
(1977) 07 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Arbitration Petition No. 77 of 1974

M/s. United Builders	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 12-07-1977

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 20, 30, 33
Limitation Act, 1963 — Article 158

Citation : (1977) 07 J&K CK 0003

Hon'ble Judges : I.K. Kotwal, J

Bench : Single Bench

Advocate : R.P. Bakshi, for the Appellant; R.D. Jamwal, for the Respondent

Judgement

I.K. Kotwal, J.—In an application u/s 20 of the Arbitration Act made by the Petitioner, the court vide its order dated 28-11-1975

appointed one Lt. Col. S.S. Bawa as an Arbitrator to settle the disputes between the parties and submit his award in the court within the time fixed

in the order. The time originally fixed by the court for making the award was, however, extended and the Arbitrator finally passed his award on 5th

of Aug. 1976. On receiving a copy of the award from the Arbitrator, the Petitioner again approached the court on 17th of Aug. 1976 with an

application u/s 14 of the Arbitration Act wherein he prayed that the Arbitrator be asked to file the original award in the court along with other

concerned documents. No notice of this application was, however, given to the Respondent, Union of India. On 31st Aug. 1975 the Respondent

also made an application u/s 14 of the Arbitration Act to the effect that the Arbitrator be directed to file his award in the court which he had passed

and published on Aug. 5, 1976. No order was passed by the court on this

application. Both these applications were put up before the Deputy Registrar of the court on Sept. 9, 1976 in presence of counsel for the parties as also one S. Bikram Jit Singh, an employee of the Respondent. The proceedings which took place before him on Sept. 9, 1976 were recorded by the Deputy Registrar of the Court in the following words:

Award has been received from the Arbitrator, L.C. for the parties take notice of filing the same in the Court. They may file objections, if any, to the award within the statutory period. Put up for further proceedings before Hon'ble S.B. on 14-10-1976.

2. The Respondent filed its objection petition to the award under Sections 30 and 33 of the Arbitration Act on Oct. 5, 1976 challenging therein the

validity of the award on a variety of grounds. The court also permitted the Petitioner to file its objections to the aforesaid objection petition. One of

the objections taken was that the objection petition filed by the Respondent was time barred. The court vide its order dated Nov. 4, 1976 framed

a number of issues out of which Issue No. 1 which was treated as a preliminary issue ran thus:

Whether the applications for setting aside the award and objections to the award are barred by time? O.P.P.

The learned Counsel for the parties declined to lead any evidence on this issue. It is in these circumstances that I am called upon to decide this issue.

3. I have heard learned Counsel for the parties at length besides going through the record carefully.

4. Article 158 of the Limitation Act reads as under:

Description of Period of Time from
application. limitation, which period
begins to run.

158. Under the Jammu Thirty The date of
and Kashmir days. service of the
Arbitration Act, to set notice of filing
aside an award or of the award.

to get an award
remitted for
reconsideration.

5. Mr. R.P. Bakhshi, the learned Counsel for the Petitioner has argued that under this article a formal service of notice of filing of the award is not necessary. Time under this article, adds the learned Counsel, shall begin to run from the day a party acquires knowledge of filing of the award in the court, it being immaterial from what source such knowledge is acquired.

6. To prove that Respondent acquired knowledge of the filing of the award, more than thirty days before it filed the objection petition, the learned Counsel has relied upon a letter sent by one V.S. Dhameja, probably a subordinate of the Arbitrator Lt. Col. S.S. Bawa. This letter was addressed to the Arbitrator himself and one copy each of this letter was also sent to the parties. This letter is dated Aug. 26, 1976 and states that the award has been filed in the High Court on Aug. 24, 1976, Mr. R.D. Jamwal, the learned Counsel for the Respondent, has admitted the receipt of a copy of this letter in the following words:

Receipt of letter is not denied but on which date it was received is to be ascertained from records.

