
(2011) 03 AHC CK 0297

In the Allahabad High Court

Case No : First Appeal From Order No"s. 354, 355, 356, 474, 475 and 476 of 2011

Krishi Utpadan Mandi Samiti

APPELLANT

Vs

U.P. Industrial Facilitation Council

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Arbitration Act, 1940 — Section 14, 20
Arbitration and Conciliation Act, 1996 — Section 2, 34, 37, 40, 41
Constitution of India, 1950 — Article 226
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 6(2)
Limitation Act, 1963 — Section 14, 5
Micro, Small and Medium Enterprises Development Act, 2006 — Section 19
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 10, 4

Citation : (2011) 4 ADJ 112 : (2012) 1 ARBLR 165

Hon'ble Judges : R.K. Agrawal, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. All these appeals arising out of separate orders dated 10.12.2010 passed by the learned District Judge, Bulandshahar, have been preferred u/s 37 of the Arbitration And Conciliation Act, 1996 (hereinafter referred to as the Act). The learned District Judge has rejected the petition filed u/s 34 of the Act as being time barred. As in all these appeals, common question of fact and law are involved, they have been heard together and are being disposed of by a common order. The First Appeal From Order No. 354 of 2011 is being treated as the leading case.

2. The Respondent herein M/s. An ads, Chowk Bazar, Bulandshahar, filed claim petition before the Commissioner and Director Industries, U.P. (Facilitation Council) Kanpur, (hereinafter referred to as the Commissioner) u/s 6(2) of the Interest on Delayed Payments to Small Scale Ancillary Undertakings Act, 1993 as amended by Act No. 28 of 1998.

3. The Commissioner and Director Industries, U.P. Kanpur, acting as the arbitrator gave an award awarding the sums claimed with interest @ 5% above floor rate charged by the scheduled banks on credit limit. The Appellant challenged the proceedings of the claim petition as also the award given by the Commissioner by preferring Civil Misc. Writ Petition No. 3795 of 2008 along with other writ petitions. The learned single Judge of this Court vide judgment and order dated 23.05.2008 dismissed all the writ petitions by holding that Sub-section (4) of Section 2 of the Act makes the Arbitration and Conciliation Act, 1996 except Sub-section (1) of Sections 40, 41 and 43 of the Act applicable to the statutory arbitration provided under the Interest on Delayed Payments to the Small Scale Ancillary Undertakings Act, 1993 as amended by Act No. 28 of 1998 and, further that the provisions of Sections 4 and 10 of the Krishi Utpadan Mandi Adhiniyam, 1964 do not override the provisions of the Interest of the Delayed Payments to Small Scale Ancillary Act, 1993 as amended in 1998 and the decision of the Facilitation Council of its own jurisdiction is subject to challenge only u/s 34 of the Act and a writ petition for setting-aside the statutory award is ordinarily not maintainable. This Court consequently dismissed all the writ petitions with liberty to the present Appellant to challenge the award of the Facilitation Council in accordance with law and, subject to the limitation prescribed in law to challenge the award. The judgment and order dated 23.05.2008 passed by this Court has become final between the parties. Thereafter, objections u/s 34 of the Act were filed on 16.09.2008, along with an application u/s 5 of the Limitation Act, 1963 for condoning the delay in filing the objections. In the application filed u/s 5 of the Limitation Act, it was stated by the Appellant that the copy of the undated award sent by the Council for the U.P. Industrial Facilitation Council, Kanpur, through covering letter dated 07.01.2008 was received on 11.01.2008. After receiving the award, the papers were not placed before the Secretary by the employees of the Mandi Samiti due to ignorance of law and when it was placed before the Secretary after obtaining necessary sanction and as per legal advice the Appellant filed Writ Petition No. 6797 of 2008 before the Allahabad High Court on 29.01.2008, which was dismissed by the High Court vide judgment and order dated 23.05.2008. After dismissal of the above writ petition, legal advice was sought from its counsel practising in the Supreme Court, who vide opinion dated 28.01.2008 advised the Appellant to file objections u/s 34 of the Act. After obtaining proper sanction from the Mandi Parishad, Lucknow, objections u/s 34 of the Act is being filed and the delay had occurred due to ignorance of law and in obtaining sanction, etc. from the concerned higher authorities of the Mandi Parishad, Lucknow and it is not intentional. Hence, a prayer was made that the delay in filing the objections be condoned.

