

(2000) 12 GUJ CK 0064

In the Gujarat High Court

Case No : Civil Revision Application No. 570 of 2000

Jyoti Motors

APPELLANT

Vs

Industrial Credit and Development Syndicate Ltd. and Others

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33, 34, 34(1), 34(3)
Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Article 119(b), 29(2), 5
Motor Vehicles Act, 1939 — Section 110A, 58, 58(3)
Motor Vehicles Act, 1988 — Section 166(2), 166(3)

Citation : (2001) 21 GLH 717 : (2001) 2 GLR 1719

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : M.G. Nagarkar, for the Appellant; Navin K. Pahwa and D.N. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Mehta, J.—M/s. Jyoti Motors-petitioner has filed this revision application u/s 115 of the CPC challenging the order dated 25-5-2000 passed by the 5th Joint Civil Judge (S.D.), Rajkot, in Civil Application No. 95 of 1999 filed by the petitioner-applicant for condonation of delay in filing the main application in the matter which pertains to set aside arbitral award already passed against the petitioner-applicant. The original application was filed for setting aside the award passed u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

2. The facts giving rise to this revision application are as under :

2.1 The petitioner entered into a Hire-Purchase Agreement with M/s. Industrial Credit and Development Syndicate Ltd., respondent No. 1 for purchasing dumper trucks of Swaraj Mazda. The petitioner stood as guarantor in his capacity as a dealer and mediator. As there was default in payment of instalments, the

respondent company initiated proceedings for arbitration.

2.2 The dispute was referred to the arbitration of Sole Arbitrator Shri B. L. Sharma as per Hire-Purchase Agreement. Further, the Arbitrator issued notice to the parties including the petitioner. However, the petitioner chose not to appear before the Arbitrator.

2.3 It may be noted that respondent No. 1 appeared before the Arbitrator and put forward his case before the Arbitrator. The Arbitrator after going through the evidence on record passed award on 13-4-1998 in favour of the respondent-Company.

2.4 In the petition it was the case of the petitioner that the petitioner came to know about the award under the provisions of the Act only on 21-4-1998. However, no application was filed for setting aside the award.

2.5 As the petitioner did not initiate any steps for setting aside the award under the provisions of the Act, respondent-Company filed execution application being Special Darkhast No. 153 of 1998, notice of which was served upon the petitioner-Company.

2.6 Thereafter, the petitioner filed application on 6-2-1999 under the provisions of Section 34 of the Act for setting aside the award. As per the provisions of Section 34(3) of the Act, an application for setting aside the award has to be made within three months from the date of award. However, the proviso to this sub-sec, provides for extension of time by the Court for a further period of 30 days. As the petitioner did not file the said application within the stipulated period, he filed this application for condonation of delay.

3. The learned 5th Joint Civil Judge, Rajkot, by his judgment and order dated 25-5-2000 was pleased to dismiss the said application mainly relying on Section 34 of the Arbitration Act.

4. Being aggrieved and dissatisfied with the judgment and order of the learned Judge, the petitioner has filed the present revision application before this Court.

5. In the revision application, it was contended that the learned Judge has committed an error in holding that it is not competent for the Court to condone the delay if the delay is for more than four months. It was further submitted that it would be discriminatory and irrational to hold that beyond the period of four months, even if there is sufficient cause, because the Court cannot entertain the application.

6. On behalf of respondent No. 1 Mr. Navin Pahwa, learned Advocate, has tried to support the reasoning of the learned Judge.

6.1 Before I consider the rival contention. I would set out the statutory provisions of Arbitration Act in this behalf. Chapter VII of the Act provides for setting aside awards. Section 34 of the Act provides for application for setting aside arbitral award. Sub-section (1) of Section 34 of the Act reads as follows :-

"(1) 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).

34(2) xxxxx

34(3) - An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal.

