

(1962) 04 GUJ CK 0007

In the Gujarat High Court

Case No : Civil Revision Application No. 651 of 1960

Hasanalli Abdulalli Malabari

APPELLANT

Vs

Shantilal Bhaidas Marfatia and Others

RESPONDENT

Date of Decision : 16-04-1962

Acts Referred:

Limitation Act, 1908 — Article 158, 14(2)

Citation : AIR 1962 Guj 317 : (1963) GLR 94

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : A.D. Desai, for the Appellant; S.B. Vakil and P.D. Desai, for the Respondent

Final Decision : Allowed

Judgement

V.B. Raju, J.—Civil Judge, Junior Division, Surat, dismissed an application to set aside an award on the ground of limitation, namely on the ground that the application was filed after 30 days from the date on which the parties had notice of the filing of the award.

2. Under Article 158 of the First Schedule to the Limitation Act, the period of limitation, to set aside an award under the Arbitration Act, 1940 or to get an award remitted for reconsideration, is thirty days from the date of service of the notice of filing of the award. Section 14(2) of the Arbitration Act, 1940, which will hereinafter be referred to as the Act, reads as follows:

"The arbitrators or "umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award."

3. In the instant case the award was originally filed on 2-7-1958 by the arbitrator, but at the time of doing so, he did not comply with the rules framed by the Bombay High Court regarding the documents to be attached to the award to be filed in Court. He, therefore, filed his affidavit on 18-3-1958, and the Court passed an order on 19-8-1958, which runs as under:

"Plaintiff has submitted his affidavit. Hence issue notices of the filing of the award to parties on process fee paid."

This order was passed below Ex. 1. A similar order was passed on Ex. 14, which is as under:

"Applicant has made and produced his affidavit today. Hence the award to be considered to have been filed today and notices of the filing of the award be Issued to the parties on process fee paid. Pleader of the applicant also agrees to this."

This notice was served on 3-9-1958 and the application to set aside the award was made on 27-9-1958. The application for filing the award, which was filed on 2-7-1958 by the arbitrator, was treated as Regular Civil Suit No. 561 . of 1958, and notices were served on the parties of the filing of the award. On the parties objecting, the arbitrator was informed that the documents which were necessary to be filed under the rules framed by the Bombay High Court had not been attached to the award, and therefore he filed another affidavit on 18-8-1958 and produced the necessary documents.

4. The appeal Court below, namely the Assistant Judge, Surat, held that on 19-8-1958, when the order was passed in the presence of both the parties, the parties were aware of the filing of the award and that therefore the period of limitation should start from the date on which the parties were aware that the award had been filed in Court. He relied on *Bhola Nath Mallick Vs. Mahadev Mallick*, , and held that as the application to set aside the award was filed more than 30 days after 19-8-1958, the application to set aside the award was beyond limitation. It is this order which is challenged in revision.

5. Under Article 158 of Schedule I to the Limitation Act, which is quoted above, limitation commences from the date when the notice of the filing of the award is served. But as held by their Lordships of the Supreme Court in *Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others*, , when no notice has been issued by the Court u/s 14(2) of the Act to the parties of the filing of the award, oral, Informal or constructive intimation given by the Court will serve the purpose of the notice and the date of such intimation will be the starting point of limitation. Their Lordships declared that where a written notice is not given by the Court u/s 14(2) of the Act, the period of limitation would commence from the date on which oral or informal or constructive Intimation had been given to the parties to the filing of the award. Their Lordships did not make any declaration of law as regards cases in which written notice had been Issued.

6. In the instant case, the orders below Exs. 1 and 14, which were both passed in the presence of the parties directed the issue of notices to the parties of the filing of the award. The Court gave an order in writing directing the issue of notice, and in compliance with that order a written notice in fact had been issued and served on 3-9-58. The date of service of the written notice is 3-9-58. In face of this fact, it is impossible to say that the starting period of limitation would commence on 19-8-58.

7. It is contended by the learned counsel for opponent No. 2 that the question as to what is the starting point of limitation does not depend on what the Judge understood to be necessary in the matter of notice. He contends that even if the Judge was under the impression that a written notice was necessary and in law a written notice is not necessary provided the parties had otherwise knowledge of the filing of the award, the limitation would run from the date when parties had otherwise knowledge of the filing of the award. In the instant case, if no written notice had been issued, it would be open to count the starting period of limitation as starting from 19-8-58. But a written notice had, in fact, been issued, and when there is the service of a written notice, we cannot say that that is not the date of the service of the notice and that that is not the date of the starting point of limitation. There cannot be two starting points for the period of limitation, namely 19-8-58 and 3-9-58 one the date of oral intimation and the second the date of service of notice. When a written notice is sent u/s 14(2) of the Arbitration Act, that would be the starting point for the period of limitation. If there is no written notice u/s 14(2) of the Act, then the date on which oral or informal or constructive intimation was given to the parties by the Court of the fact that the award was filed would be the starting point for limitation as observed by their Lordships of the Supreme Court. But as observed, a written notice was served on 3-9-58 and 3-9-58 is the date on which the period of limitation would commence.

8. The learned counsel for opponent No. 2 has relied on *Bhola Nath Mallick Vs. Mahadev Mallick*, *Kawalsingh v. Baldeosingh* AIR 1957 Nag 57, and *Valchand Dipchand Vs. Gulba Laxman*. All these three cases were cases in which a written notice has not been issued. In *Bhola Nath Mallick Vs. Mahadev Mallick*, it was observed that the service of a written notice was not necessary and that the date when the parties filed appearance would be deemed to be the service of notice. The case in *Valchand Dipchand Vs. Gulba Laxman*, was also a case where no notice was issued by the Court u/s 14(2) of the Act of the fact that the arbitrator had filed his award. In the Nagpur case (AIR 1957 Nag 57) it was observed that a written notice need not be given if the parties have otherwise knowledge of the filing of the award. All these three rulings deal with cases where a written notice had not been issued by the Court and they considered the question as to when the period of limitation would start in such cases, and they held that although a written notice had not been given, the period of limitation would commence from the date when the parties had otherwise knowledge of the filing of the award. These cases do not lay down the principle that in a case

where a written notice had been served on the parties, limitation would not run from the date of the service of that notice but from an earlier date.

9. I, therefore, held that the Courts below were wrong in holding that the application was barred by limitation. The application was clearly in time. The revision application is, therefore, allowed and the trial Court is directed to dispose of the application in accordance with law. No order as to costs in this Court as well as the Courts below.