



2024:DHC:5589-DB



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

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Date of Decision : 30.07.2024+ **FAO(OS) (COMM) 155/2024 & CM APPL. 43037-43039/2024****DELHI URBAN SHELTER IMPROVEMENT BOARD (DUSIB)**

.....Appellant

Through: Mr.Vinay Rathi, Advocate, Mr.Vijay
Maggo, Law Officer and Mr Pranav
Siroha, LA in person.

versus

M/S BCC DEVELOPERS AND PROMOTERS PVT LTD

.....Respondent

Through: Mr Rahul Malhotra and Ms J
Talukdar, Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The appellant has filed the present intra-court appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an order dated 30.05.2024 (hereafter *the impugned order*) passed by the learned Single Judge in OMP (COMM) No.48/2024 captioned *Delhi Urban Shelter Improvement Board v. BCC Developers Promoters Private Limited*.

2. The learned Single Judge dismissed the said application filed by appellant under Section 34 of the A&C Act, for setting aside the Arbitral



Award dated 17.06.2019 (hereafter *the impugned award*) on the ground that it was barred by limitation.

3. The appellant, prior to filing of the said application before this Court, had assailed the impugned award by filing an application under Section 34 of the A&C Act before the learned Commercial Court, South West District, Dwarka District Courts, Delhi on 12.09.2019. The said learned Commercial Court had returned the application for lack of jurisdiction by an order dated 23.05.2022. The appellant states that the certified copy of the said order dated 23.05.2022 was made available to the appellant fourteen days later. Thereafter, the appellant presented the said application before the learned Commercial Court, North West District, Rohini District Courts, Delhi on 19.09.2022. The same was disposed of by an order dated 27.07.2023 on the ground that the said learned Commercial Court lacked the pecuniary jurisdiction to entertain the application. Thereafter, on 25.09.2023, the appellant filed the abovementioned application under Section 34 of the A&C Act [OMP (COMM) No.48/2024] in this Court.

4. The learned counsel appearing on behalf of the appellant submits that the learned Single Judge erred in dismissing the application on the ground of limitation ignoring the provisions of Section 14 of the Limitation Act, 1963 (hereafter *the Limitation Act*). He also relied upon the decision of the Supreme Court in **Civil Appeal No. 4367 of 2004** captioned **M.P. Steel Corporation v. Commissioner of Central Excise** decided on 23.04.2015 in support of his contention.



5. We find no fault with the impugned order rejecting the appellant's application on the ground of limitation.

6. In terms of Section 34(3) of the A&C Act, an application for setting aside an arbitral award may be filed within a period of three months from the date of the receipt of a copy of the arbitral award. In terms of the proviso to Section 34(3) of the A&C Act, the Court can condone the delay of a further maximum period of thirty days if the Court is satisfied that the applicant was prevented by sufficient cause from filing the said application within the stipulated period of three months.

7. In the present case, the impugned award is dated 17.06.2019 and therefore, the period of three months for filing the application under Section 34 of the A&C Act to set aside the impugned award expired on 17.09.2023. However, the appellant had filed the application before the Dwarka District Courts on 12.09.2019, that is, five days prior to the expiry of the limitation period. The application was returned by an order dated 23.05.2022. It is not in dispute that a certified copy of the said order was made available to the appellant fourteen days thereafter. Thus, it was necessary for the appellant to present the application before the Court of competent jurisdiction within a maximum period of five days, which was the remaining period of limitation as available to the appellant. However, the appellant did not take steps for filing the application to set aside the impugned award with the Court of competent jurisdiction within the aforesaid period.

8. The appellant filed the said application before learned Commercial Court, Rohini District Courts on 19.09.2022. Even if the time taken in



obtaining the certified copy of the order dated 23.05.2022, is excluded, the application for setting aside the impugned award before the learned Commercial Court, Rohini District Courts was presented after a period of 106 days of return of the application by the learned Commercial Court, Dwarka. Thus, the presentation of this application to set aside the impugned award was, clearly, beyond the period of limitation as prescribed under Section 34(3) of A&C Act. More importantly, the delay also exceeds the period of thirty days that could be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act.

