

(1993) 11 AP CK 0013

In the Andhra Pradesh High Court

Case No : C.R.P. No"s. 2394, 2395 and 2396 of 1982

K. Prakash Rao

APPELLANT

Vs

Singareni Collieries Co. Ltd. and Another

RESPONDENT

Date of Decision : 15-11-1993

Acts Referred:

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

Citation : (1993) 3 ALT 517 : (1993) 2 APLJ 464 : (1995) 1 ARBLR 507

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Advocate : T. Anantha Babu, A. Veeraswamy and P. Vinayaka Swamy, for the Appellant; K. Sreenivassa Murthy, for the Respondent

Judgement

M.N. Rao, J.—These three revision petitions are directed against the common order passed by the learned IV Additional Judge, City Civil Court, Hyderabad in I.A. No. 1746/90 in O.P. Nos. 401/90, 1747 of 1990 in O.P. Nos. 402 of 1990 and 1745 of 1990 in O.P. No. 403 of 1990 dismissing the applications filed by the petitioner herein to allow the O.Ps. - O.P. Nos. 401, 402 and 403 of 1990 - and to pass decrees in terms of the three awards passed by the arbitrator. As all the three revision petitions are inter-connected, the same are disposed of by this common judgment.

2. The petitioner herein was entrusted with execution of certain contract works by the respondent - the Singareni Collieries Company Limited, a Public Sector Corporation (hereinafter referred to as "the Company"). As disputes had arisen relating to the execution of the works between the petitioner and the Company, a retired District Judge was appointed as an arbitrator by the court and he, after entering upon reference, passed three awards on 30.8.1990 and filed them in the court after due notices to both sides. Within 30 day of receiving the notice, the petitioner filed on 4.10.1990, three O.Ps. - O.P. Nos. 401, 402 and 403 of 1990 praying the court to make each of awards, a rule of the court and to pass three

separate decrees in terms of the awards. The three O.Ps. were registered on 6.10.1990 by the court and posted them on 8.12.1990 for the appearance of the opposite party-the Company. On 21.9.1990, the Company, on its part, filed three O.Ps. - O.P. Nos. 7, 8 and 9 of 1991 seeking to set aside the three awards.

3. The three O.Ps., filed by the company were returned by the office of the City Civil Court on 1.10.1990 raising the following objections :

- "(1) Blanks in the complaints be filled in.
- (2) Complaint copies be filed.
- (3) Documents, if any, be filed.
- (4) Suit summons and process be filed.
- (5) Missing signatures be filled."

Ten days time was granted for complying with the objection and representation. The Company represented all the three O.Ps., on 12.11.1990 with an endorsement "all the objections were complied with" and separate applications were filed in each of the three O.Ps., seeking condonation of delay in representation. The delay was condoned but the office returned, once again, all the three O.Ps., on 15.11.1990 with the following endorsement;

"Objections dated 1.10.1990 not complied with."

Ten more days time was granted for compliance and representation. Again the O.Ps., were represented on 16.1.1991 with three separate applications seeking condonation of delay in representation with the endorsement on each of them that the objections were complied with. The three O.Ps., were then scrutinised and the office of the court below registered the same on 17.1.1991 and posted them on 26.2.1991 for first hearing.

4. As already mentioned, on 29.12.1990, the three I.As., from out of which the present revision petitions arise, were filed by the contractor (petitioner herein) requesting the court to pass decrees in each of the three O.Ps., filed by him in terms of the three awards passed by the arbitrator. The three applications filed by the petitioner were founded primarily, on the contention that between 15.11.1990 and 15.1.1991 - the interregnum between the return of the Company's O.Ps., and their representation - there were no applications by the Company on the file of the court seeking to set aside the three awards passed by the arbitrator and by 29.12.1990, the period of 30 days in filing the applications to set aside the awards under Article 119(b) of the Limitation Act had expired and, therefore, the three O.Ps., filed by the petitioner for passing decrees in terms of the three awards should be allowed.

