



2024:DHC:5595-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 25.07.2024

+ **FAO (COMM) 140/2024 & CM 41285/2024**

**M S PARAMOUNT PREMIER PVT LTD
& ANR.**

.....Appellants

Through: Mr Ravi Gupta, Sr. Advocate with
Mr Apoorv Agarwal, Mr Gaurav
Singh, Mr Abhishek Jaiswal, Mrs
Muskaan Mehra, Mr Shrey Sharma
and Mr Chaitanya Malhotra,
Advocates.

versus

NEERAJ GROVER & ANR.

.....Respondents

Through: Mr Parmanand Yadav and Mr Mohit
Arora, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

1. We had heard arguments in the above-captioned appeal on 23.07.2024. On that date, we had heard submissions in the matter, briefly, and recorded observations concerning the material facts/issues which arise for consideration in the present appeal.

2. For convenience, the relevant part of the order dated 23.07.2024 is

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extracted hereunder:

“6. We may note that this appeal is directed against the judgment and order dated 08.07.2024 passed by Mr Rajesh Kumar Goel, learned District Judge (Commercial Court)-02, Central, Tis Hazari, Delhi.

7. Via the impugned judgment, the learned District Judge has dismissed the petition preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 [in short, “1996 Act”], on the ground of limitation.

8. To be noted, the record shows that a “consent award” was passed by the learned Arbitrator on 12.09.2022. Thereafter, the appellant filed an application under Section 33 of the 1996 Act, in the first instance, on 19.09.2022.

9. The record also discloses that the appellant filed a second application under Section 33 of the 1996 Act on 21.10.2022. These applications preferred by the appellant under Section 33 of the 1996 Act were dismissed by the learned Arbitrator on 24.04.2023.

9.1 It is not in dispute that if the limitation for preferring a petition under Section 34 of the 1996 Act is counted from that date, i.e., the date on which the applications under Section 33 were dismissed, the Section 34 petition would be within time.

10. We may note that learned counsel for respondent no.1 contends that since the applications under Section 33 of the 1996 Act were not maintainable, limitation would run from the date the appellant received the arbitral award.”

3. As would be evident from the extract above, the only issue that arises for consideration is the date from which limitation for preferring objections to the award would kick in.

4. Learned counsel for the respondent contends that since the two applications filed by the appellant under Section 33 of the Arbitration and Conciliation Act, 1996 [in short, “1996 Act”] were not maintainable, the period of limitation cannot commence from the date of disposal of the



applications.

4.1 Concededly, the two applications were filed by the appellant under Section 33 of the 1996 Act. The first application was filed on 19.09.2022. This was followed by an application which was lodged with the learned Arbitrator on 21.10.2022. Learned counsel for the respondent contends that the very fact that the second application was filed would show that the first application lacked substance and therefore, any relief granted by this Court would result in marring the good faith principle which runs through the 1996 Act.

5. Furthermore, learned counsel for the respondent says that the appellant had applied for several accommodations while the applications under Section 33 of the 1996 Act were pending before the learned Arbitrator.

6. Lastly, in support of his plea that limitation would run from the date the appellant received the award, learned counsel had relied upon the judgment of the Supreme Court rendered in *Gyan Prakash Arya v. Titan Industries Ltd.*, (2023) 1 SCC 153.

7. Mr Ravi Gupta, learned senior counsel, who appears on behalf of the appellant, contends to the contrary.

8. We have heard counsel for parties.

9. The period for preferring an application for setting aside an Award is governed by the provisions of Section 34(3) of the 1996 Act.

9.1 For convenience, the relevant parts of the said provision are set forth
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hereafter:

“RECOURSE AGAINST ARBITRAL AWARD

34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) xxx

xxx

xxx

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

[Emphasis is ours]

10. A careful perusal of the aforementioned provisions would show that an application for setting aside an award cannot be filed after three (3) months have elapsed from the date on which the party preferring objections has received the arbitral award. However, if a request was made to the arbitral tribunal under Section 33 of the 1996 Act, the limitation prescribed under the said provision would commence from the date when such “***request had been disposed of by the arbitral tribunal***”.

