

(2012) 10 BOM CK 0194

In the Bombay High Court

Case No : Arbitration Petition No. 26 of 2008

M/s. P.C.V. Traders, Prop. Ms. Priti Chandrakant Vora, 10/B, APPELLANT
Shashitara Apartments, S.V. Patel Road, Borivali (West),
Mumbai 400103

Vs

Kapol Cooperative Bank Limited, Multi State Cooperative RESPONDENT
Bank Ltd. Ground Floor, Rolex Apartments, S.V. Road, Malad
(West), Mumbai 400064

Date of Decision : 30-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33(4), 34, 34(1), 34(3)
Limitation Act, 1963 — Section 2(j), 29(2), 4, 5

Citation : (2013) 1 MhLj 364

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : S.K. Jain, for the Appellant; R.M. Haridas, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By these two petitions filed u/s 34 of the Arbitration & Conciliation Act, 1996, the petitioner seeks to challenge the award dated 8th November, 2005 and also supplementary award dated 17th August, 2006 declared by the learned arbitrator. The Learned Counsel appearing for the respondent submits that both the petitions are barred by limitation as the petitions are not filed within three months from the date of receiving copy of the award from the learned arbitrator. It is submitted that the petitioner had misled this Court by taking out Notice of Motion (598 of 2012) in Arbitration Petition (26 of 2008) and Notice of Motion (597 of 2012) in Arbitration Petition (31 of 2008) for seeking condonation of delay of two days in filing the petitions.

2. From the perusal of the averments made in the petition, it is clear that the copy of the award dated 8th November, 2005 was received in the month of November, 2005. The Petitioner thereafter applied u/s 33(4) of the Act before the learned arbitrator for clarification and for making additional award. On 17th

August, 2006 the learned arbitrator passed orders on the said applications made u/s 33(4) of the Act. Admittedly copies of the said supplementary awards dated 17th August, 2006 were received by the petitioner on the same day. The present petition has been lodged by the petitioner on 19th December, 2006 which is much after three months from the date of getting copy of the supplementary award from the learned arbitrator.

3. The Petitioner thereafter filed Notice of Motion for condonation of delay contending that there was only two days delay in filing the petitions. When the Notice of Motion appeared before this Court, papers and proceedings in arbitration proceedings were not available in the court. This court accepted the statement made by the petitioner who appeared in person and the averments made in the affidavit in support of the motion. Considering the fact that there was prayer for condonation of delay of only two days, the Learned Counsel for the respondent did not oppose the application in good faith. This court accepted the statement made by the petitioner in person and in affidavit in support of the motion and condoned the delay of two days.

4. The Supreme Court in the case of Assam Urban Water Supply and Sew. Board Vs. Subash Projects and Marketing Ltd., after consideration of the limitation prescribed in section 34(3) of the Act, has held thus :

7. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows Sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.

8. In Popular Construction Company (supra), this Court has held that an application for setting aside an award filed beyond the period mentioned in Section 34(3) would not be an application "in accordance with Sub-section (3) as required u/s 34(1) of the 1996 Act" and Section 5 of the 1963 Act has no application to such application. In para 12 of the report, it was held in Popular Construction Company s thus:

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 the 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.

9. Recently, in the State of Maharashtra Vs. Hindustan Construction Company Ltd., , a two Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) emphasized the mandatory nature of the limit to the extension of the period

provided in proviso to Section 34(3) and held that an application for setting aside arbitral award u/s 34 of the 1996 Act has to be made within the time prescribed under Sub-section (3) of Section 34, i.e., within three months and a further period of 30 days on sufficient cause being shown and not thereafter.

13. The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words? Section 2(j) of the 1963 Act defines "period of limitation" which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act. Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows Sub-section (3) of Section 34 of the 1996 Act is not the "period of limitation" and, therefore, not "prescribed period" for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to Sub-section (3) of Section 34 of the 1996 Act being not the "period of limitation" or, in other words, "prescribed period", in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

5. I am of the view that the petitions not having been filed within three months from the date of getting the copy of the award is barred by limitation prescribed u/s 34(3) of the Act. Even if, the date of receipt of the supplementary award from the arbitrator is considered, three months had already expired when these petitions were lodged. In my view this Court was misled by the petitioner by falsely contending that there was delay of only two days in filing petition u/s 34 of the Act.

6. In my view the prescribed period for making an application for setting aside arbitral award is three months. The period of thirty days mentioned in proviso to section 34(3) of the Act is not the period of limitation and is therefore, not prescribed period for the purpose of making an application for setting aside arbitral award. The Petitioner has proceeded on the footing that the time to challenge was three months plus thirty days from the date of getting the copy of the supplementary award which is on the face of it contrary to section 34(3) of the Act. I do not propose to go into the issue whether the limitation in this case would commence from the date of getting the copy of the award dated 8th November, 2005 in view of the application filed by the petitioner u/s 33(4) of the Act having been dismissed being not maintainable by the learned Arbitrator.

7. This court has no power to condone the delay beyond thirty days and that also only if sufficient cause is shown and not thereafter. Mr. Jain the Learned Counsel

for the petitioner does not dispute that three months plus 30 days had already expired when the petitions were lodged by the petitioner. Both these petitions are thus barred by limitation. I, therefore, pass the following order :

Arbitration Petition No. 26 of 2008 and Arbitration Petition No. 31 of 2008 are dismissed.

There shall be no order as to costs.