
(2015) 05 MP CK 0078
In the Madhya Pradesh High Court
Case No : A.A. No. 39 of 2010

M.P. Veneer and Plywood Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14, 33, 34, 37
Limitation Act, 1963 — Section 14

Citation : AIR 2015 MP 142 : (2015) 3 MPLJ 299

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Ashish Shroti, for the Appellant; Girish Kekre, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Aradhe, J—In this appeal preferred under section 37 of Arbitration and Conciliation Act (hereinafter referred to as "Act"), 1996, the appellant has assailed the validity of the order dated 20-8-2010 passed by the trial Court by which objection preferred by the appellant under section 34 of the Act has been dismissed as barred by limitation. In order to appreciate the appellant's challenge to the impugned order few facts need mention which are stated infra. The appellant had established its veneering unit at Betul in pursuance to the assurance given by the State Government and an agreement was executed between the parties on 28-11-1978. Under the agreement, teak and timber was to be supplied to the appellant for a period of 12 years from 14 depots which were specified in the agreement. The respondents failed to adhere to its commitment spelt in the agreement. The dispute between the parties arose on account of demand notice issued by the respondent on 26-3-1988 and 5-4-1988. The appellant assailed the validity of the aforesaid demand notices by filing the writ petition before this Court namely M.P. No. 1460/1988. During pendency of the writ petition a bench of this Court appointed Justice B.C. Verma as an arbitrator by an order dated 21-6-2004, who passed an award on 25-6-2008 by

which claims of both the parties, were rejected. Both the parties filed their respective objections under section 34 of the Act in the writ petition which was pending before this Court on 22-9-2008. The writ petition was disposed of by a Bench of this Court vide order dated 25-9-2008 with the liberty to the parties to file their respective objections before the Principal Court of original jurisdiction. The appellant applied for obtaining the certified copy of the order passed by this Court on 26-9-2008 which was delivered to it on 1-11-2008.

2. On receipt of certified copy of the order the appellant filed an objection under section 34 of the Act on 20-11-2008 along with an application for condonation of delay. The District Court by an order dated 20-8-2010 dismissed the application preferred by the appellant as barred by limitation.

3. Learned counsel for the appellant submitted that in the absence of any specific bar contained in the provisions of the Act the provisions of section 14 of Limitation Act, 1963 are applicable to section 34 of Arbitration in respect of filing an objection under section 34 of the Arbitration and Conciliation Act 1996. It was further submitted that if the period for which the objection preferred before this Court remained pending is excluded, it is evident that the objection preferred by the petitioner was filed within time limit which could be condoned by the trial Court. However, the trial Court has failed to appreciate the aforesaid aspect of the matter. In support of aforesaid submission reliance has been placed on the decision of the Supreme Court in the case of *State of Goa vs. Western Builders*, 2007 (1) MPLJ (S.C.) 7 : (2006) 6 SCC 236.

4. On the other hand, learned Government Advocate has supported the impugned order. It is further submitted that limitation should be counted from the date of order passed by the trial Court.

5. I have considered the submissions made by learned counsel for parties. Section 34 of the Act deals with application for setting aside arbitral award. The relevant extract of section 34 reads as under:--

An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33 from the date on which that request had been disposed of by the arbitral tribunal.

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

6. The Supreme Court in the case of *State of Goa* (supra) has held that since there is no prohibition provided under section 34 of the Act, therefore, the provisions of section 14 of Limitation Act can be read in the Act of 1996 which will advance the cause of justice. It has further been held that if the statute is silent and there is no specific prohibition then the statute should be interpreted

which advances the cause of justice. The aforesaid view has been reiterated by the Supreme Court in *Union of India and another vs. Bhavna Engineering Company*, (2008) 13 SCC 546 . Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a Court without jurisdiction. The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of section 14. In fact the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. See: *Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others*, (2008) 2 ARBLR 139 : (2008) 3 CLT 244 : (2009) 3 CompLJ 203 : (2008) 5 CTC 741 : (2008) 6 JT 22 : (2008) 6 SCALE 748 : (2008) 7 SCC 169 .

7. In the backdrop of aforesaid well settled legal position, facts of the case may be seen. In the instant case during the pendency of the writ petition, the arbitrator was appointed by the High Court who delivered an award on 15-6-2008 which brought on record before the writ Court. The appellant therefore filed an objection under section 34 of Act on 22-9-2008. The writ petition was disposed of on 25-9-2008 with the liberty to the parties to file the objection before the appropriate forum. Thereafter, the appellant made an application for obtaining the certified copy of the order on 26-9-2008 which was delivered to it on 1-11-2008. The application under section 34 of the Act was filed on 20th November, 2008. Thus, in the facts of the case and in view of law laid down by the Supreme Court in the case of *Consolidated Engineering Enterprises (supra)*, the petitioner is entitled to benefit of section 14 of the Act. If the period for which the objection preferred by the petitioner under section 34 remained pending before this Court as well as the period spent in obtaining certified copy of the order is excluded, it is evident that the objection under section 34 of the Act was filed on 117th day. The trial Court after a period of 90 days on sufficient cause being shown can further condone the delay of 30 days.

8. In the facts of the case the appellant had made out a sufficient cause for condonation of delay in view of section 14 of Limitation Act, 1963. The aforesaid aspect of the matter has not been appreciated by the trial Court. The order passed by the trial Court suffers from error apparent on the face of record, therefore, the same cannot be sustained in the eye of law. Accordingly, it is quashed. The delay in filing the application under section 34 of the Act by the petitioner is condoned. The trial Court is directed to decide the objection preferred by the petitioner on merits in accordance with law. In the result, the appeal is allowed.