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

7. Mr. Navin Pahwa, learned Advocate, has relied on the judgment of the Supreme Court in the case of Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, . In that case the Hon"ble Supreme Court considered Section 5 of the Limitation Act. The main question posed before the Hon"ble Supreme Court was as to whether time-limit prescribed by the proviso to sub-section (2) of Section 58 of the Motor Vehicles Act, 1939, apply in case of an application for renewal of a permit under the proviso to sub-section (1D) of Section 68-F. The proviso to sub-section (2) required that an application for renewal of a permit should be made not less than 120 days from the date of expiry of the permit. However, sub-section (3) of Section 58 vested a discretion in the Regional Transport Authority to entertain an application for renewal of a permit even if it is beyond the time-but in that case the delay should not be of more than 15 days. The word used in sub-section (3) of Section 58 was "may" and not "shall". The Regional Transport Authority was thus given a discretion to entertain an application for renewal of a permit even where it was beyond the time, though not more than 15 days. It can thus condone delay depending on the circumstances of each case and can condone delay for a period of 15 days only. It was contended before the Hon"ble Supreme Court that by virtue of Section 29(2) of the Limitation Act, 1963, provision of Section 5 of the Limitation Act would become applicable in the case of an application for renewal of a permit. In this context, Hon"ble Justice P. N. Bhagwati on behalf of the Supreme Court made the following most pertinent observations :

"It is, therefore, clear that sub-section (3) of Section 58 confers a discretion on the Regional Transport Authority to entertain an application for renewal when it is made beyond the time-limit specified in the proviso to sub-section (2), but not more than 15 days late and the discretion is to be exercised in favour of entertaining the application for renewal when it is shown that there was sufficient cause for not making it in time. Now, the question which arises is : Does Section 5 of the Limitation Act, 1963, apply so as to empower the Regional Transport Authority, for sufficient cause to entertain an application for renewal even where

it is delayed by more than 15 days? Section 29, sub-section (2) of the Limitation Act, 1963 makes Section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was sub-section (3). Does sub-section (3) expressly exclude further extension of time u/s 5? If it does, then Section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it or in other words, it shall have no power to condone the delay. There is, thus, an express provision in sub-section (3) that delay in making an application for renewal shall be condonable only if it is not more than 15 days and that expressly excludes the applicability of Section 5 in cases where an application for renewal is delayed by more than 15 days. This provision may seem harsh, but it has been deliberately and advisedly made because the question of renewal of a permit must obviously be decided before the expiration of the period of the permit and in view of the elaborate procedure set out in Section 57 for dealing with an application for renewal, a certain minimum period before the expiration of the period of the permit must be provided within which this procedure can be completed so that the renewal can, if at all, be granted well in time before the permit expires."

8. The learned Counsel for the respondent thereafter relied on the judgment of this Court in the case of *Mer Ramda Vejunandbhai and etc. Vs. Hardasbhai Parbatbhai and Others*, where this Court (Coram : S. D. Shah, J.) after relying upon the aforesaid judgment of the Supreme Court in para 23 "has observed thus :

"From the aforesaid observations, it becomes clear that Section 5 of the Limitation Act cannot be availed of by the petitioners for condonation of the delay. Proviso to sub-section (3) of Section 166 of the Motor Vehicles Act, 1988, in so many terms says that the Claims Tribunal may entertain the application after the expiry of the prescribed period of six months, but not later than 12 months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. This would clearly mean that if the application for compensation is filed beyond the period of 12 months from the date of the occurrence of the accident, the Claims Tribunal shall have no power to condone delay. There is thus express provision in proviso to sub-section (3) of Section 166 that delay in making an application for compensation shall be condonable not later than 12 months from the date of the occurrence of the accident and that expressly excludes the applicability of Section 5 of Limitation Act in cases where an application for compensation is delayed by more than 12 months from the date of the occurrence of the accident."

Again in para 28, the Court observed thus :

"From the aforesaid discussion, the following clear principles emerge :

(1) Section 166 of the Motor Vehicles Act, 1988 prescribed the same period of limitation for making an application for compensation to Claims Tribunal which was prescribed by Section 110A of the Motor Vehicles Act, 1939.

(2) The proviso to sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 restricts the power of the Claims Tribunal to condone delay in making application for compensation on sufficient cause being shown to a period not above 12 months from the date of the occurrence of the accident. In other words, a Claims Tribunal can condone delay in making an application for compensation upto a period of 12 months only from the date of the occurrence of accident. This is quite in contrast to the (sic) power given by the proviso to Section 110(3) of the Motor Vehicles Act, 1939 which did not in any way restrict the power of the Claims Tribunal to condone delay in making an application for compensation on sufficient cause being shown.

