

(1988) 11 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Revision Petition No. 418 of 1987

Ashwani Kumar

APPELLANT

Vs

Banwari Lal and Others

RESPONDENT

Date of Decision : 01-11-1988

Acts Referred:

Arbitration Act, 1940 — Section 30
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Article 119

Citation : AIR 1990 Raj 3 : (1989) 1 RLW 396

Hon'ble Judges : Navin Chandra Sharma, J

Bench : Single Bench

Advocate : Lakh Raj Mehta, for the Appellant; M.C. Bhandari and N.R.K. Singhal, for the Respondent

Final Decision : Allowed

Judgement

Navin Chandra Sharma, J.—This is a revision by Ashwani Kumar against the order of the District Judge, Sri Ganganagar dt. May 23, 1987 allowing certain amendments sought to be made by non-petitioners Nos. 4 and 5 in their application for setting aside the award filed on Feb. 19, 1985.

2. Facts lending to the filing of this revision petition are that the petitioner and non-petitioners Nos. 4 and 5 had entered into an agreement dt. June 18, 1984 for settlement of dispute regarding properties specified in the agreement. Non-petitioners Nos. 1 to 3 were appointed arbitrators who gave their award on August 25, 1984. The arbitrators moved an application u/s 14(2) of the Arbitration Act, 1940 (for short, hereinafter, "the Act") before the District Judge Shri Ganganagar along with the award and prayed that the award may be made the Rule of the Court. Notices of the filing of the award were served by the Court upon the petitioner as well as non-petitioners Nos. 4 and 5. Non-petitioners Nos. 4 and 5 filed objections u/s 30 of the Act for setting aside the award. These objections were filed by them on Feb. 19, 1985. Subsequent to that non-

petitioners Nos. 4 and 5 moved an application on Sept. 19, 1986 seeking certain amendments in their application for setting aside the award. Non-petitioners Nos. 4 and 5 wanted to add more objection for setting aside the award to the effect that in respect of the agricultural land covered by the award, a revenue suit was pending before the Assistant Collector, Sri Ganganagar and, therefore, without obtaining prior permission of that Court no award could have been passed in respect of the agricultural land and the award was liable to be set aside on this ground also. This amendment application was opposed on behalf of the petitioners on the ground that the same was belated. The District Judge, Sri Ganganagar, however, allowed the amendment application filed by the non-petitioners Nos. 4 and 5 on the ground that for finally deciding the controversies between the parties effectively, the amendment deserved to be allowed and moreover the same also did not alter the nature of the objections. It is against this order allowing the amendments sought by the non-petitioners Nos. 4 and 5 that petitioner Ashwani Kumar has filed this revision before this Court.

3. Mr. Lekh Raj Mehta appearing for the petitioner urged that the District Judge had no jurisdiction to allow the amendment application. It was argued that objections u/s 30 of the Act for setting aside the award can only be filed within thirty days of the service of notice of the award. According to the learned counsel each and every objection must be raised in the application for setting aside the award within the statutory limitation period of thirty days. After the expiry of the said period neither any objection application can be filed nor any further objections can be added which were not taken within the limitation period of thirty days. It was pointed out that non-petitioners Nos. 4 and 5 had filed their objections to the award on Feb. 19, 1985 and had not raised any objection which they wanted to add by way of amendment by their application moved on Sept. 19, 1986 much after the expiry of the limitation period of thirty days from the service of the notice of the award.

4. Mr. M.C. Bhandari, learned counsel appearing for the non-petitioners Nos. 4 and 5 urged that objections had been filed by the non-petitioners Nos. 4 and 5 within the limitation period of thirty days and non-petitioners Nos. 4 and 5 could amend their objections in order to put forward all the objections to the award so that all of them may be decided to settle the rights of the parties. He also urged that the period of limitation of thirty days applies to the original objection petition and it does not preclude a party from making an amendment applications in order to amend his objections.

5. Mr. Lekhraj Mehta has relied before me upon the decision of their Lordships of the Supreme Court in *Madan Lal Vs. Sunderlal and Another*, that of the Calcutta High Court in *Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd.*, and that of the Patna High Court in *Prabhat Kumar Lala v. Jagdish Chandra Narang*, AIR 1968 Patna 399, to contend that no application to set aside an award can be considered by the court unless the objections for setting aside of the award are made within the period of limitation of 30 days which is

provided as the limitation period by Article 119(b) of the Limitation Act of 1963 which corresponds to Article 158 of the Limitation Act of 1908 and that any ground subsequently added must be treated as a new application and such subsequent ground, if raised after the period of limitation of 30 days provided by Article 119(b) of the Limitation Act of 1963 would be barred by time. It was also argued that the District Judge Sri Ganga-nagar should not have allowed the amendment and permitted non-petitioners Nos. 4 and 5 to raise a new ground for setting aside the award after the period of limitation as a right had accrued to the petitioner by lapse of time. As against this Mr. M.C. Bhandari on behalf of non-petitioners Nos. 4 and 5 relied upon the decision of the Patna High Court in Union of India(UOI) Vs. Binod Behari Singh, and he contended that it is not a case where non-petitioners Nos. 4 and 5 had raised a new ground by any supplementary objections or during the course of arguments. On the other hand, it is a case where non-petitioners Nos. 4 and 5 had applied for amendment of their objection petition which was admittedly filed within limitation and the amendment petition was rightly allowed by the court for the purpose of determining the real questions in controversy between the parties.

