
(2002) 08 BOM CK 0041

In the Bombay High Court

Case No : Civil Revision Application No. 1011 of 1996

Ballumal A. Jaisingh

APPELLANT

Vs

J.J. Builders and Others

RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Arbitration Act, 1940 — Section 30
Limitation Act, 1963 — Article 119B, 5

Citation : (2003) 3 MhLj 238

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Advocate : V.V. Bhangde and R.M. Kinkhede, for the Appellant; N.C. Phadnis, for Non-applicant No. 2 and A.C. Dharmadhikari, for Non-applicant No. 3, for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—By this application, the applicant has challenged the order dated 9-8-1996 passed by the Second Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No. 76/94. The suit arises out of an arbitration proceeding which culminated in the Arbitrator passing an award which was Exh. 8 in the suit deciding the claims of the parties to the arbitration before him. When the suit was thus instituted on presenting the award to the Court for making it rule of the Court, notices are required to be given and within 30 days of the receipt of the notice, objections if any to the award will be made rule of the Court, are to be filed as required by Section 30 of the Arbitration Act.

2. On 18-7-1995 non-applicant No. 1 filed application (Exh. 14) seeking grant of time to file objections to the award as contemplated by Section 30 of the Act. It is obvious, therefore, that at least on that date he had the notice of the fact that the award has been filed in the Court for being made the rule of the Court and that the Special Civil Suit has commenced for that purpose and that he has the right to file objections u/s 30 of the Act. It was from this date within 30 days the

objections were required to be filed.

3. The non-applicant No. 2 filed application (Exh. 18) praying for grant of time to file objections. His knowledge will have to be presumed from 4-8-1995 when this application was made. The applications are filed admittedly in the Special Civil Suit. They, therefore, had total knowledge of the fact that the suit has been filed for making the award of the Arbitrator the rule of the Court.

4. The very purpose of issuance of a notice u/s 30 is to bring to the knowledge of the parties concerned the fact that the award is filed in the Court for making it the rule of the Court. That being the intent and the non-applicant Nos. 1 and 2 having factually filed applications for extension of time to file objections, the purpose of notice was fulfilled. Factual issuance of notice in the circumstances was not required to be proved. However, factually the objections were filed on 21-11-1995, i.e. beyond the period prescribed by Article 119B of the Indian Limitation Act read with Section 30 of the Arbitration Act and consequently, were barred by limitation. It is undoubtedly true that an application u/s 5 of the Indian Limitation Act would be filed and taking a liberal view of the matter as is desired by the Supreme Court of India in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, that can be done only after an application u/s 5 for that purpose is moved. The jurisdiction of the Court itself is barred and the Court is prevented from taking cognizance of any matter if it is barred by limitation. It can get the jurisdiction only if an application to that effect is made. In the absence of an application, the Court will have no jurisdiction to take up the matter and consequently, will have no power to condone the delay. I am fortified in the view I am taking by a judgment of the Supreme Court in Ramesh Chand Sharma Vs. Udham Singh Kamal and Others, and in Secretary to Government of India and Ors. v. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231 wherein it has been observed by the Supreme Court of India that the power to condone the delay exists in the Court, the power cannot be exercised unless there is a prayer to do so by a proper application for that purpose.

5. Admittedly, in the present case, there is no such application and consequently, the learned trial Judge had no jurisdiction to condone the delay without the application. The action of condoning the delay without application is, therefore, an action which is without jurisdiction or where the learned trial Judge has exercised the jurisdiction not vested in him by law and the order in revision is, therefore, liable to be set aside. It is accordingly set aside. The objections are rejected. The Civil Revision Application stands allowed. The learned Judge is requested to proceed with the Special Civil Suit in accordance with the law.