingly, the appellants had filed an application (IA No.11689/2022) seeking condonation of delay in filing the above petition.

3. The learned Single Judge found that the Court did not have the power to condone the delay as it exceeded the period of thirty days and accordingly, dismissed the said application. Consequently, the appellants' petition for setting aside the impugned award also stood rejected.

4. It is the appellants' case that the period of thirty days after the expiry of the period of limitation – which was the outer limit of the delay that could be condoned by the Court – expired when this Court was closed for vacations, therefore, the said period stood extended to the date on which the Court reopened after vacations. The appellants claim, on the strength of Section 10 of the General Clauses Act, 1897 (hereafter *the General Clauses Act*), that their petition was filed within a period that could be condoned by the Court, as it was filed immediately on reopening of the Court after summer vacations.

5. Thus, the only controversy that requires to be addressed is whether the delay of thirty days that can be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act, would stand



extended to the next date on which the Court reopens, if the last day of the period of thirty days falls on a date when the Court is closed.

6. Before proceeding to consider the rival contentions and address the controversy, it is relevant to note the factual context in which the present controversy arises.

7. The Arbitral Award sought to be impugned by the appellants was rendered on 04.02.2022. A scanned copy of the impugned award was sent by an e-mail to the appellants on the said date. However, the appellants claim that the signed award (hard copy) was received on 14.02.2022. For the purpose of addressing the controversy, it is assumed that the impugned award was delivered to the appellants on 14.02.2022.

8. In terms of Section 34(3) of the A&C Act, an application for setting aside an arbitral award may be made within a period of three months from the date of receipt of the award. Thus, the application under Section 34 of the A&C Act to set aside the impugned award was required to be made within a period of three months from 14.02.2022, that is, on or before 14.05.2022. However, by virtue of the order dated 10.01.2022 passed by the Supreme Court in *Suo Motu Writ Petition (C) No.3/2020 – In Re: Cognizance for Extension of Limitation*, in cases where the period of limitation expired during the period between 15.03.2020 till 28.02.2022, the same was extended for a period of ninety days from 01.03.2022.



9. It is relevant to note that there is no cavil that the period of limitation for filing the petition is three calendar months from the date of receipt of the impugned award and therefore, it expired on 14.05.2022. However, by virtue of the order dated 10.01.2022 passed by the Supreme Court, further ninety days from 01.03.2022 (and not three months) were available to the appellants to file a petition to assail the impugned award. The said period expired on 29.05.2022.

10. This Court closed for summer vacations from 04.06.2022 to 03.07.2022. The appellants filed the petition on 04.07.2022, being the first date on which this Court reopened after the summer vacations.

11. It is material to note that although the Court reopened on 04.07.2022, the Registry of this Court opened with effect from 27.06.2022 and it was notified that the suits, appeals, applications or other proceedings, which were to be filed on reopening day could also be instituted or preferred in the regular course from 27.06.2022 to 02.07.2022, however for the purposes of limitation, the Court re-opened on 04.07.2022 only.

REASONS & CONCLUSION

12. As noticed at the outset, that the dispute involved in the present appeal is in a narrow compass. The principal question to be addressed is whether the delay of period beyond thirty days in filing an application under Section 34 of the A&C Act can be condoned by the Court if the last day of the said period falls on the day when the Court is closed and the application is filed immediately after the said date.



13. Mr. Nayar, learned senior counsel appearing for the appellants relied on the decision of the Supreme Court in *Sridevi Datla v. Union of India & Ors.*¹ in support of his contention that Section 10 of the General Clauses Act would be applicable in respect of the period of delay of thirty days that could be condoned by a Court in terms of the proviso to Section 34(3) of the A&C Act. He submitted that the reliance on the decision of the Supreme Court in *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited*² is misplaced as the said decision had considered the question in reference to Section 4 of the Limitation Act, 1963 (hereafter *the Limitation Act*) and not Section 10 of the General Clauses Act. According to him the decision of the Supreme Court in *Sridevi Datla v. Union of India & Ors.*¹ covers the controversy in favour of the appellants.

