
(1993) 09 DEL CK 0027

In the Delhi High Court

Case No : Interim Application No's. 9137 and 9137A of 1991 and Suit No. 239 of 1991

Kirpal Singh Khurana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Citation : (1993) 3 AD 953 : (1993) 2 ARBLR 498 : (1993) 52 DLT 134

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : S. Poddar and Vandana Taneja, for the Appellant;

Judgement

Sat Pal, J.

(1) This is a petition filed by the petitioner under Section 14 of the Arbitration Act, 1940 and it has been prayed that the respondent No. 2 be directed to file the award in Court and upon filing of the same further proceedings be taken according to law. After the award was filed, notice of filing the award was served on the respondent-Union of India through Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi on 2.4.91. The respondents filed the objections on 17.7.91 vide application bearing No. 1A 9137/91. Along with the said application, the respondents have also filed an application bearing No. 9137-A/91 under Section 5 of the Limitation Act for condensation of delay, if any. The application for condensation of delay has been opposed by the petitioner in their reply to the said application.

(2) Mr. Sanjay Poddar, learned Counsel appearing on behalf of the petitioner submitted that the objections filed on behalf of the respondents are barred by limitation. He submitted that the notice of filing the award was served on the respondents on 2/04/1991 and the objections have been filed on 17/07/1991 i.e. beyond 30 days from the date of the receipt of the notice and as such the objections are liable to be dismissed on this short ground. As regards the

application filed by the respondent u/s 5 of the Limitation Act, the learned Counsel submitted that the limitation will commence from the date of service of the notice on Union of India which is 2/04/1991, but no satisfactory Explanation has been given by the defendants for the delay from 3/05/1991 onwards. He further submitted that the contention of the respondent in para 4 of the application that the period of vacation should be excluded from the period limitation, is untenable in view of Section 4 of the Limitation Act, 1963. He, therefore, contended that since the objections have not been filed within the period of limitation, the award should be made rule of the Court. In support of his contention the learned Counsel placed reliance on a decision of this Court in the case of M/s.R.S. Sharma & Co. v. U.O.I., is No. 12627/92 in S. No. 2788/91. In this case a learned Single Judge of this Court rejected the contention of the respondents that since the dispute arose out of a contract awarded by P.W.D. Delhi Administration and no notice on filing of the award was served on Delhi Administration, as such service on Union of India through Ministry of Home Affairs was not a valid service.

(3) Ms. Vandana Taneja, learned Counsel for the respondents, however submitted that the notice of filing of the award served on the Ministry of Urban Development on 2/04/1991 and the notice was received in the office of the Chief Engineer, Delhi Administration on 27/05/1991 and in the office of the concerned Executive Engineer on 29.5.91. She further submitted that from 1/06/1991 to 5/07/1991 the Courts were closed for vacation and excluding the period of vacation, the objections have been filed within 30 days from the date of service of the notice on the Chief Engineer. She further submitted that in case it is held that the objections filed by the respondents are barred by limitation, the application filed u/s 5 of the Limitation Act should be allowed in view of the facts stated in that application and delay should be condoned. In support of her contentions the learned Counsel placed reliance on two judgments of Supreme Court reported in the case of Collector Land Acquisition v. Kaliji. 1987, Raj LR (S.C.) 132 ; G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, and a Judicial Commissioner, Tripura in the case of Tripura Administration v. Tripura State Bank Ltd., Air 1959 Tri 40.

(4) I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties I need not decide the point as to whether the notice of filing of the award should be served on the Ministry concerned or on the office of the Chief Engineer as even assuming for the sake of arguments that the notice of filing of the award was required to be served on the office of the Chief Engineer concerned, even then I do not find any merit in the application for condensation of delay in filing the objections. In para 4 of the application the respondents have contended that for the purpose of limitation, the full period of vacation from 1/06/1991 to 5/07/1991 should be excluded. Admittedly the notice of filing of the award was received in the office of Chief Engineer on 27.5.91 and the limitation of 30 days expires on 26/06/1991 i.e. during the vacation. In such a case the respondents were required to file the objections on the date of

opening of the Courts after vacation i.e. 6/07/1991 u/s 4 of the Limitation Act whereas admittedly the objections have been filed on 17/07/1991. Since no Explanation whatsoever has been given for the delay from 6/07/1991 to 16/07/1991, I do not find any merit in the application (IA1937-A/91) for condensation of delay and accordingly this application is dismissed. In the two judgments cited by the learned Counsel for the respondents it has been held by the Supreme Court that the expression "sufficient cause implied by the Legislature is elastic to enable the Courts to apply the law in a meaningful manner and Court should adopt a liberal approach in condensation of delay. Ratio of these judgments, however, is not applicable to the facts of the present case as no cause whatsoever has been shown for the period of delay from 7/07/1991 to 16/07/1991. In this connection a reference may be made to a judgment of the Supreme Court in the case of Food Corporation of India and others Vs. E. Kuttappan, . In this case the period of limitation for the purpose of filing of objection had begun on 25/10/1988 but the objections were filed on 6/12/1988 and the said objections were held to be barred by time as the same have been filed beyond the prescribed period of 30 days.

(5) In view of the above discussion, the objections filed by the respondents in IA. 9137/91 being time barred are dismissed. Since I have dismissed the objections, I direct that award be made rule of the Court. Let a decree be drawn in terms of the award. The award will form a part of the decree. The parties are, however, left to bear their own costs. With this order the suit, is Nos. 9137-A/91 and 9137/91 stand disposed of. Petition allowed.