

(2003) 11 DEL CK 0147

In the Delhi High Court

Case No : FAO No. 413 of 2002 and CM 816 of 2002

Chaudhary Transport and Co.

APPELLANT

Vs

The Motor General Finance Ltd. and Others

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Limitation Act, 1963 — Article 119, 5

Citation : (2003) 3 ARBLR 681 : (2003) 108 DLT 654 : (2004) 72 DRJ 132 :
(2004) 1 RAJ 332

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : R.M. Sinha, for the Appellant; K.R. Beriwal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—ADMIT.

2. As the matter is short and only a pure question of law is involved in the case, it has not been deemed necessary to call for the Trial Court file and with the consent of the parties, matter has been heard and disposed of by this order.

3. This appeal is directed against the judgment of learned Additional District Judge whereby it is held that the provisions of Section 5 of the Limitation Act do not apply for condoning the delay in filing application under Sections 30 and 33 of the Arbitration Act to set aside the award. Since there was delay in filing the objections and after holding that Section 5 of the Limitation Act does not apply the objections were dismissed being barred by time. To hold that Section 5 of Limitation Act does not apply to condone delay in filing the application under Sections 30 and 33 of the Arbitration Act, 1940, the learned Additional District Judge has relied upon judgment of this Court in N.K. Construction Company Ltd. Versus DDA 2000 RLR 457 wherein it was laid down that if objections to the award were not filed within time, the defaulter could not seek condensation of delay u/s 5 of the Limitation Act as Section 5 was inapplicable to suits per

contradistinction to Section 4 which applied to suits as well. According to the judgment relied upon by the learned Additional District Judge it was settled proposition of law that Section 5 of the Limitation Act did not apply to the proceedings under the Arbitration Act, 1940 hence, the provision could not be invoked for extending the time for filing objections to set aside award.

4. I have gone through the judgment of this Court in N.K. Construction Company Ltd. Versus DDA (supra) and in my opinion, the correct provision of law was not brought to the notice of the Court when the aforesaid judgment was delivered as the same is not only against the clear provisions of law laid down in the Limitation Act, but also against the judgments of the Supreme Court. Limitation for filing application under Sections 30 and 33 of the Arbitration Act is prescribed in the Limitation Act itself. Under Article 119 an application for setting aside an award or for remitting the award can be filed within 30 days of the date of the service of notice of the filing of the award. u/s 5 of the Limitation Act any appeal or any application other than an application under any of the provisions of the CPC may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or application within such period. A plain reading of Section 5 of the Limitation Act shows that if any application other than an application under CPC, is filed beyond the period prescribed in the Limitation Act such delay can be condoned if the applicant satisfies the Court that he had sufficient cause for not filing the application within the period prescribed in the Schedule to the Limitation Act. Since the limitation for filing application under Sections 30 and 33 of the Arbitration Act is prescribed by Article 119 of the Limitation Act, I do not find any reason as to why the provisions of Section 5 of the Limitation Act can not be applied to condone the delay in filing such application.

5. The matter is otherwise fully covered by the judgment of the Supreme Court in Bharat Coking Coal Ltd. Versus M/S L.K. Ahuja & Co (2001) 2 AD (SC) 293 wherein it was held that it was obvious that even an objection setting out the grounds specified in Section 30 of the Arbitration Act would amount to an application as contemplated under Article 119 of the Schedule to the Limitation Act and, Therefore, such objections will have to be filed within the period of limitation. It was further held that an application for condensation of delay in filing objections u/s 30 of the Arbitration Act can thus be filed u/s 5. It was held that Section 5 of the Limitation Act provides that any application other than that contemplated under Order 21 CPC could be admitted after the prescribed period if the applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period. It was held that Section 5 of the Limitation Act was applicable to all applications other than under Order 21 of the CPC and hence, scheme of an enactment cannot be availed of to defeat such a right conferred under the statute of limitation in clear terms.

6. In view of the aforesaid judgment of the Supreme Court, the judgment of this Court in N.K. Construction Company Ltd. Versus DDA (supra) does not lay down

good law. Since the application of the appellant u/s 30 of the Arbitration Act was dismissed only on the ground that the same was beyond limitation and Section 5 of the Limitation Act was not applicable to condone the delay in filing such application, the order of the trial court cannot be sustained. I, accordingly, allow this appeal, set aside the impugned order and remand the case to the Court of the Additional District Judge with a direction to decide the application of the appellant u/s 5 of the Limitation Act on merits. In the facts of this case, however, the parties are left to bear their own costs.

7. Parties are directed to appear before the Trial Court on 19.12.2003.