6. It goes without saying that their Lordships of the Supreme Court in Madan Lal Vs. Sunderlal and Another, clearly laid down that it is clear from the Scheme of the Act that if a party wants an award to be set aside on any of the grounds mentioned in Section 30 it must apply within 30 days of the date of service of notice of filing of the award as had been provided in Article 158 of the Limitation Act of 1908. If no such application was made, the award could not be set aside on any of the grounds specified in Section 30 of the Act. There can be no doubt on the scheme of the Act that any objection even in the nature of a written statement which falls u/s 30 cannot be considered by the Court unless such an objection is made within the period of limitation of 30 days, though if such an objection is made within limitation that objection may in appropriate cases be treated as an application for setting aside the award. Facts in Madan Lal's case were that the appellant had filed an objection in the nature of a written statement. By this objection he attacked the validity of the award on various grounds. But the objection did not contain any prayer at the end nor did it indicate what relief the appellant desired, though there were as many as 43 paragraphs therein. Their Lordships observed that where an objection, as in that case, raised grounds which fell squarely within Section 30 of the Act, that objection cannot be heard by that Court and cannot be treated as an application for setting aside the award unless it was made within the period of [imitation. In Madan Lal's case, even the objections in the nature of the written statement were filed within 30 days of the service of the notice of filing of the award. The Supreme Court, therefore, upheld that order of the Courts below passing a decree in terms of the award. As already stated, in the present case, non-petitioners Nos. 4 and 5 had filed their objections and had prayed for setting aside the award within the limitation period of 30 days.

7. In Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd.,

the applicant Haji Embrahim Kasam had made a motion asking to set aside award dt. July 22, 1949 and filed on Aug. 20, 1949. During the course of arguments, counsel for the applicant" had advanced a submission that the Arbitrator omitted to file necessary documents with the award. That was a ground which was not taken at all in the petition to set aside the award and it was an attempt to add new grounds. As the ground was not taken in the petition, counsel for the applicant filed an affidavit of Abdul Gaffar on Dec. 21, 1949 and during the course of the hearing, on the basis of new affidavit applied to set aside the award on the ground stated therein. It was held that Article 158 of the old Limitation Act provided that the application for setting aside the award must be made within 30 days from the date of the notice of the filing of the award. On Dec. 21, 1949 when the affidavit was affirmed stating the new ground in an application made therein, that was treated as a new application and the same was held to be clearly barred by time.

8. In Prabhat Kumar Lala and Others Vs. Jagdish Chandra Narang, the Arbitrators made an agreed award on July 18, 1965 and filed it before the Subordinate Judge on 19th July 1965. The plaintiff filed an objection to this award on 17th Aug. 1965 u/s 30 of the Arbitration Act. A rejoinder was filed on behalf of the defendants to the objections. On Sept. 7, 1965 the plaintiff filed a supplementary objection with an affidavit. It was contended before the Division Bench of the Patna High Court on behalf of the appellant that supplementary objection filed on Sept. 7, 1965 could not be entertained as the same was filed beyond the prescribed period of limitation and the two instances of misconduct in the proceedings were not mentioned in the objections which had been filed on Aug. 17, 1965, which were within time. It was also urged on behalf of the appellant that the supplementary objections were merely an amendment like that of pleadings and the same had been accepted by the court below. The Division Bench held that the grounds of misconduct which were not mentioned in the original objection of the appellant could not be entertained even though they were specified in the supplementary objection.

9. As a matter of fact, in none of the cases relied on behalf of Mr. Lekhraj Mehta, the question with regard to allowing the amendments in the original objection petition which was filed within time was involved. In the decisions relied upon by him what was only laid down was that objection to the award u/s 30 of the Act should be filed within 30 days from the date of the service of the notice of the award and any subsequent objection either by way of written statement or supplementary objections cannot be allowed to be taken if they are not filed within the prescribed period of limitation. That has also been the view of this Court as would appear from a single Judge decision in Devendra Singh Vs. Kalyan Singh, It was held by his Lordship M.L. Joshi, J., that after an award has been made, all grounds of objections to the award, including grounds of the non-existence or invalidity of the agreement or reference and all other grounds and nullity must be taken in an application for setting aside the award and that no ground not so taken can be available after the time for making such application

has expired.