5. Three contentions were raised in the court below by the petitioner. The primary contention was that there was no valid presentation of applications for setting aside the awards passed by the arbitrator under Sections 30 and 33 of

the Arbitration Act. The two ancillary contentions were : (i) Sri A. K. Mohan Rao, the Divisional Engineer (Civil) and Sri N. K. Sangyam, Chief Engineer (Civil) were shown as the officials representing the Company but the vakalat was signed only by Sri A. K. Mohan Rao but not by Sri N. K. Sangyam and that even the counsel also did not sign the vakalatnama when the three O.Ps., were filed by the Company on 21.9.1990; and (ii) the order passed by the court condoning the delay in representation would not bind the petitioner.

6. The learned Additional Judge held that when pleadings were filed without verification, the defect could be rectified even after the expiry of the period of limitation as held by this court in N.P. Chengalraya Naidu Vs. G.N. Pattabhi Reddi, The orders of the court condoning the delay in representation became final and so their validity could not be once again reagitated. The court has power u/s 148 of the CPC to condone the delay in representation. When the delay in representation was condoned "rightly or wrongly" and the O.Ps., filed by the Company were registered on 17.1.1991, it could not be said that they were barred by time. Had the O.Ps., filed by the petitioner been taken up for hearing on 29.12.1990 or any other date prior to 17.1.1991, the "situation would have been entirely different" but since that was not the case, the O.Ps., filed by the Company could not be rejected on the ground that they were presented beyond the prescribed period of limitation. The learned Judge also held that the documents - Exs. B. 2 and B. 3 - filed by the Company would show that the Chairman and Managing Director had delegated his powers with regard to legal matters to the officials mentioned in Ex. B. 3 in regard to Civil Engineering works and, therefore, the two officials could not be said to have no authority to represent the company. Thus, rejecting all the pleas raised by the petitioner, the learned judge has dismissed the three interlocutory applications. Hence the present three revision petitions.

7. The same contentions urged before the lower court are reiterated in the three revision petitions.

8. In limine, I must make it clear that the Company filed within the prescribed time - on 21.9.1990 - the three O.Ps., for setting aside the three awards passed by the arbitrator. Decisional law relating to orders passed by the courts registering suits or appeals beyond the period of limitation without notice to the opposite party, therefore, has no relevance.

9. In Krishnasami v. Ramasami (AIR 1917 PC 179), a learned single Judge of the Madras High Court, without notice to the opposite side, condoned the delay in filing a first appeal beyond the period of limitation and admitted the same. When the matter came up for final hearing, an objection was taken that the admission of the appeal without notice was impermissible in law. A Division Bench of the Madras High Court sustained an objection and dismissed the appeal. When the matter was carried to the Privy Council by way of an appeal it was observed :

"But this order of admission was made not only in the absence of Ramasami

Chettiar, the contesting respondent, but without notice to him. And yet in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to reconsideration at the instance of the party prejudicially affected and this view is sanctioned by the practice of the courts in India", (per Sir Lawrence Jenkins).

The aforesaid statement of law enunciated by the Privy Council is of little assistance to the petitioner. When a suit or an application is filed within time and when the registry of the court returns the papers for compliance with the objections pointed out and grants time for representation and when the same are represented beyond the time specified for representation, it has been the practice of the courts in our State, for several decades, to insist upon the party to file an application seeking condonation of delay in representation and such applications are disposed of on merits without notice to the other side. As the time for representation is fixed by the court itself and not by law, the court has undoubted power to condone such type of delays in the exercise of its power u/s 148 of the Code of Civil Procedure. An order passed by the court exercising discretion to condone the delay in representation cannot be questioned by the opposite party to the proceedings on the ground of want of notice. Such a plea is plainly untenable. No questions for adjudication, either under substantive law or procedural law especially under the Law of Limitation, arise at that stage. The procedure for condoning the delay in representation cannot be treated as that one u/s 5 of the Limitation Act. *Indian Statistical Institute v. Associated Builders*. (AIR 1978 SC 335)