14. He also emphasized that the learned Single Judge had not examined the question whether there was, in fact, sufficient cause that prevented the appellants from filing the petition under Section 34 of the A&C Act, prior to 04.07.2022. He pointed out that the impugned judgment turned only on the question whether the Court had the power to condone the delay in terms of Section 34(3) of the A&C Act.

15. Mr. Simran Mehta, learned counsel appearing for the respondent countered the aforesaid submissions. He rested his contentions on the

¹ (2021) 5 SCC 321

² (2012) 2 SCC 624



decision of the Supreme Court in *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited*² and in *Bhimashankara Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited (WIL)*³.

16. The facts in the present case are somewhat similar to the facts in the case of *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited*². In the said case, the arbitral award was received by the appellant on 26.08.2003. The three months period for filing the application for setting aside the arbitral award expired on 26.11.2003. The period of further delay of thirty days, which could be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act expired on 25.12.2003. However, the concerned District Court was closed for Christmas vacations for the period from 25.12.2003 to 01.01.2004 and the petition was filed on 02.01.2004. The Supreme Court held that the question whether the delay could be condoned was dependent on the applicability of Section 4 of the Limitation Act. The Supreme Court held that the Court could entertain a petition within a period of thirty days beyond three months of receipt of the arbitral award on sufficient cause being shown. However, the said period of thirty days is not the period of limitation and therefore, Section 4 of the Limitation Act was not attracted. Consequently, the said period of thirty days would not extend further even though the last

³ (2023) 8 SCC 453



day of such period fell on a date when the Court was closed. The relevant extract of the said decision is set out below:

“11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts?

12. Section 4 of the 1963 Act reads as under:

“4. *Expiry of prescribed period when court is closed.*—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

“2. (j) ‘period of limitation’ [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act;”

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three



months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

15. Seen thus, the applications made by the appellants on 2-1-2004 for setting aside the arbitral award dated 26-8-2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time-barred.”

17. It is material to note that the Supreme Court did not examine the applicability of Section 10 of the General Clauses Act and the decision in *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited*² rested solely on the applicability of the Limitation Act in respect of an application to set aside an Arbitral Award under Section 34(3) of the A&C Act.

18. In *Sridevi Datla v. Union of India & Ors.*¹, the Supreme Court examined the applicability of Section 10 of the General Clauses Act in the context of delay in filing an appeal under Section 16 of the National Green Tribunal Act, 2010 (hereafter *the NGT Act*).

19. In terms of Section 16 of the NGT Act, an appeal against certain orders could be preferred to the National Green Tribunal (hereafter *NGT*) within the period of thirty days from the date of communication of those orders. The proviso to Section 16 of the NGT Act expressly provides that if the NGT is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period of thirty days, it could allow it to be filed within “a further period not exceeding sixty days”. In the said case, the period of ninety days expired on



12.07.2020, which was a Sunday. The appellant filed the appeal on the next date, that is, on 13.07.2020. The Supreme Court held that the Limitation Act (including Section 4 of the Limitation Act) was inapplicable, however, the benefit of Section 10 of the General Clauses Act would be available. The relevant extract of the said decision is set out below:

“Applicability of General Clauses Act

19. There can be no dispute that the period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the Limitation Act, if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days. Undoubtedly, in such cases, the Limitation Act would be inapplicable. There are several previous judgments of this Court holding that where periods of limitation are prescribed under special laws, appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period. This Court holds that there is merit in the contention of the Union that the provisions of the Limitation Act are inapplicable. This is, however, not dispositive of the issue; the next question is whether there is merit in the appellant's argument that NGT should have considered the issue of whether the appeal was filed within the extended period prescribed under the proviso to Section 16 i.e. within sixty days after the expiration of the initial 30 day period, required in the main provision.

20. The appellant argues that since there is no indication to the contrary; the appeal is to be considered as having been filed within the extended period of 60 days, since the last (of the 60 days) was a Sunday (12-7-2020). The appellant relied on Section 10 of the General Clauses Act, for this purpose. The respondents, notably the Union, opposed this argument.