The only important thing i.e. the date when this letter was actually Deceived by the Respondent is shrouded in mystery. Neither the admission recorded by Mr. Jamwal mentions the date when this letter was received by the Respondent, nor has the Petitioner taken the trouble of mentioning such a date in his objections. The onus of proving this issue was on the Petitioner. It is, therefore, the Petitioner which is to suffer for this lacuna. In the absence of any such proof the Respondent shall be deemed to have acquired knowledge of the filing of the award in the court on Sept. 9, 1976, only, when the Deputy Registrar informed the parties about the same. Reckoned from this date, the objection petition has been filed by the Respondent within thirty days as required by Article 158 of the Limitation Act.

7. Assuming that the Respondent became cognizant of the filing of the award more than thirty days before Oct. 5, 1976, when the objection petition was filed, the question still remains as to whether in the absence of any notice from the court u/s 14(2) of the Arbitration Act the letter

written by the said V.S. Dhameja constituted a valid notice within the meaning of Article 158 of the Limitation Act. In support of his contention that

the aforesaid letter did not constitute a valid notice the learned Counsel for the Petitioner has placed reliance upon a few judgments which I now

proceed to discuss hereinafter:

8. The first authority to be noticed is Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, . In this case the award

was filed in the court on Feb. 18, 1948. On Feb. 21, 1948 the court adjourned the case to March 22, 1948 for ""parties say to the Arbitrator's

report."" Defendant No. 12, who sought to challenge the award filed his objections on Nov. 9, 1948. No formal notice u/s 14(2) of the Arbitration

Act was, however, served on the said Defendant. The Supreme Court held that the order of the Court dated Feb. 21, 1948 for parties say to the

Arbitrator's report was a sufficient compliance with Section 14(2) of the Arbitration Act, and that no formal notice by the court was necessary.

9. The other authority relied upon by the learned Counsel is The State of West Bengal Vs. L.M. Das, . In this case the Registrar of the Calcutta

High Court on the award being filed in the court wrote a letter to the Appellant on June 5, 1969 that the award had been filed in the High Court on

its original side. This letter was received by the Appellant on June 16, 1969. The High Court issued Anr. formal notice in accordance with the rules

framed by the Calcutta High Court informing the Appellant of the filing of the award in the court, which was served upon the Appellant on July 14,

1969. The Appellant filed his objections u/s 30 of the Arbitration Act on Aug. 12, 1969 i.e. within thirty days from the date it received the

aforementioned formal notice. The High Court refused to consider the objection petition filed by the Appellant on the ground that the same was

barred by time and relying upon Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, the High Court held that no

formal notice was necessary and that even an oral notice would do.

10. The learned Counsel has also made reference to B. George v. K. Lingiah AIR 1961 Andh Pra 457. In this case an award duly signed by the

Umpire as well as the Arbitrators was for the first time filed in the Court on June 7, 1955 in presence of the parties and their counsel. Objections to

this award were filed by the Appellant on July 5, 1955 i.e. within thirty days from

June 7, 1955. An objection was taken by the Respondent that the Petitioner had knowledge of filing of the award on Jan. 4, 1955 when the suit was filed or at any rate on 28th of March, 1955 when the Umpire filed the award. The High Court repelled this contention on two grounds viz;

(i) the record of the proceedings showed that the Petitioner had in fact no such knowledge; and

(ii) even if he had any knowledge it was not a knowledge in respect of a valid award as the awards filed on 4-1-1955 and 28-3-1955 were neither

signed by the Arbitrators nor by the Umpire. The court while dissenting from the view taken by the Allahabad, Madras, Lahore and Calcutta High

Courts in *Ranjit Chandra Talukdar and Others Vs. Bissay Ram Mandal and Others*, ; (1888) ILR 11 Mad 144; AIR 1925 Lah 619 (1) : AIR

1930 Lah 228 and AIR 1926 Cal 1018 respectively, to the effect that notice to the parties u/s 14(2) of the Arbitration Act was imperative even if

they had knowledge of the filing of the award aliunde and relying upon the view taken by the Nagpur and Calcutta High Court in AIR 1957 Nag.

57 and *Bhola Nath Mallick Vs. Mahadev Mallick*, , held that if a party to whom notice has been issued has knowledge that the award has been

filed that would be sufficient compliance with Section 14(2) of the Arbitration Act and no further notice would be necessary.

