

(2004) 08 DEL CK 0073

In the Delhi High Court

Case No : OMP 362 of 2003 and is 9267, 9268 of 2003

Delhi Transport Corporation

APPELLANT

Vs

Rose Advertising and Another

RESPONDENT

Date of Decision : 24-08-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 34, 34(1), 34(2), 34(3)
Limitation Act, 1963 — Section 5

Citation : (2004) 3 ARBLR 86 : (2004) 113 DLT 403 : (2004) 76 DRJ 454

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : S.K. Luthra, for the Appellant; Ravi Gupta, for the Respondent

Judgement

R.C. Chopra, J.—OMP No.362/2003 is an objection petition u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ""the Act"" only) against an Award dated 6.10.1998. IA.No.9267/2003 is an application u/s 34(3) of the Act for co doing the delay in the filing of the objections u/s 34 of the Act and is No.9268/2003 is an application u/s 35 of the Act for staying the execution proceedings filed by the respondent vide Execution Petition No.58/1999 till the disposal of the objections u/s 34 of the Act.

2. I have heard learned counsel for the petitioner and learned counsel for the respondent No.1. I have gone through the records.

3. The facts relevant for the disposal of the aforesaid OMP and the IAs., briefly stated, are that in view of the arbitration agreement and disputes between the parties an Arbitrator was appointed, who made and published his Award dated 6.10.1998. The respondent No.1 filed an Execution Application No.58/1999 but the petitioner objected to the execution on various grounds inter alias that the Award could not be executed under the Act of 1996 inasmuch as the arbitral proceedings had commenced prior to the coming into force of the said Act. These objections of the petitioner were upheld by a learned Hon"ble Judge of this Court but in an appeal filed by the respondent No.1, the Division Bench held that the

execution application was maintainable. The order of the learned Single Judge was set aside. The petitioner filed SLP No.105/2002 in the Supreme Court of India, which was decided vide orders dated 17.4.2003. It was held by the Supreme Court that the parties had agreed to be governed by the law as in force at the relevant time and in view of Section 85(2) the Act of 1996 only was applicable and even the Arbitrator had proceeded on that understanding and given his Award. The prayer of the petitioner for grant of time to file objections against the Award was considered and it was held that the question as to whether the time for making an application for setting aside the Award could be extended or not will have to be decided as and when an application for that purpose is made. The SLP filed by the petitioner was dismissed on 17.4.2003. On 29.8.2003, the petitioner filed objections u/s 34 of the Act along with the aforesaid two IAs praying that the delay in the filing of the objections u/s 34 of the Act be condoned. It was also prayed that the execution proceedings be stayed. Learned counsel for the respondent No.1 relying upon the judgment of the Apex Court in Union of India Vs. M/s Popular Construction Co., has contended that Section 5 of the Limitation Act is not applicable to the objections u/s 34 of the Act and since the objections have not been filed within the period prescribed u/s 34(3) of the Act the same are liable to be dismissed. Learned counsel for the petitioner, however, contends that up to 17.4.2003, the parties were not clear as to whether the old Act of 1940 or the new Act of 1996 would govern them. He submits that under the facts and circumstances of the case and in view of the observations made by the Apex Court in the orders dated 17.4.2003, this Court would be well within its powers to condone the delay in the filing of the objections u/s 34 of the Act. He draws the attention of this Court to the observations made by the Apex Court clarifying that the matter having remained sub-judice, there was no occasion for the petitioner to apply for setting aside the Award and the question whether time for making an application for setting aside an Award could be extended or not will have to be decided as and when an application for that purpose is made.

4. In view of the judgment of the Apex Court in ""Union of India Vs. Popular Construction Company"" (supra), the question of applicability of Section 5 of the Limitation Act and the condensation of delay in the filing of the objections u/s 34 of the Act is finally settled. The Courts have no power to condone the delay in the filing of the objections u/s 34 of the Act, if the same have not been filed within the period provided by Section 34(3) of the Act. In this case, the observations made by the Court in para 16 of the judgment read as under:

""Furthermore, Section 34(1) itself provides that 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). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application ""in accordance with"" that sub-section. Consequently by virtue of Section 34(1) recourse to the court against an

arbitral award cannot be made beyond the period prescribed. The importance of the period fixed u/s 34 is emphasized by the provisions of Section 36 which provide that :

""where the time for making an application to set aside the arbitral award u/s 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court.""

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to ""proceed to pronounce judgment according to the award, and upon the judgments pronounced a decree shall follow"" (Section 17). Now the consequence of the time expiring u/s 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favor of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.""

5. In view of this dictum of the Apex Court in ""Union of India Vs. Popular Construction Company"" , the discretion of the Courts to enlarge the time for filing the objections beyond the period prescribed u/s 34(3) of the Act is totally taken away.

6. Therefore, no Court can be called upon to invoke Section 5 of the Limitation Act for condoning the delay in the filing of the objections u/s 34 of the Act.

7. However, under the facts and circumstances of the present case since the Apex Court itself has left it open to the Court to consider the question of extending the period for filing the objections a view can be safely taken that on 17.4.2003 only, the parties finally came to know that the arbitral proceedings and the Award in question were governed by the Act of 1996 and as such, the objections were required to be filed u/s 34 of the Act and not under the Act of 1940. The observations of the Apex Court that the matter having remained sub-judice, there was no occasion for the petitioner to apply for setting aside the Award are extremely meaningful and clearly convey that the right of the petitioner to file objections could not be foreclosed mere by on account of the pendency of the question of the applicability of the Act in Courts. This Court may not be having power to condone the delay in the filing of the objections u/s 34 of the Act but in the light of the orders of the Apex Court dated 17.4.2003, this Court can certainly determine as to from which date the limitation as prescribed u/s 34(3) of the Act has to be computed.

8. As already observed that only on 17.4.2003, when the Apex Court gave its judgment, the petitioner came to know that the Award in question was governed by the Act of 1996 and as such, it was required to file its objections u/s 34 of the Act. Therefore, this Court would be fully justified in computing the period of limitation w.e.f. 17.4.2003 but that also does not help the petitioner inasmuch as

the petition u/s 34 of the Act was not filed by the petitioner within a period of three months or additional 30 days in terms of sub-clause(3) of Section 34 of the Act. It was filed on 30.8.2003, which was about 12 days beyond the period prescribed u/s 34(3) of the . Therefore, even if for the purposes of computing the limitation the date of Apex Court order viz. 17.4.2003 is taken as starting point the petitioner's objections have been filed beyond the statutory period and as such, are barred by time. The OMP No. 362/2003 filed by the petitioner is held to be barred by limitation and is liable to be dismissed.

9. Accordingly, the OMP No. 362/2003 as well as IAs No 9267, 9268/2003 stand dismissed.