21. Section 10 of the General Clauses Act, 1897 stipulates that when the last date for doing something falls on a public holiday, the act “*shall be considered as done*”.. if it “*is done or taken on the next day afterwards on which the Court or office is open*”. This provision applies to all Central Acts enacted *after* the said Act was brought into force. The scope of this provision was considered by this Court in *Harinder Singh v. S. Karnail Singh* by a four-Judge Bench, which explained the object of Section 10 and held as under:

“5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.”

22. Other decisions have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is, therefore, held that the provision applies *proprio vigore* to all appeals filed under the NGT Act.”

20. It is apparent from the above that the Supreme Court had proceeded on the basis that where a period of delay that can be condoned is prescribed and the same expires on a holiday, then the act should be considered done within the prescribed period if it is done on the next date.

21. It is relevant to refer to Section 10 of the General Clauses Act, which reads as under:

“10. Computation of time. – (1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a



prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the [Indian Limitation Act, 1877, applies.

(2) This section applies also to all and Regulations made on or after the fourteenth day of January, 1887.”

22. It is at once clear that there is material difference in the language of Section 10 of the General Clauses Act and Section 4 of the Limitation Act. Undisputedly, Section 4 of the Limitation Act is applicable only where the prescribed period “*for filing a suit, appeal or application expires on a date when the Court is closed*”. The expression ‘prescribed period’ is defined to mean the period of limitation within the meaning of Section 2(j) of the Limitation Act. Clearly, if Section 4 of the Limitation Act is applicable, the period of thirty days delay which can be condoned in terms of the proviso to Section 34 of the A&C Act, would not be extended if it expired on a day when the Court is closed. This is because the benefit of Section 4 of the Limitation Act is applicable only to the period of limitation and not the period of delay after the expiry of period of limitation. In ***Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited***², the Supreme Court had proceeded on the basis that Section 4 of the Limitation Act was applicable. However, the same was applicable only where the ‘prescribed period’ of limitation expired on the date when the Court was closed. Section 4 of the Limitation Act has no application



insofar as the power of the Court to condone the delay after the period of limitation had expired. The Supreme Court in *Sridevi Datla v. Union of India & Ors.*¹ was concerned in a case where the provision of the Limitation Act was not applicable. In that context, the Supreme Court held that recourse to Section 10 of the General Clauses Act would be available.

23. A plain reading of Section 10 of the General Clauses Act indicates that it also contemplates a case where the Central Act or Regulation allows an “act to be done or taken in any Court”. Therefore, the key question is whether the language of Section 10 of the General Clauses Act could be read expansively to also cover the act of filing a petition within the period of thirty days after the expiry of the period of limitation of three months. Undisputedly, if a person satisfies the Court that he had sufficient cause that prevented him from filing the petition within the prescribed period, it would be permissible for the said applicant to file a petition under Section 34 of the A&C Act within the period of thirty days after the expiry of the period of three months. It would follow that if the last date of such period, during which the applicant was allowed to file an application (*albeit* subject to satisfying the Court that he was prevented from filing the petition within the prescribed period) or a day when the Court was closed, by virtue of Section 10 of the General Clauses Act, the said act would be deemed to be done within the said period if it was done on the day when the Court reopened.



24. At this stage, it is also relevant to consider the import of paragraph 7 of the Notification dated 20.05.2022 issued by this Court expressly providing that the suits, appeals, applications or other proceedings could be filed in regular course between 27.06.2022 to 02.07.2022. The relevant extract of the said Notification dated 20.05.2022 is set out below:

“7. Suits, Appeals, Applications or other proceedings, which are to be filed on the re-opening day, may also be instituted / preferred or made in regular course between 10.00 A.M. and 4.00 P.M. from Monday, the 27th June, 2022 to Saturday, the 2nd July, 2022 as per convenience of the parties though for the purpose of limitation the Court re-opens only on 04.07.2022.”