4. The contesting Respondent filed its objections stating therein that the application is not legally maintainable and the provisions of Section 5 of the Arbitration Act is not applicable. It was stated therein that the provisions of Sub-section (3) of Section 34 of the Act excludes the applicability of Section 5 of the

limitation Act 1963. According to the contesting Respondents, the Act being a special Act and the period of filing the objections having been prescribed to be 3 months with a further power to the District Judge to condone the delay of only 30 days and not thereafter, the delay beyond the period of 30 days can not be condoned. The Appellant is a statutory autonomous body to take its own decision and no sanction was required and the act of omission and commission of the officers of the Appellant is not bona fide. Further, the Appellant had not deposited 75% of the amount in terms of the award in the Court in view of the specific provisions of Section 7 of the Interest on Delayed Payments to Small Scale Ancillary Industrial Undertakings Act, 1993 and on its repeal u/s 19 of the MICRO Small and Medium Enterprises Development Act, 2006. Thus, the application for setting-aside the award can not be entertained.

5. The Appellant had also filed an application seeking benefit of the provisions of Section 14 of the limitation Act, 1963 for excluding the time spent in pursuing the writ petition. Objections were also filed on the said application on the ground that the provisions of Section 14 of the Limitation Act, 1963 is not applicable and, therefore, the time spent in pursuing the writ proceedings can not be excluded while counting the period of limitation. The learned District Judge after excluding the time already spent in pursuing the writ petition before this Court that is the period between the date of filing the writ petition till the date when the writ petition was dismissed (ie. 29.1.2008 to 23.5.2008), came to the conclusion that the petition u/s 34 of the Limitation Act has been filed after the period of 3 months and 30 days. The learned District Judge came to the conclusion that Section 5 of the Limitation Act is not applicable and the petition having been filed beyond the prescribed period u/s 34(3) of the Act is liable to be dismissed being time barred.

6. We have heard Sri B.D. Mandhyan, learned senior counsel assisted by Sri Satish Mandhyan, on behalf of the Appellant and Sri P.N. Saxena, learned senior counsel assisted by Sri U.N. Pandey, on behalf of the contesting Respondents.

7. Sri B.D. Mandhyan, learned senior counsel invited the attention of the Court to the fact that the Madhya Pradesh High Court in the case of Nagar Palika Parishad, Morena v. Agrawal Construction Co. (2004) 2 MPJR 374 while interpreting the provisions of Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 had held that the provisos of Section 5 of the Limitation Act, 1963 is not attracted while filing revision before the High Court against an award passed under the aforesaid Act and, therefore, the delay can not be condoned, which view was upheld by Hon''ble the Supreme Court by observing as follows:

Heard Mr. Sushil Kumar Jain, learned Counsel for the Petitioner at length. In our view there is no infirmity in the impugned judgment. The authority in Nasiruddin v. Sita Ram Agrawal has been correctly followed. Same view has also been taken by this Court in Union of India v. Popular Construction Co. The SLP stands dismissed with no order as to costs.

8. which decision has been doubted by Hon''ble the Supreme Court in the case of State of M.P. and Another Vs. Anshuman Shukla, and the matter has been referred for reconsideration by a larger Bench. He thus submitted that the hearing of the appeal be deferred till the Hon''ble Supreme Court decides the matter.

9. He further submitted that the provisions of Section 14 of the Limitation Act, 1963, is applicable and, therefore, the time spent in pursuing the writ petition before this Court ought to be excluded. He has relied upon the following decisions of Hon''ble the Supreme Court.

1. J. Kumaradasan Nair and Another Vs. IRIC Sohan and Others,
2. Wazirchand Mahajan and Another Vs. Union of India (UOI),
3. State of Goa Vs. Western Builders,
4. Union of India (UOI) Vs. Shring Construction Company Private Limited,
5. Sterling General Insurance Co. Ltd. Vs. Planters Airways Pvt. Ltd.,
6. Mr. Shaikh Salim Haji Abdul Khayumsab Vs. Mr. Kumar and Others,
7. Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker,
8. The State of U.P. v. Agrawal Brothers and Anr. AIR 2007 ALL 2598;
9. Shakti Tubes Ltd. tr. Director Vs. State of Bihar and Others,
10. Sri P.N. Saxena, learned senior counsel appearing for the contesting Respondents however submitted that the decision of Hon''ble the Supreme Court in the case of Anshuman Shukla (supra) to refer its earlier judgment in the case of Nagar Palika Parishad, Morena for consideration by a larger Bench would not come in the way of deciding the present appeals. He submitted that the question involved in the case of Anshuman Shukla and Nagar Palika Parishad, Morena (supra) related to the applicability of the provisions of Section 5 of the Limitation Act, 1963 to revision to be filed in the High Court u/s 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983. In the case of Nagar Palika Parishad, Morena, the Hon''ble Supreme Court has upheld the decision of the Madhya Pradesh High Court wherein it has been held that the Tribunal under the aforesaid Act is not a Court and, therefore, the provisions of the Limitation Act, 1963, would not be applicable. According to him, no such situation exists in the present case as Section 43 of the Act itself provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in Court. According to him, the question in the present case is as to whether the District Judge has the power to condone the delay beyond 30 days after the expiry of the statutory period of 3 months provided u/s 34(3) of the Act for filing an application for setting-aside the award or not and as to whether recourse could be taken to the provisions of Section 5 of the Limitation Act, 1963 in such a situation or not. According to him, in a catena of decisions, the Hon''ble Supreme Court has held