10. In the instant case, the condonation of delay in representation of the O. Ps., filed by the Company operates retrospectively with effect from 21.9.1990, the date when the three O. Ps., were presented in the registry of the City Civil Court. If the date 21.9.1990 is reckoned as the date of valid presentation, it cannot be said that the said O. Ps., were barred by time they were presented within 30 days from the date of receipt of notice issued by the arbitrator. The contention that during the interregnum between 5.11.1990 and 5.1.1991 - the return of the Company's O. Ps, and their representation - there were no applications filed by the Company seeking to set aside the three awards passed by the arbitrator, therefore, does not merit acceptance. It is not necessary to go into the question : what would have been the legal consequence if the three O. Ps., filed by the petitioner had been taken up during that period and decided ? That contingency did not arise. Therefore, the principal and the second ancillary contentions about there being no valid presentation and the condonation of delay in representation not binding the petitioner are without substance.

11. What remains to be considered is the first ancillary contention viz., that the two officers - Sri A. K. Mohan Rao and Sri N. K. Sangyam - had no authority to

represent the Company. A second limb of this contention is that there was no proper presentation of the three O.Ps., filed by the Company since either on 21.9.1990, the date when they were filed in the registry of the City Civil Court or on 12.11.1990, when they were represented, the pleadings were without verification.

12. I shall first deal with the second limb of the first ancillary contention. The contention advanced in this regard by the petitioner was rejected by the lower court relying upon the decision of this court in *Chenalkaya Naidu* (supra). Shri Anantha Babu, learned counsel for the petitioner, says that the principle of law accepted by this court in the aforesaid ruling no longer holds the field in view of the later decision of the Supreme Court in *Kashinath v. Kudsia Begam* AIR 1971 SC 373.

13. Both cases arose under the Representation of the People Act, 1951 (for short "the Act"). This court had taken the view that even if verification was made after the expiry of the period of limitation, the same would amount to an irregularity which could be cured by a subsequent amendment. This is no longer good law. The Supreme Court in *Kashinath* (supra) held :

"..... a defective petition could not be allowed to be rectified after the period of limitation for filing it had expired."

This statement of law applies only to matters arising under the Act but not to suits or other civil proceedings. The reason is obvious : Sections 81 and 82 of the Act deal with "presentation of petitions and parties to the petitions". Section 117 of the Act relates to security for costs. Section 86, which bears the heading "trial of election petitions", lays down by sub-section (1) :

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117".

In view of this mandatory requirement, the Supreme Court has laid down the aforesaid legal principle. But so far as suits and other civil proceedings are concerned, the position is different. No such analogous provision is found either in the CPC or in the Arbitration Act.

14. A Division Bench of the Madras High Court in *Subbiah Pillai alias S.S.M. Subramania Pillai Vs. Sankarapandiam Pillai and Others*, . Also see, *Madan Lal Vs. Sunderlal and Another*, , After adverting to the precedents on this point held :

"The result of the above decisions by the Judicial Committee and the High Court of Allahabad is that where a plaintiff has not signed a plaint, filed with his knowledge and consent, it is an omission which can be cured, and indeed, should be corrected in the interest of justice."

The Division Bench also accepted the opinion of Mulla in his commentary on the CPC :

"If the defect is not discovered until the case comes on for hearing before an

appellate court, the appellate court may order the amendment to be made in that court. The appellate court ought not to dismiss the suit or interfere with the decree of the lower court merely because the plaint has not been signed. The omission to sign or verify a plaint is not such a defect as could affect the merits of a case or the jurisdiction of the court."

This opinion of the Division Bench binds me and also, it is not necessary to refer to the decisions of other High Courts cited by *Johurimull Jugalkishore Vs. Kashiprosad Jhajharia*, , *L. Madan Lal Haveliwala Vs. L. Sunder Lal and Another*,

15. Whether the two officers - Sri A. M. Mohan Rao, Divisional Engineer Civil) and Sri N. K. Sangyam, Chief Engineer (Civil) had - no authorisation to represent the Company, is the question that remains to be considered. Order 29, Rule I of the CPC lays down that in suits by or against a Corporation, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal officer of the Corporation who is able to depose to the facts of the case. It necessarily presupposes that the Secretary or the Director or other principal officer, as the case may be, has been authorised by the Corporation to act on its behalf. Sri Anantha Babu, learned counsel for the petitioner, says that the two officers in question have no competency, in law, to institute legal proceedings on behalf of the Company. There is some controversy as to the procedure adopted by the court below for ascertaining the authority of the two officers and I think it is unnecessary to go into that.

