
(2002) 03 DEL CK 0176

In the Delhi High Court

Case No : IAs. 7209-11/01 in S. 1890-A/89

Lama Transport Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Citation : (2002) 2 ARBLR 218 : (2002) 97 DLT 874 : (2002) 64 DRJ 350

Hon'ble Judges : B.N. Chaturvedi, J

Bench : Single Bench

Advocate : Bishwajit Bhattacharya and Sujeet Gupta, for the Appellant; Sujata Kashyap, for the Respondent

Judgement

B.N. Chaturvedi, J.—Against an award dated 19.7.1988, the applicant/respondent, Union of India, filed its objections under Sections 30 & 33 of the Arbitration Act, 1940, which came up for hearing on 7th of April, 1997. There was, however, no appearance on behalf of the applicant/respondent. Its objections were, thus, dismissed. The award was made rule of the court and a decree was passed in terms thereof.

2. The applicant/respondent filed an application being IA. No. 7209/01 under Order IX Rule 13/Order XLVII Rule 1 CPC on 2nd of August, 2001. It was accompanied by an IA. No. 7210/01 u/s 5 of the Limitation Act seeking condensation of Delay in making the said IA. 7209/01. Another IA. No. 7211/01 under Order XXXIX Rules 1 & 2 CPC had also been filed for stay of operation of the decree dated 7.4.1997.

3. The applicant/respondent being stationed at Dantak, Bhutan, with no office in Delhi, had allegedly been dependent on the Litigation Branch at Delhi for prosecuting its objections against the award. The objections were dismissed on 7th of April, 1997 since the Government counsel, who had been entrusted with the case to handle the same, failed to appear before the Court on that date. For a long time, no intimation was received by the applicant/respondent from the

Government counsel in spite of a number of letter/reminders in that respect. Eventually, a request for appointment of a new counsel was made to the Ministry of Law. But, the new counsel declined to deal with the case on the plea that the same had already been mishandled by the previous counsel. The case was, Therefore, re-routed through Ministry of Law to the previous counsel. Vide letters dated 9.2.1999, 24.2.1999, 25.6.1999 and 30.10.1999, the previous counsel was requested to intimate the latest position in the case as well as to obtain a copy of the order, and forward the same to the applicant/respondent with her opinion thereon. Eventually a certified copy of the order dated 7.4.1997 was handed over to the representative of the applicant respondent by the previous counsel on 11th of February, 2000 only.

4. On being approached to file an application for setting aside the order dated 7.4.1997, the counsel, vide her letter dated 15.2.2000, advised the Department against making the same on the ground that in view of considerable time having elapsed, no useful purpose would be served. The applicant/respondent, thereafter, referred the matter to the Ministry of Law for its opinion and the Ministry of Law opined that the Department could not be made to suffer on account of negligence of its counsel, and, accordingly, advised to make an application for setting aside the order dated 7.4.1997. This is how the present application was made after so much of delay.

5. IA. 7210/01 more or less, recites similar averments, in a bid to justify the delay in making IA. 7209/01.

6. Non-applicant/petitioner opposed both the applications.

7. I have heard the learned counsel for the parties on either side.

8. With IA. 7209/01, photocopies of various letters Constituting correspondence between the applicant/respondent and its previous counsel, and Ministry of Law, have been attached to substantiate the averments in the application.

9. It may be noticed that after dismissal of objections and passing of decree in view of award being made rule of the court on 7th April, 1997, the application for setting aside that order was made as late on 2nd of August, 2001. The basic plea of the applicant/respondent is that being based at Dantak, Bhutan with no office at Delhi, the applicant/respondent had to depend on the Government counsel for representing it and to keep it posted with the progress of the case, but as the Government counsel, Ms. Jyoti Singh, Advocate, representing applicant/respondent, failed to appear before the Court on 7th of April, 1997 and also omitted to inform the applicant/respondent about the order dated 7.4.1997, passed in default of her appearance, in spite of a number of letters written to her, the applicant/respondent could not come to know of the said order to enable it to make an application for setting aside the same at an early point of time.

