
(1979) 12 DEL CK 0022

In the Delhi High Court

Case No : I.A. No's. 2924 and 2925 of 1979 and Suit No. 190-A of 1979

M/s. Ashok Leyland Ltd. Madras

APPELLANT

Vs

The Union of India and another

RESPONDENT

Date of Decision : 13-12-1979

Acts Referred:

Citation : (1979) 12 DEL CK 0022

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : M. Chandrasekharan, for the Appellant; Vijay Kishan, for the Respondent

Final Decision : Allowed

Judgement

D.K. Kapur, J.—On 7th May, 1979, the counsel for the petitioner and the respondent appeared before the Deputy Registrar and accepted notice of the award. The order does not say that the award has been received or filed but, it appears that this is how the parties understood the same. If the award was filed, then the period for filing objections to the same would commence on 7th May, 1979, and undoubtedly that period is 30 days. Hence, the objections should have been filed in early June, 1979. Due to the summer vacations, the parties could file their objections on the reopening of the Court which meant that they could file them on 9th July, 1979, latest. No objections were filed even by that date. Objections were in fact filed on 17th August, 1979. The same are accompanied by the present application, I.A. No. 2925/79, u/s 5 of the Limitation Act, which is now under consideration.

2. The case of the applicant is that the objections were to be filed by the petitioner along with the affidavits, etc. required by the High Court Rules and as the petitioner is a company with its office in Madras, it was necessary to send the documents to Madras. This was done and the necessary documents were sent to learned counsel for the petitioner under registered post. On account of the fact that the Courts were closed, the documents which had to be filed in Court were

not received by learned counsel but were redirected to him at his address in Kerala. The original envelope which has been produced shows that it had been redirected to Mr. Chandrashekar, Mattakkot House, Pallam, Kottayam, Kerala. By the time the documents reached Kerala, learned counsel had already left at the conclusion of the summer vacations and came to Delhi. However, the registered envelope was sent back to M/s. Ashok Leyland Ltd., presumably this was on account of the printed words at the top saying "if undelivered please return to Ashok Leyland Ltd., The envelope shows that the date on which redelivery took place was 6th July, 1979. Hence, if M/s. Ashok Leyland Ltd., had been alert, they could have sent this envelope along with all the contents by air to reach Delhi by 9th July, 1979, and could have filed the documents within time. Actually they did nothing of the sort, they kept the documents and then later on sent the same to learned counsel along with an application for condonation of delay, etc., which is now before the Court. The application states all these facts. It states that the documents were redelivered and were with the company to await instructions from the counsel. After hearing from the counsel, the necessary papers were sent to him again to Delhi, but by that time the delay had taken place.

3. The primary question, assuming that Section 5 of the Limitation Act applies, is whether the delay should be condoned. No doubt, the circumstances are unusual in the sense that the documents have gone back and have not been sent again in time. It can be seen that the applicant has been negligent in not refiling the documents shortly after 6th July, 1979. The delay of more than a month or so after 9th July, 1979 appears to be occasioned by something that appears to be like negligence. Learned counsel for the Union of India stresses the fact that every day's delay has to be explained and there is no explanation.

4. In my view, it is undoubtedly necessary for the applicant to satisfy the Court that he had sufficient cause for not filing the application within time. The circumstances are such that on return of the papers by post, it was possible for the applicant to send a person with the documents from Madras to Delhi, but equally the applicant could say that the documents have come back from the counsel, perhaps it is necessary to await further communication from him. The fact that the documents were sent back to the sender places the sender in a predicament. In such a predicament, one party may act in one way and another may act in another way. In any event, I cannot say that the applicant was wrong in awaiting a communication from their lawyer. It further appears that learned counsel informed the applicant about the non-filing of the documents only after he learnt of the same on the date fixed, i.e., 25th July, 1979, and thereafter the documents were re-sent from Madras and refiled in Court, Considering the fact that there are some circumstances showing that the applicant had tried to act promptly, it does show that facts exist on record which would Justify an extension of limitation.

5. Firstly, there is the envelope showing that the despatch had taken place in

time. That envelope contains all the postal markings showing the redirection from Delhi to Kerala and then to Madras. Then there are the objections and the affidavit. The affidavit supporting the objections was sworn before a Notary Public in Madras and is dated 8th June, 1979. I am sure that if the documents had not been sent back, they could have been filed well within time. Taking all the circumstances, I think the delay should be condoned and the objections should be considered if Section 5 of the Limitation Act applies.

6. On the question whether Section 5 of the Limitation Act applies, learned counsel contends for the respondent that Section 17 states that if the time for making an application for setting aside an award has expired, then the award should be made a rule of the Court. He relies on the words "time for making an application to set aside the award" occurring in the section. That time is 30 days and, therefore, after 30 days there is no question of extension of time. He also relies on some observations in the judgment of the Supreme Court *Madan Lal Vs. Sunderlal and Another*, where the judgment indicates that if the time for making an application has expired, then the Court has to pass a judgment. Nevertheless, there are several cases referred to in this very judgment showing in what circumstances the Court can consider objections raised even after the expiry of limitation. This very judgment states that objections which are outside the scope of Section 30 of the Act, can be filed and raised after the period of limitation has expired. If the Court has already made the award a rule of the Court and passed judgment, then such objections could never be considered. The making of the award a rule of the Court is not an automatic process. It may be that if the award had been made a rule of the Court before the objections had been filed, then I could not be hearing this application because the case would already be over. However, as the application has been made before the award has been made a rule of the Court, it can be considered.

7. Clearly, the expression "time for making an application to set aside the award" occurring in Section 17 of the Act has to be read along with the Limitation Act because the time referred to is just 30 days. If the Limitation Act was amended, it could make the time shorter or longer. As it happens, in the Limitation Act of 1908, the period of 30 days could not be extended because Sec. 5 of the Limitation Act did not apply to applications. However, Section 5 of the Limitation Act as amended by the Act of 1963, states that even in the case of applications other than applications under Order 21, Civil P.C., the period of delay can be condoned if the party shows sufficient cause. Hence, the expression occurring in Section 17 "after the time for making an application etc, has expired" has to be read as the period mentioned in the Limitation Act together with such further period that may be allowed u/s 5. If the period of limitation is extended, because delay is condoned, then the application is within time and hence will not be hit by Section 17 of the Act, I hold accordingly.

8. Consequential to this analysis, I condone the delay in filing the objections under Sections 30 and 33 of the Arbitration Act in the peculiar circumstances of

this case. I have accepted the facts stated by the applicant, but I direct that the registered envelope which has been produced today be placed on record. It is marked with the letters "XX" As the allowance of this application is not on account of the fault of the respondent, I grant costs to the Union of India Rs. 300. The costs may be paid on the next hearing.