9. As noted above, the learned Commercial Court, Rohini District had disposed of the application of the appellant to set aside the impugned award by an order dated 27.07.2023 on the ground that it lacked the pecuniary jurisdiction. Thereafter, on 25.09.2023, the appellant had filed the application to set aside the impugned award under Section 34 of the A&C Act before this Court, that is, after a delay of sixty-one days of the learned Commercial Court, Rohini District rejecting the appellant's application.

10. There is no reason to exclude the period of 120 days being the period from the date of return of the application by the learned Commercial Court, Dwarka and the date of filing the application before the learned Commercial Court, Rohini. However, even if the period from the date the appellant had filed the application before learned Commercial Court Dwarka District Courts (12.09.2019) and the date on which the learned Commercial Court, Rohini had rejected the same on the ground of lack of pecuniary jurisdiction, is excluded, the appellant's application to set aside the impugned award is beyond the period of limitation as provided under Section 34(3) of the A&C



Act. Further, the Court has no jurisdiction to condone the delay as the same exceeds thirty days beyond the period of three months prescribed by Section 34 (3) of the A&C Act.

11. Section 14 of the Limitation Act provides for exclusion of time spent for proceeding *bonafide* in a court that lacks jurisdiction. Section 14 of the Limitation Act is set out below:-

“14. Exclusion of time of proceeding *bona fide* in court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other



cause of a like nature.

Explanation.— For the purposes of this section,—

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

12. In the present case, the Section 14(2) of the Limitation Act is applicable as the appellant seeks exclusion of period of limitation in pursuing the application to set aside the impugned award. It is apparent from the plain language of Section 14(2) of the Limitation Act that only the time during which the applicant was prosecuting another proceeding against the same party for the same relief, is required to be excluded. Thus, the time period prior to instituting the proceedings before a court which did not have the jurisdiction as well as, the time period to take recourse before a court of competent jurisdiction, after it was evident that the court is unable to proceed on account of defect of jurisdiction, are required to be considered for determining whether the same exceeded the period of limitation.

13. Thus, the entire period of limitation from the date of receipt of impugned award and instituting the proceedings in the court of competent jurisdiction is required to be determined. And, the period spent by a party in prosecuting the proceedings with due diligence in a court which did not have the jurisdiction is required to be excluded from this period.



14. In the present case, even if the time periods spent by the appellant before both the District Courts are excluded, the appellant's application for setting aside the impugned award is beyond the period of limitation as provided under Section 34(3) of the A&C Act.

15. The reliance placed by the appellant on *M.P. Steel Corporation v. Commissioner of Central Excise (supra)* is clearly misplaced. In the said case, the Supreme Court held as under:-

“41. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bonafide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant – appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period



together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression “the time during which the plaintiff has been prosecuting with due diligence another civil proceeding” needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.”

[emphasis added]

16. It is apparent from the above, the Supreme Court had expressly held that absence of negligence or any inaction is necessary for entertaining an application under Section 14 of the Limitation Act. The Supreme Court had



held that the time taken by the appellant to present its application in a Court that did not have the jurisdiction would necessarily run against the period of limitation and cannot be excluded under Section 14 of the Limitation Act. Illustratively, the Supreme Court held that if limitation in original proceedings is six months and the applicant / plaintiff filed the proceedings on the ninetieth day (that is, after a period of three months) and the said proceedings are abortive; the plaintiff / applicant will have to file the proceedings in the Court having the necessary jurisdiction within the remaining period of three months. Thus, only the period from the date on which the proceedings are initiated in a Court lacking the jurisdiction and the date on which the such proceedings are aborted, can be excluded under Section 14 of the Limitation Act subject to the other conditions being satisfied.

17. In a later decision in *Suryachakra Power Corporation Limited v. Electricity Department, Rep. by its Superintending Engineer, Port Blair and Ors.: (2016) 16 SCC 152*, the Supreme Court reiterated that it would be necessary for an applicant/plaintiff to pursue the proceedings with ‘due diligence’ and in ‘good faith’. Absent these two ingredients, Section 14 of the Limitation Act would not be applicable.

18. In the present case, even if it is assumed the appellant had diligently pursued the proceedings in courts that were unable to entertain the application to set aside the impugned award, the appellant had not taken steps to initiate the proceedings within the time available after excluding the time in proceedings before the courts that did not have the necessary



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jurisdiction.

19. In this view, we find no merit in the present appeal and same is, accordingly, dismissed.

20. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 30, 2024

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Click here to check corrigendum, if any