10. No doubt, photocopy of various letters, addressed to Ms. Jyoti Singh, Advocate, show that Ms. Jyoti Singh did not respond to the letters so written

from the office of applicant/respondent, the applicant/respondent felt complacent simply by writing letters at some intervals and never thought of deputing any official to visit its counsel, Ms. Jyoti Singh, Advocate, to enquire about the fate of the case from her or to gather the necessary information with the assistance of Litigation Branch at Delhi.

11. From the letter dated 9.2.1999 of the applicant/respondent, addressed to Ms. Jyoti Singh, Advocate, it is evident that the applicant/respondent had come to know of the order dated 7.4.1997, disposing of the case, as early as in February, 1999. Except writing letters to Ms. Jyoti Singh, the applicant/respondent does not appear to have taken any concrete steps to procure the certified copy of the order dated 7.4.1997 by deputing one of its officials to visit Delhi for the purpose. The applicant/respondent simply kept on corresponding although until Ms. Jyoti Singh, vide her letter dated 15.2.2000, addressed to the office of the applicant/respondent, informed it that keeping in view that a period of three years had elapsed since the order dated 7.4.1997, dismissing the objections and making the award rule of the court, had been passed, it was not advisable to file an application for setting aside the decree being highly belated.

12. Manifestly, even after coming to know of the contents of the order dated 7.4.1997, the applicant/respondent did not develop any sense of urgency to approach the Court immediately with an application for setting aside the order dated 7.4.1997. It took more than 1-1/2 years even thereafter to come up with the present application.

13. The application for condensation of delay does not carry specific averments explaining day-to-day delay in making the application for setting aside the ex parte decree. Mere writing of letters to the counsel from time to time cannot be treated as indicative of exercise of due diligence in prosecuting the case, particularly, when in spite of repeated letters, the counsel omitted to respond by passing on the desired information with respect to the progress of the case to the applicant/respondent. In a situation where the applicant/respondent was not getting the required information regarding progress of the case, apart from writing to the counsel, it was incumbent on its part to have also taken recourse to personal contact by deputing some official to visit Delhi to collect the necessary information. Assuming that the applicant/respondent was unaware of the fate of the case until 9th of February, 1999, a prompt follow-up action on its part to move the court against the ex parte decree dated 7.4.1997 even after coming to know of the same is found to have been very much wanting. In any case, there is little excuse for its failure to make the application for setting aside the ex parte decree for a period about 1-1/2 years even after being aware of the contents of the order dated 7.4.1997. The applicant/respondent proceeded at a quite leisurely pace without much concern to move the court without undue loss of time.

14. In Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , it was held:

".....even after sufficient cause has been shown a party is not entitled to the condensation of delay in question as a matter of right..... This introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration....."

15. In M/s. Democratic Builders Vs. Union of India, , where there was 20 days delay in filing objections against the award, a Single Bench of this Court observed that the applicant must explain each and every day's delay in making the application.

16. A similar view finds expression in a A Single Bench decision of the Allahabad High Court in Sohan Vs. Abdul Hameed Khan, .

17. In the present case, the applicant/respondent but for offering vague Explanation for inordinate delay in making the application for setting aside the ex parte decree, fails to show sufficient cause for condensation of delay, and the manner in which it chose to proceed with the matter, makes lack of due diligence writ large on the face of it, disentitling it to any discretionary indulgence.

18. Finding no sufficient cause, the IA. 7210/01 u/s 5 of the Limitation Act is disallowed. Consequently, IA. 7209/01 under Order IX Rule 13/Order XLVII Rule 1 CPC is dismissed being time barred. With the dismissal of IA. 7209/01, IA. 7211/01 under Order XXXIX Rules 1 & 2 CPC does not survive and stands disposed of accordingly.