(3) The Legislature while enacting the new Act, i.e. the Motor Vehicles Act, 1988 has deliberately and purposively introduced a new proviso to sub-section (3) of Section 166 while otherwise retaining the substantive provision by enacting Section 166(1), (2) and (3) which are verbatim the same as Section 110A(1), (2) and (3).

(4) Consistent with the principle enunciated by the Supreme Court in the case of The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, it shall have to be held that the provision of Section 166(3) and its proviso unmistakably show that the Legislature has deliberately excluded the application of the principle underlying Section 5 of the Limitation Act, 1963 except to the extent of its operation for a period of 12 months from the date of the occurrence of the accident.

(5) Since the Legislature has wilfully omitted to incorporate the provision identical to Section 110A(3) proviso of the Act, 1939 and since the Legislature has instead enacted the proviso to sub-section (3) of Section 166 which is plain and unambiguous, it is not open to the Court to supply the omission by engrafting in it or introduction by analogy or implication, something what the Court thinks to be a general principle of justice and equity.

(6) Section 29 of the Limitation Act, 1963 makes Section 5 of the said Act applicable in the case of an application for compensation filed before a Claims Tribunal to a period of 12 months from the date of the occurrence of the accident. Proviso to sub-section (3) of Section 166 of Motor Vehicles Act, 1988 in so many terms provided that of a Claims Tribunal can entertain an application for compensation not above the period of 12 months from the date of the occurrence of the accident provided sufficient cause is shown. This clearly means that if an application for compensation is filed beyond a period of 12 months from the date

of the occurrence of the accident, the Claims Tribunal shall not be entitled to entertain it or in other words, it shall have no power to condone the delay. There is thus an express provision in proviso to sub-section (3) of Section 166 that delay in making an application for compensation shall be condonable only if it is not beyond 12 months from the date of the occurrence of the accident and that provision expressly excludes the applicability of Section 5 in cases where an application for compensation is delayed by more than 12 months from the date of the occurrence of the accident (See : Supreme Court decision in Mohammad Ashfaq (supra))."

9. In view of the judgment of the Hon"ble Supreme Court and the judgment of this Court, the learned Counsel for the respondent submitted that there is no substance in the revision application filed by the petitioner and this Court should reject the same.

10. Mr. Navin K. Pahwa, learned Advocate for respondent No. 1 states that in view of Section 34(3) of the Act, an application for setting aside an arbitral award cannot be made after three months from the date of the receipt of the arbitral award by the applicant or from the date of the disposal of the request by a party u/s 33. But if the Court is satisfied that the applicant is prevented by sufficient cause from making the application within the prescribed period, it may entertain the application within a further period of thirty days, but not thereafter.

11. In my view Section 34 of the Act itself prescribes the period of limitation for making an application for setting aside an arbitral award as also the time from which such period starts reckoning. As per Art. 119(b) of the Limitation Act, 1963, an application to set aside an award under the Act of 1940 could be made within a period of 30 days from the date of the service by the Court of the notice of the filing of the award in the Court. Section 5 of the Limitation Act, 1963, applies where the limitation has been prescribed under the Limitation Act, 1963 itself and since the limitation of three months for filing an application for setting aside an arbitral award has been prescribed under sub-section (3) of Section 34 of the Act and not under the Limitation Act, 1963, Section 5 of the Limitation Act, 1963 has no applicability and even on "sufficient cause" being shown by the applicant, the Court cannot extend the time-limit for filing such application beyond the maximum period of thirty days provided under the Act.

12. In my view the learned Judge after relying on Section 34(3) of the Arbitration Act, has rightly rejected the application for condonation of delay. Section 34(3) of the Arbitration Act is in pan materia with the provisions of Section 166(3) of the Motor Vehicles Act, 1988 which has been considered by the Supreme Court as well as the High Court, and therefore, the ratio laid down by the Hon"ble Supreme Court and this Court clearly applies. Therefore, I find no substance in the revision application filed by the petitioner, and therefore, the same is required to be rejected. The revision application is rejected. Interim relief stands vacated.

13. Application rejected.