10.1 The proviso appended to Sub-Section 3 of Section 34 of the 1996 Act grants leeway to the Court to entertain objections beyond three (3) months upon sufficient cause being shown by the objector, subject to an outer limit of thirty (30) days.

11. Insofar as Section 33 is concerned, it deals with requests made to the



arbitral tribunal for correction and/or interpretation of the award and also for rendering an additional award. The period provided under Section 33 of the 1996 Act for making a request for the purposes indicated above is thirty (30) days from the date of receipt of the arbitral award unless another timeframe is agreed upon by the parties.

12. Broadly, the regime provided under Section 33 of the 1996 Act is as follows:

12.1 Under Sub-Section (2) of Section 33 of the 1996 Act, the arbitral tribunal is invested with the power to consider the request made under Sub-Section (1) of Section 33 of the 1996 Act, and for this purpose, it has been accorded thirty (30) days from the date of receipt of such request.

12.2 Under Sub-Section (3) of Section 33 of the 1996 Act, the arbitral tribunal has been given *suo motu* powers for correcting errors of the type referred to in Clause (a) of Section (1) of Section 33 of the 1996 Act *qua* which as well, the timeframe fixed is thirty (30) days, commencing from the date when the arbitral award is rendered.

12.3 Besides this, as indicated above, the arbitral tribunal under Section 33 of the 1996 Act is also empowered to render an additional award concerning claims presented in arbitral proceedings that were not considered in the arbitral award, *albeit*, at the request of a party made within thirty (30) days of receipt of the arbitral award. However, the party interested in the additional award being rendered is required to give notice to the opposite party.



12.4 The timeframe for rendering an additional award for which provision is made under Sub-Section (4) of Section 33 of the Act is sixty (60) days [unlike for correction and/or interpretation of the award] from the date when such request is made.

13. As alluded to above, for the purposes of limitation for preferring an application for setting aside the arbitral award, the provision which constitutes the trigger point is Sub-Section (3) of Section 34 of the 1996 Act.

14. The plain language of Sub-Section (3) of Section 34 of the 1996 Act indicates that three (3) months, which is the time provided for preferring an application for setting aside, commences from the date when the request made under Section 33, for the purposes as given above, i.e., correction/interpretation or rendering of an additional award, is disposed of by the arbitral tribunal.

14.1 As adverted to above, the three (3) months provided under Sub-Section (3) of Section 34 of the 1996 Act can be extended only by another thirty (30) days where the Court is satisfied that the objector was prevented from lodging his objections due to sufficient cause.

15. Concededly, both applications preferred by the appellant under Section 33 of the 1996 Act were disposed of on 24.04.2023.

16. It is also, therefore, not in dispute that if this date is taken into account, the objections filed by the appellant under Section 34 of the 1996 Act to the “consent award” dated 12.09.2022, would be within time.

17. It is our view that if the submission of the learned counsel for the
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respondent were to be accepted, it would lead to a chaotic situation.

18. The periods for commencement and end of limitation have to be ascertained by applying an objective parameter. In consonance with this principle, it must be said that the reason for dismissal of an application filed under Section 33 of the 1996 Act cannot form a yardstick for determining when limitation would commence. Therefore, as provided in Sub-Section (3) of Section 34 of the 1996 Act, in a case where a request or an application is made under Section 33 of the 1996 Act, limitation to prefer objections can only commence from the date when the application is disposed of, for whatever reasons.

19. The reliance placed by the learned counsel for the respondent on the judgment rendered by the Supreme Court in *Gyan Prakash (Supra)*, to our minds, cannot help the cause of the respondent.