that the provisions of Section 5 of the Limitation Act, 1963 has been impliedly excluded by the express provisions contained in the proviso to Sub-section (3) of Section 34 of the Act which limits the power of District Judge to condone the delay for a period of only 30 days and not thereafter. He has relied upon a decision of Hon''ble the Supreme Court in the case of Union of India Vs. M/s Popular Construction Co.,

11. We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties.

12. It is no doubt true that in case of Anshuman Shukla (Supra), the Hon''ble Supreme Court has been pleased to refer its earlier decision in the case of Nagar Palika Parishad, Morena (supra) for consideration by a larger Bench but that would not have any material bearing in deciding the present appeals. The provisions of the Limitation Act, 1963 has been made applicable by Section 43 of the Act to arbitrations as it applies to proceedings in Court. Thus, there is no dispute regarding the applicability of the provisions of the Limitation Act, 1963 to the arbitrations under the Act. We may mention here that in the case of Nagar Palika Parishad, Morena, the question before the Hon''ble Supreme Court was regarding the applicability of the provisions of the Limitation Act, 1963, to revisions filed before the High Court u/s 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 and the Hon''ble Supreme Court had affirmed the decision of the Madhya Pradesh High Court by holding that the authority in Nasiruddin and Others Vs. Sita Ram Agarwal, has been correctly followed, which view has also been taken by the Supreme Court in the case of Union of India v. Popular Construction Co. (supra). As already mentioned herein before, in view of the specific provisions contained in Section 43 of the Act, there is no dispute regarding the applicability of the provisions of the Limitation Act, 1963 to the arbitrations under the Act. Thus, in our considered opinion hearing of these appeals need not be deferred.

13. The only question to be decided in the present appeals is regarding the application of Section 5 of the Limitation Act, 1963 to an objection filed u/s 34 of the Act for setting-aside the arbitral award. Sub-section (3) of Section 34 of the Act provides for making an application within 3 months from the date of receipt of the arbitral award. However, under the proviso to Sub-section (3), the Court has been empowered to entertain the application for setting-aside the award within a further period of 30 days but not thereafter if it is satisfied that the applicant was prevented by sufficient cause from making an application within the said period of 3 months. Thus, by virtue of proviso to Sub-section (3) of Section 34 of the Act, the Court has been empowered to condone the delay of only 30 days and not thereafter as the principles of applying the provisions of Section 5 of the Limitation Act for condoning the delay of unlimited period of being satisfied that sufficient cause is there is not applicable in view of the specific provisions contained in the statute.

14. In the case of J. Kumaradasan Nair (supra) the Hon''ble Supreme Court has

held that the provisions contained in Section 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake and should be applied in a broad manner and where Sub-section (2) of Section 14 of the Limitation Act, 1963 per se is not applicable, the same would not mean that the principles akin thereto would not be applied, otherwise, the provisions of Section 5 of the Limitation Act would apply.

15. In the case of Wazir Chand Mahajan(supra), the Hon''ble Supreme Court has held that -

There is no doubt that Cl. (1) of S. 37 of the Arbitration Act deals only with the authority of the arbitrator to deal with and decide any dispute referred to him: it has no concern with an application made to the Court to file an arbitration agreement and to refer a dispute to the arbitrator. After an agreement is filed in Court and the matter is referred to the arbitrator, it is for the arbitrator to decide by the application of the law contained in the Limitation Act, whether the claim is barred. But S. 37 (1) does not confer authority upon the Court to reject the application for filing of an arbitration agreement u/s 20 of the Arbitration Act because the claim is not made within three years from the date on which the right to apply arose.