11. In *Kawal Singh Akbar v. Baldeosingh Akbar* AIR 1957 Nag 57, the award had been produced in the court in presence of the Appellant and

his counsel on 22-1-1951, objections to the award were filed on 10-4-1951. The court held that as the Appellant had knowledge of the filing of

the award on 22-1-1951, no formal notice u/s 14(2) of the Arbitration Act was necessary, and therefore, dismissed the objections as barred by

time.

12. In *Bhola Nath Mallick Vs. Mahadev Mallick*, the award was filed in a pending suit on 21-9-1949. No formal notice was given to the parties of

the filing of the award, but the Defendant made an application on 28-10-1949 requesting the court to permit him to inspect the award which

according to his knowledge had been filed in the court. The Defendant after examining the award filed his objections thereto on 17-12-1949. The

objections were dismissed as barred by time on the ground that the Defendant

had knowledge of the filing of the award on 28-10-1949 or prior to it. It was pleaded on behalf of the Defendant that no formal notice as envisaged by Section 14(2) of the Arbitration Act having been served upon him, time under Article 158 Limitation Act did not start to run against him. It was held that the Defendant would be deemed to have acquired knowledge of the filing of the award on 28-10-1949 when he made the application to the court for inspecting the same. The court was, however, categoric in holding that but for the aforesaid application time would not have started to run under Article 158 of the Limitation Act. The Court also doubted the soundness of the argument that knowledge of filing of the award through extraneous sources also constituted a notice under Article 158 of the Limitation Act. It may be useful to quote some relevant lines from the aforesaid judgment which reads thus (at p. 228):

.... The importance of the provisions about service of notice is that the parties may apply to the court within 30 days of such service of notice for remitting or for setting aside the award. If the party is not only already cognisant of the filing of the award but has applied to the court for facilities to examine the award filed there will be no necessity for serving such a party again. In the present case the party in question applied to Court for leave to examine the award and for time to file objections. Had the party not filed the aforesaid application there could not have been any question of that party being barred by lapse of time. Limitation would not begin to run. Mandatory provision contained in Article 158 of the Limitation Act as it now stands becomes unnecessary for strict application when the party has already appeared in the case.

It may be debatable question whether proof of knowledge of the filing of the award from extraneous source would be sufficient compliance of the mandatory provision contained in Article 158 or not. However, Defendant having appeared in Court there is no further necessity of serving him with notice.

It would be clear that none of the authorities relied upon by Mr. Bakshi supports the proposition of law adumbrated by him. On the contrary the observations of Calcutta High Court in Bhola Nath Mallick Vs. Mahadev Mallick, quoted above, shall support the view which I propose to take in this case.

13. Under Article 158 of the Limitation Act, time shall start running against a party intending to get an award set aside under the provisions of the Arbitration Act, only after it has notice of the filing of the award in the court. u/s 14(2) of the Arbitration Act, the moment an award is filed in a court, a duty is cast upon it to issue notice to the parties that the award has been so filed. There is no other provision in the Arbitration Act which provides for such a contingency. Obviously therefore, the term ""notice"" used in Article 158 of the Limitation Act refers to no notice other than the one to be given by the Court u/s 14(2) of the Arbitration Act. Again no formal notice u/s 14(2) of the Arbitration Act would be necessary where a party has acquired knowledge of the filing of the award in the court, but such knowledge must be one which directly or indirectly emanates from the court in which the award is filed. Knowledge from any other source if permitted to be treated as equivalent to knowledge acquired in or from the court, would destroy the very purpose for which Section 14(2) of the Arbitration Act has been enacted. Any knowledge of the filing of the award which is acquired from an extraneous source, shall not have the effect of setting Article 158 of the Limitation Act in motion against the party which seeks to challenge the award.

14. The Respondent having no notice of the filing of the award in the court earlier than Sept. 9, 1976, his objection petition is well within time.

Issue No. 1 is accordingly decided in favour of the Respondent and against the Petitioner.

15. The case shall now come up for further proceedings on 20th July, 1977.