20. In *Gyan Prakash*, the Supreme Court was called upon to rule on the issue whether the award was modified having regard to the circumstances alluded to in Section 33 of the 1996 Act. Given the facts and circumstances obtaining in the case, the Supreme Court concluded that the modification of the award was beyond the scope and ambit of Section 33 of the 1996 Act.

21. Likewise, the judgment of the Division Bench of this Court in *U.P. Jal Vidyut Nigam Ltd vs. C.G. Power & Industrial Solution Ltd.*, 2023:DHC:8858-DB would have no applicability. The judgment dealt with the question: whether, in the given facts and circumstances, recourse could be taken to Section 14 of the Limitation Act, 1963 [in short, “Limitation



Act”] to condone delay in preferring an application under Section 34 of the 1996 Act.

21.1 As noticed above, learned counsel for the respondent sought to invoke the good faith doctrine vis-à-vis the provisions of Section 33 of the 1996 Act. There is no such expression contained in Section 33 of the 1996 Act. On the other hand, Sub-Section (1) of Section 14 of the Limitation Act clearly states that in computing the period of limitation, the period during which the plaintiff was prosecuting another civil proceeding “with due diligence”, shall be excluded, subject to *inter alia*, the civil proceeding being prosecuted “*in good faith*”.

22. On the other hand, Mr Ravi Gupta, learned senior counsel, has correctly relied upon the judgment of the Supreme Court rendered in ***Ved Prakash Mithal and Sons vs. Union of India***, 2018 SCC OnLine SC 3181, which enunciates the principle adverted to by us hereinabove. For convenience, the relevant part of the said judgment is extracted hereafter:

“6. Learned counsel appearing on behalf of the petitioners before us has argued that the expression “disposed” which is mentioned in Section 34(3) would have to be read in consonance with and in harmony with Section 33. So read, this would only mean where some positive step has, in fact, taken place under Section 33 and the Award is either corrected or modified. This could not possibly refer to an Award which is not ultimately corrected or modified and the application under Section 33 is merely dismissed. For this, he relies upon the judgment of a Single Judge of the Bombay High Court in the case of Amit Suryakant Lunavat v. Kotak Securities, Mumbai reported in 2010 (6) Mh.L.J. 764. The learned Single Judge held:



“13. There is no justification, as contended, to accept the submission in view of the mandate of section 34 and considering the scheme and purpose of the Arbitration Act that because the application under section 33 of the Act was filed and it was rejected subsequently, therefore, the limitation period commenced afresh from the date of such decision of the award. In my view, it is contemplated only on a situation where the Arbitrator corrects or interprets and/or add or decide to add any additional claims and modified the award as only in such cases the original award loses its originality and therefore an application for setting aside the award needs to be filed within three months from the date of receipt of such corrected or modified award. Therefore, the party who received the award after deciding the application under section 34(3) of the Act, may get the benefit of fresh commencement of limitation from the receipt of the modified and/or corrected award and not otherwise.”

7. We are of the view that the judgment of the Bombay High Court does not reflect the correct position in law. Section 34(3) specifically speaks of the date on which a request under Section 33 has been “disposed of” by the Arbitral Tribunal.”

[Emphasis is ours]

23. Broadly, this very position has also been taken by the Supreme Court in another judgment, cited by Mr Ravi Gupta, i.e., *M/s USS Alliance vs. The State of Uttar Pradesh & Ors.*, 2023 SCC OnLine SC 778.

24. Thus, for the foregoing reasons, we are inclined to allow the appeal.

25. It is ordered accordingly.

26. The impugned judgment passed by the learned District Judge, (Commercial Court)-02, Central, Tis Hazari, is set aside.

27. The learned District Judge is directed to decide the application filed under Section 34 of the 1996 Act, on merits.

28. Parties and their respective counsel will appear before the concerned
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court on 07.08.2024.

29. The appeal is disposed of in the aforesaid terms.

29.1 The pending application shall stand closed.

30. Parties will act based on the digitally signed copy of the judgment.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

JULY 25, 2024

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