
(2003) 04 DEL CK 0040

In the Delhi High Court

Case No : RA No"s. 24/98 and is 640/96 in Suit No. 2501/94

M.G.F. (India) Ltd.

APPELLANT

Vs

Daily Pratap and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Citation : (2003) 3 AD 31 : (2003) 2 ARBLR 309 : (2003) 104 DLT 119 : (2003) 67 DRJ 715 : (2003) 1 ILR Delhi 305

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : S.K. Mehra, Mamta Mehra and Mukta Kapoor, for the Appellant; V.P. Chaudhar and Nitinjay Chaudhary, for the Respondent

Judgement

R.C. Jain, J.—This is an application under Order 47 Rule 1 read with Section 151 CPC moved on behalf of the respondent/judgment debtor seeking review of the judgment/order dated 17.9.98 whereby the objections filed by the respondent against the Award of the Sole Arbitrator dated 10.10.94 have been dismissed as time barred and the Award of the Sole Arbitrator has been made a rule of the Court.

2. On 17.4.94, Mr. Inder Jit Gulati, Sole Arbitrator filed his Award dated 10.10.94 in the Court and the parties were issued notice of filing of the Award returnable for 18.9.95. Counsel for the petitioner had accepted the notice on the same day but did not choose to file any objections within the stipulated period. It is alleged in the application that objections to the Award were filed on 23.8.95 and not on 18.1.96 as has been noted by the Court in the order dated 17.9.98. This is stated to be an error apparent on the face of the record and it is pleaded that had the true facts that the respondent was served with the notice of filing of the Award on 23.7.95 and filed the objections on 23.8.95 had been correctly noted by the Court, there was only one day delay in filing of the objections to the Award. Along with the review application an application u/s 5 of the Limitation Act 1963 read with Section 151 CPC has also been moved seeking condensation

of one day's delay in filing the objections on the ground that the counsel for the respondent namely Mr. Y. K. Mathur gave the respondent to understand that as service of the parties of filing of the Award was effected upon the respondent on 23.7.95, the objections could be filed uptill 23.8.95.

3. The decree holder has opposed the application raising preliminary objections about the maintainability of the application for review of the impugned order under the provisions of Order 47 CPC; no grounds on which review of the order/judgment of the Court is permissible have been alleged or proved on record; Respondent/judgment debtor had only remedy of appeal to challenge the order of the Court if according to him it was illegal or suffered from any other infirmity. The application for review is stated to be time barred and is not supported by any affidavit of the judgment debtor. It is not denied that the respondent filed its objection petition bearing is No. 1186/96 dated 21.8.95 purported to have been filed on 23.5.95 under filing No. 11392 but it is stated that the said is was lying in the Registry with the following objections:

1. Order dated 10.1.95 not complied with
2. Court fee on Power of Attorney, not fixed.
3. I.A. was not typed in double space.

4. The respondent had, Therefore, to take back the objection petition to remove the said objections. Counsel for the respondent/judgment debtor Shri K. C. Dewan took back the objection on 2.2.96 under his signatures and after removing the objections re-filed the same by affixing the court fee on the Vakalatname of the same date. The objection petition so filed was also stated to be defective in several respects. It is denied that the plaintiff is entitled to seek review of the impugned order or the impugned order dated 17.9.98 is liable to be recalled on any of the grounds.

5. Application for condensation of delay has also been opposed on similar grounds as also on the ground that there was if effect delay of about 6 months in filing of the objections and not of one day because the respondent failed to remove the office objections for a long time despite opportunities granted for the purpose. It is denied that there are sufficient grounds for condensation of delay.

6. I have heard Shri S. K. Mehra, learned counsel representing the decree holder and Shri V.P. Chaudhary, Sr. Adv. representing the judgment debtor/non-applicant and have given my thoughtful consideration to their submissions.

7. Before I proceed to examine the merits and the grounds on which the review has been sought it is pertinent to take note of the order dated 17.9.98 which is sought to be reviewed. The said order reads as under:

" By the order dated 6th May, 1994 passed in Civil Suit No. 3739/92, this Court appointed Shri Inder Jit Gulati, as an Arbitrator to adjudicate upon the disputes between the parties. Thereafter the learned Arbitrator entered upon the

reference and gave his Award dated 10th October, 1994. Notice of filing of the Award was duly served upon the respondents No. 1 and 2. They have filed their objections against the Award.

Learned counsel for the petitioner submitted that the objections filed by the respondents cannot be considered as they are barred by time. Reliance has been placed on the decision rendered by the Supreme Court in *Bharat Coking Coal Ltd. Vs. C. K. Ahuja* 1995 AIR SCW 1419 which is an authority for the proposition that if the objections were not filed within time, they cannot be considered at the time of making an award rule of the court. Limitation for filing of objections is 30 days. According to the petitioner, notice of filing the Award was served upon the respondents on 23rd July, 1995 and the objections were filed on 18th January, 1996. It is obvious that the objections have been filed after the period of limitation prescribed there for. In view of the decision of the Apex Court in *M/s Bharat Coking Coal Ltd. (Supra)*, the objections filed by the respondents cannot be considered. Court. Hence objections filed by the respondent No. 1 and 2 are rejected as barred by time.