25. It is clear from the plain language of the notification that for the purposes of limitation, the Court reopened on 04.07.2022. The fact that the Registry of the Court was accepting filings from 27.06.2022 to 02.07.2022 is material to determine whether the appellants were prevented by sufficient cause from filing the petition prior to 04.07.2022 but would have little impact on the applicability of Section 10 of the General Clauses Act if otherwise applicable.

26. In view of the above, the next question that arises is whether Section 10 of the General Clauses Act is applicable. The decision of the Supreme Court in *Sridevi Datla v. Union of India & Ors.*¹ does suggest that Section 10 of the General Clauses Act would be applicable in cases where a special statute contains an express provision regarding



limitation and the Limitation Act (including Section 4 of the Limitation Act), is inapplicable.

27. In the case of *Bhimashankara Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited (WIL)*³, the Supreme Court in unambiguous terms held that Section 10 of the General Clauses Act was inapplicable so far as the proviso to Section 34(3) of the A&C Act is concerned. The Supreme Court also made observations to the effect that the decision in *Sridevi Datla v. Union of India & Ors.*¹ was not a good law as the Court had not noticed the binding decision in the case of *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited.*². The relevant extract of the said decision is set out below:

“46. Therefore, the central question in the present appeal is whether when the last day of condonable period of 30 days [under Section 34(3) of the Arbitration Act] falls on a holiday or during the court vacation, would the benefit of Section 10 of the General Clauses Act, 1897 be available?

57. Now, so far as reliance placed upon Section 10 of the General Clauses Act, 1897 on behalf of the appellant is concerned, at the outset it is required to be noted that such a contention is untenable in light of the proviso to Section 10 of the General Clauses Act, 1897, which specifically excludes the application of Section 10 of the General Clauses Act, 1897 to any act or proceeding to which the Limitation Act, 1877 applies. Reference to the 1877 Act will now have to be read as reference to the Limitation Act, 1963 in view of Section 8 of the General Clauses Act, 1897.

58. Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and when Section 10 of the General Clauses Act, 1897



specifically excludes the applicability of Section 10 to any act or proceeding to which Limitation Act, 1963 applies and in light of the definition of “period of limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in *Assam Urban*, benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.

59. Now, so far as the reliance placed upon the decision of this Court in *Sridevi Datla v. Union of India* relied upon on behalf of the appellant is concerned, at the outset it is required to be noted that in the said decision, this Court has not noticed the decision in *Assam Urban* and there is no discussion on distinction between “prescribed period” and the “discretionary condonable period”. On the other hand, the binding decision of this Court in *Assam Urban* is directly on point.

60. In view of the above and for the reasons stated above, applying the law laid down by this Court in *Assam Urban*, it cannot be said that the High Court and the learned IIIrd Additional District and Sessions Judge, Vijaypur have committed any error in refusing to condone the delay caused in preferring application under Section 34 of the Arbitration and Conciliation Act, 1996 which was beyond the period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.”

28. Mr. Nayar, earnestly contended that there is inconsistency in the decision of the Supreme Court in *Bhimashankara Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited (WIL)*³. He referred to paragraph 54 of the said decision where the Supreme Court had reiterated that the provisions of the Limitation Act would be inapplicable to the extent, they were excluded by virtue of express provision contained in Section 34(3) of the A&C Act. He submitted



that if the provisions of the Limitation Act were expressly excluded in view of the special provisions relating to limitation contained in Section 34(3) of the Limitation Act, the proviso to Section 10 of the General Clauses Act would be applicable. The said contention appears attractive but we are unable to accept the same. There is no ambiguity in the decision in *Bhimashankara Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Limited (WIL)*³. The Supreme Court has expressly held that Section 10 of the General Clauses Act is not applicable in respect of the period of delay, which could be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act. This Court is informed that a petition seeking review of the said decision is pending before the Supreme Court. However, that is of little assistance to the appellants at this stage as undisputedly, the said decision, unless reviewed, is a binding authority.

29. In view of the above, we are unable to accept that the delay in filing the petition [being OMP(COMM) No.316/2022] could be condoned by the Court in terms of Section 34(3) of the A&C Act.

30. The appeal is accordingly dismissed. All pending applications are also dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 03, 2024

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