16. The powers of the Chairman and Managing Director of the Company, inter alia, include :

"H. Legal Matters :

H-1 : To appoint legal Advisors of the Company.

... Full powers.

(Delegated powers)

H-2 : Pleading, memo of appeals, vakalatnamas etc., power to sign and pay fee to lawyers and incur other expenses, issue notices, make references before Tribunal, tax authorities, etc.

Full powers.

(Delegated powers)

In exercise of the aforesaid powers, the Managing Director of the Company sub-delegated the powers to certain offices as can be seen from Ex. B. 3, which reads :

Sub-Delegation of powers vested with Chairman and Managing Director to C.E. (Civil), Addl. C.E. (Civi), Dy. C.E. (Civil) and D.E. (Civil) in Civil Engineering Department.

As empowered underclause H-2 of the Delegation of Powers, I hereby sub-delegate powers under the H-2 of the Legal matters reading as under to C.E. (Civil), Addl. C.E. (Civil), Dy. C.E. (Civil) and D.E. (Civil) in Civil Engineering Department, who will be acting on behalf of the Company in matters relating to Civil Engineering works so far as it relates to the Powers sub-delegated :

H-2 :

Power to sign, pleading, Memo of appeals, vakalatnamas, etc."

The sub-delegation, therefore, comprehends the two officers in question - Sri A. K. Mohan Rao, Divisional Engineer (Civil) and Sri N. K. Sangyam, Chief Engineer (Civil). Sri Anantha Babu's contention is that the sub-delegation can only be in each case but not in respect of each class of cases and in support of this, he relies on clause M-2 of the delegation of powers in favour of the Chairman and Managing Director which reads :

"M-2 : SUB-DELEGATION :

Sub-delegate any powers delegated to him to his subordinate officers specifying the extent of delegation in each case".

The delegation of powers in favour of the Chairman and Managing Director are under different categories Company matters, budget, capital works, purchases and contracts, establishment matters, legal matters, administration etc. As the different categories in respect of which powers could be exercised by the Chairman and Managing Director are enumerated, the extent of his power to sub-delegate cannot be narrowed down to each of the individual cases comprehended by each of the specified categories. Such an interpretation may be justified only in respect of residuary matters falling under the head "miscellaneous" and as "legal matters" constitute a specified category under clause-H, the words "in each case" occurring in clause M-2, in my opinion, comprehend the power of sub-delegation in respect of the entire class of "legal matters". The Chairman and Managing Director of the Company is, therefore, empowered to sub-delegate his powers in favour of officers specified in Ex. B. 3 in respect of legal matters. There is no need to pass separate orders of sub-delegation relating to matters like appointment of legal advisers signing of pleadings, reimbursement of legal expenses engagement of advocates other than those on the panel, comprehended by Clause-H. The two officers in question - Shri A. K. Mohan Rao, Divisional Engineer (Civil) and Shri N. K. Sangyam, Chief Engineer (Civil) - it cannot be said, are not duly authorised agents to represent the Company. The power of sub-delegation in their favour includes the power to sign vakalat, pleadings and all other incidental matters necessary to prosecute the proceedings. The contention raised in this behalf Sri T. Anantha Babu, learned counsel for the petitioner, cannot be accepted.

17. In the result, all the three revisions petitions fail and accordingly they are dismissed. The Court below shall dispose of the OPs., pending on its file - O.P.

Nos. 401, 402 & 403 of 1990 and O.P. Nos. 7, 8, 9 of 1991 as expeditiously as possible, in any event, not later than three months from the date of receipt of this order. No costs.

18. Petitions allowed.