In the result, the Award is made rule of the Court. A decree be drawn up in terms of the said Award. The award shall form part of the decree. The respondents No. 1 and 2 shall pay interest to the petitioner @ Rs. 12% per annum from the date of the award till realisation of the amount awarded by the Arbitrator. No order as to costs.

A bare perusal of the above order would show that the objections filed by the respondent against the Award of the Sole Arbitrator were not considered on merits and in fact were dismissed primarily on the ground that the same had been filed after the prescribed period of limitation. In recording such finding, the Court relied upon the decision of Supreme Court in the case of *Bharat Coking Coal Ltd. Vs. C. K. Ahuja* 1995 AIR SCW 1419. In this very order the Court had noted that the notice of filing of Award was served upon the respondent on 23.7.95 and the objections were filed on 18.1.96 and, Therefore, the objections have been filed much after the prescribed period of limitation of 30 days and, Therefore, such objections filed by the respondent could not be considered and were liable to be rejected as barred by time. So far as the date of filing of the objection viz. 18.1.96 as noted in the aforesaid orders was patently incorrect because as per the record, the objections to the Award had in fact been filed by the respondent on 23.8.95 vide is No. 116/95 filing No. 11342. Office pointed out certain objections in the said is which were removed by the respondent only on 2.2.96, Therefore, it cannot be said that the objections were filed by the respondent on 18.1.96. It appears that this date was incorrectly/inadvertently noted down because it was the date for filing of reply to certain other application filed by the plaintiff. In the opinion of this Court, this is an error apparent on the face of the record.

8. Now the ultimate question which arises for consideration is as to whether the aforesaid error in noting down the correct date of filing of the objection would

afford sufficient ground to the respondent and is sufficient to recall of the impugned order. Learned counsel for the decree holder has strongly urged that this incorrect recording of the date of filing of the objection in the impugned order is of no consequence because even as per the showing of the respondent/ objector the objections had not been filed within the stipulated period of 30 days from the date of service of the notice of filing of the award and there was still a delay, may be of one day, which dis-entitled the respondent to maintain the objections against the Award. It is submitted that on the face of this admitted delay, the order is still justified and calls for no review because the consequences would have been the same that as the objections were admittedly time barred. As against this the contention of the learned counsel for the respondent is that it was incorrect noting down of the date 18.1.90 which has weighed heavily with the Court while dismissing the objections because that gave an impression to the Court that there was a delay of about 6 months in filing the objections, although the delay in filing the objections was only one day and perhaps looking into this small delay, the Court could have condoned the delay and objections of the respondent disposed of on merits rather than dismissed as barred by time. In support of his contention he has placed reliance upon a Supreme Court decision in the case of Bharat Coking Coal Ltd. Vs. M/s. L.K. Ahuja and Co., decided on 21.2.01 . In that case there was delay in filing the objections against the Award and application u/s 5 of the Limitation Act was moved. The question arose whether an application for condensation of delay in filing the objections u/s 30 was permissible or not and the Court answered the same as under:

" An application for condensation of delay is permissible to file objections u/s 30 of the Arbitration Act by resorting to Section 5 of the Limitation Act. Section 5 of the Limitation Act, 1963 provides that any application, other than those contemplated under Order XXI, COC could be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. It is clear that Section 5 of the Limitation Act is applicable to all applications other than those under Order XXI, CPC. Scheme of an enactment cannot be availed of to defeat such a right conferred under the statute of limitation in clear terms. As such it is improper to take. The view that in as much as an agreement of reference to arbitration is an instrument of solemn character which is binding in parties and so is the award, if Therefore the party desires to avoid the effect either of agreement or the award, he must strictly comply with the provisions of Law and on objection to award must be filed within time which cannot be extended.

9. In that case notice of objection of the Award was served upon the objector on 13.7.90 and the objector filed objections on 18.8.90 which were set out for consideration on the ground that the same have been filed beyond the period of limitation prescribed under the relevant provisions of Limitation Act. However, Apex Court on the totality of the circumstances fully satisfied that there was sufficient cause of delay in filing the objections and condoned the delay in filing the objections and extended period uptill 18.8.99. The facts and circumstances of

the case in hand are no different inasmuch as here there was only one day's delay in filing the objections which is attributed to the alleged misconception of the counsel for the respondent that on the service of notice of filing of the Award was effected on 23.7.95, the objections could be filed by on or before 23.8.95, forgetting that calendar month of July has 31 days and the period of 30 days prescribed for filing the objections was in fact too expire on 22.8.95, computing the period of 30 days from 24.7.95.

10. Having considered the matter in its entirety and from different angles and the above referred decision of the Supreme Court, this Court is of the opinion that there is an error apparent on the face of the record which itself is a sufficient ground for recall/review of the impugned order dated 17.9.98. This Court is also satisfied that sufficient ground has been made out for condensation of one day's delay in filing the objections.

11. In the result the applications are hereby allowed and the impugned order dated 17.9.98 rejecting the objections of the respondent as barred by limitation and making the award of the Sole Arbitrator as rule of the Court is hereby recalled. The application u/s 5 of the Limitation Act is also allowed and one day's delay in filing the objections against the Award of the Arbitrator is hereby condoned subject to payment of Rs.5,000/- as costs. The is filed by the respondent is now set down for hearing on merits.

is No. 9480/98 & 1186/96

List on 18th August, 2003.