10. The question regarding the allowing of amendment to application for setting aside award by including fresh ground of objections had directly arisen before the Patna High Court in Union of India(UOI) Vs. Binod Behari Singh, and also in an earlier decision in Bhagwan Din Singh v. Fakir Singh, (1913) 20 Ind Cas 773. Section 41 of the Arbitration Act inter alia provides that subject to the provisions of the Act and all Rules made thereunder, the provisions of the Civil P. C., 1908 shall apply to all the proceedings before the court and to appeals, under the Act, It is clear from the provisions of Section 41(a) of the Act that the provisions contained in the Civil P. C. apply to proceedings before the Court under the Arbitration Act. Of course this applicability is subject to the provisions of the Arbitration Act. Even by virtue of Section 141 of the Civil P.C. the provisions of Order 6, Rule 17, C.P.C. will apply to an application for setting aside an award.

11. In Kishandas Roop Chand v. Rachappa Vithola ILR (1909) 33 Bom 644, Batchelor, J. enunciated the principles which apply to the cases of amendment of the following terms: --

"All amendments ought to be allowed which satisfy the conditions :---

(a) of not working injustice on the other side, and

(b) of being necessary for the purpose of determining the real questions in controversy between the parties.....But I refrain from citing further authorities, as, in my opinion, they all laid down precisely the same doctrine. That doctrine as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general Rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore, still remains the same, Can the amendment be allowed without injustice to the other side or can it not?"

12. In Charandas v. Amir Khan AIR 1921 PC 50 (at pp. 51-52) Lord Buckmaster, delivering the judgment of the Judicial Committee observed --

"That there was full power to make the amendment cannot be disputed, and though such a power should not as a Rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases, [see for example Mohammed Zahur Ali Khan v. Mt. Thakurani Rulla Koer (1867) 11 Moo Ind App 468 (485) (PC)] where such considerations are outweighed by the special circumstances of the case, and their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one."

13. In *Harish Chandra Bajpai Vs. Triloki Singh*, the amendment of the election petition was held to be unjustified on the ground that the amendment was sought for which would have the effect of substantially altering the case as laid down in the original election petition, and that could not be permissible long after the expiry of the period of limitation prescribed for filing election petition. Upon a review of authorities, including the Privy Council decision in *Mohammed Zahur Ali's case* (supra), their Lordships laid down two propositions that (1) u/s 83(3) of the Representation of the People Act the Tribunal had power to allow particulars in respect of illegal or corrupt practices to be amended provided the election petition itself specified the grounds or charges, and this power extended to permit new instances to be given; and

(2) the Tribunal has power under Order 6, Rule 17 of the Civil P. C. to order amendment of a petition but that power cannot be exercised so as to permit new grounds of charges to be raised or to so alter the character of the petition as to make it, in substance, a new petition, if a fresh petition on those allegations will then be barred. Upon the peculiar circumstances of the particular case, their Lordships came to the conclusion that the amendment sought for after the expiry of period of limitation did not fall within the ambit of the two principles mentioned above.

14. In *Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others*, their Lordships of the Supreme Court observed :

"It is no doubt true that save in exceptional cases, leave to amend under Order 6, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this Rule can apply where either fresh allegations are added or fresh reliefs are sought by way of amendment. Where for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, the question of bar of limitation is not one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading."

15. It is unnecessary to further multiply the decisions on the point. I am, therefore, of the view that although an application for amendment under Order 6 Rule 17, C.P.C. can be made seeking to amend the objections filed for setting aside the award but the allowing or refusing the amendment would rest on the well known principles enumerated in the abovementioned decisions of the Privy Council and of the Supreme Court. In the present case, the non-petitioners Nos. 4 and 5 sought to add a new objection by way of amendment in their original objections filed on Feb. 19, 1985. The amendment application was made more than one and a half years, after the limitation period of 30 days and of the filing of the original application. The new ground sought to be added was that in respect of agricultural land covered by award a suit was pending before the Assistant Collector, Shri Ganganagar and, therefore, without obtaining prior permission of that court no award could have been passed in respect of the

agricultural land and the award was liable to be set aside on this ground also. I am of the opinion that this amounts to adding a new ground and fresh allegation and to be raised by amending the original petition, it would take away from the petitioner a legal right which had accrued to him by lapse of time. Such a power would not as a rule, except in exceptional circumstances, be exercised because its effect is to take away from a party a legal right which accrued to him by lapse of time. Consequently, I hold that District Judge, Sri Ganganagar was wrong in allowing the amendments sought by non-petitioners Nos. 4 and 5 for adding new ground for setting aside the award after a lapse of more than 1 1/2 years of the expiry of the limitation period.

16. I, therefore, allow this revision petition, set aside the order of the District Judge, Sri Ganganagar, dt. May 20, 1987 and dismiss the application under Order 6, Rule 17, C.P.C. filed by non-petitioners Nos. 4 and 5 on Sept. 19, 1986. In the circumstances of the case, I shall leave the parties to bear their own costs.