
(1995) 11 OHC CK 0007
In the Orissa High Court
Case No : Misc. Appeal No. 456 of 1991

J.P. Stores

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Arbitration Act, 1940 — Section 37
Limitation Act, 1963 — Section 5

Citation : (1996) 81 CLT 227

Hon'ble Judges : S. Chattarji, J

Bench : Single Bench

Advocate : D.P. Sahoo, for the Appellant; S.K. Nayak, R.K. Kar and J.K. Khurtia, for the Respondent

Final Decision : Allowed

Judgement

S. Chattarji, J.—The present miscellaneous appeal under the provisions of the Arbitration Act at the instance of the opposite party "in the Court below challenges the impugned order dated 20-8-1991 passed by the learned Subordinate Judge, Horapara in O.S. No. 6 of 1991. By the impugned order, the learned Subordinate Judge has rejected the application for condonation of delay u/s 5 of the Limitation Act. He entertained the objection for setting aside an award under the Arbitration Act. There is delay of 70 days in filing the objection, as envisaged under Sections 30 and 33 of the Arbitration Act, Admittedly, an arbitration is pending for over 18 years. The award has been made on a notice given beyond the appropriate time and being aggrieved thereby, steps were taken for filing objection. However, on account of the delay, there is a prayer for condonation of delay by way of filing an application u/s 5 of the Limitation Act. The learned Subordinate Judge recording the reasons has rejected the same. Being aggrieved by and dissatisfied with the said order, the present appeal has been preferred.

2. Having heard learned lawyers of both the sides and on perusal of the materials

on record and regard being had to the facts and circumstances of the case and the background of the matter, this Court is of the view that the objection under Sections 30 and 33 of the Arbitration Act should be considered on merit by the learned Subordinate Judge, on the question of condonation of delay sufficient reason being shown, The learned lawyer for the respondent appearing before this Court draws attention of this Court to a decision reported in Madan Lal Vs. Sunderlal and Another, . Therein, it has been held by the Apex Court that if a party wants an award to be set aside on any of the grounds men-tioned in Section 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Article 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in Section 30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection to an award in the nature of a written statement may be treated as such an application if it is filed within the period of limitation. But, if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for it is so treated it will be barred by limitation. This proposition of law is not in doubt or in dispute. No objection can be considered for setting aside an award other than what is envisaged u/s 30 of the Arbitration Act. For entertaining such an objection u/s 30 either being mentioned or otherwise, the period of limitation should be computed for 30 days. But if there is a delay in filing such an objection, whether such delay can be condoned by invoking the provision contained in Section 5 of the Limitation Act, has not been considered by the Supreme Court in the judgment reported in Madan Lal Vs. Sunderlal and Another, . Attention of this Court has also been drawn to a judgment reported in Government of Andhra Pradesh Vs. Durgaram Prasad, . It is there that Sections 37 and 30 of the Arbitration Act make a reference for the purpose of filing objection to award beyond the prescribed period of limitation where Section 5 of the Limitation Act can be invoked. It is found further in paragraph 9 of the said judgment that provisions of Section 5 of the Limitation Act can be invoked to extend the time for filing objection, beyond the stipulated period, to the award passed by the arbitrator. For passing the judgment, the Court referred and discussed various case laws including Supreme Court decisions in this regard. This proposition is not in doubt. The question is, however, to be seen whether the learned Subordinate Judge has considered the sufficiency of the explanation given by the appellant-opposite party before the Court below for condonation of delay. Regard being had to the circumstances of the case and the facts in detail, this Court takes a lenient view and for effective adjudication in the matter, allows the appeal, sets aside the impugned order and condones the delay in filing the objection to be considered on merit on payment of costs of Rs. 5,000/- (Rupees five thousand) to the other side within a period of 30 days from this day through the learned Advocate appearing before this Court. In default, the appeal stands dismissed.