16. In the case of Western Builders(supra), the Apex Court while examining the provisions of Section 34 of the Act has held that the provisions of Section 14 of the Limitation Act, 1963 would apply but, sofaras Section 5 is concerned, it has held as follows:

... In the present case u/s 34 by virtue of Sub-Section 3 only the application for filing and setting aside the award a period has been prescribed as 3 months and delay can be condoned to the extent of 30 days. To this extent the applicability of Section 5 of Limitation will stand excluded.....

17. In the case of Shring Construction Co. (P) Ltd.(supra), the Hon''ble Supreme Court has followed its earlier decision in the case of Western Builders and has held that applicability of Section 14 of the Limitation Act is not excluded from the Act.

18. In the case of Sterling General Insurance Co. Ltd. (supra), the Hon''ble Supreme Court has held that in interpreting Section 37(4) of the Limitation Act, 1940, the Court has to take a liberal view of the meaning of the words "undue hardship" and undue must mean something which is not merited by the conduct of the claimant, or is very much disproportionate to it.

19. In the case of Shaikh Salim Haji Abdul Khayumsab (supra), the Hon''ble Supreme Court has held that -

All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of

participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the Code of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

20. In the case of Mukri Gopalan (supra), the Hon'ble Supreme Court has considered the question of applicability of the provisions of Limitation Act, 1963 to the proceedings under the Kerala Rent Control Act, and had laid down the principles in which Section 29(2) would apply.

21. In the case of Agrawal Brothers (supra), a Division Bench of this Court was considering the question of implied repeal and the effect of a non-obstante clause in the U.P. Roadside Rent Control Act, 1945 and U.P. Regulation of Buildings Act, 1958. The decision relied upon by the learned Counsel has no application to the facts of the present case.

22. In the case of Shakti Tubes Limited (supra), the Hon'ble Supreme Court has held that the time spent in pursuing the writ petition should be excluded for the purpose of computing the period of limitation in filing a suit in terms of section 14 of the Limitation Act, 1963.

23. In the case of Popular Construction Co. (supra), the Hon'ble Supreme Court has held that -

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

24. From the aforesaid decisions cited at the Bar, the following principles emerges:

The provisions of Limitation Act, 1963 has been made applicable to arbitrations under the Act.

Section 14 of the Limitation Act is applicable to the proceedings under the Act and time spent in prosecuting the remedy before a wrong Court including a writ Court would be excluded.

25. Provisions of Section 5 of the Limitation Act is not applicable to objections filed u/s 34 of the Act as the power to condone the delay in the proviso to Sub-section (3) of Section 34 of the Act has been restricted to 30 days and not thereafter. Applying the aforesaid principles to the present case, we find that

admittedly the award was received by the Appellants as per their own showing on 11.01.2008. They preferred the writ petition before this Court on 29.01.2008 wherein the award had been challenged. This Court vide judgment and order dated 23.05.2008 had been pleased to dismiss the writ petition on the ground of remedy available u/s 34 of the Act. The application u/s 34 of the Act for setting-aside the award has been filed on 16.09.2008. Giving the benefit of Section 14 of the Limitation Act, 1963, the period from 29.01.2008 to 23.05.2008 ie 3 months and 24 days has to be excluded. The objections u/s 34 of the Act ought to have been filed by 05.08.2008. The District Judge had the power to condone the delay of not more than 30 days which means that the objections if it would have been filed by 05.09.2008, then the question of condoning the delay could have been considered by the learned District Judge. However, the objections were filed only on 16.09.2008 ie beyond the period of 30 days after the expiry of 3 months. The District Judge did not have the power to condone the delay beyond 30 days.

26. The Court is conscious that this view would result in great hardship to the Appellant as the arbitral award shall go unchallenged on technical grounds even when the Appellant had bonafidely challenged the award by preferring writ petition before this Court within 18 days of receiving of the award. In the present case, the Court is exercising the appellate powers conferred on it by the Act which has to be exercised strictly in law. Had the Court exercising its equity jurisdiction under Article 226 of the Constitution of India, then perhaps in the interest of justice hardship of such a nature could have been mitigated by issuing a direction to entertain the objections to be decided on merits.

27. In view of the foregoing discussions, we are of the considered opinion that the order passed by the learned District Judge rejecting the application filed u/s 34 of the Act as time barred does not suffer from any legal infirmity.

28. All the appeals fail and are hereby dismissed.