

(2013) 08 SC CK 0135

In the Supreme Court Of India

Case No : Special Leave To Appeal (C) No(S). 20195 Of 2017

M/S Ved Prakash Mithal And Sons

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 33, 34, 34(3)

Citation : (2013) 08 SC CK 0135

Hon'ble Judges : Rohinton Fali Nariman, J;Indu Malhotra, J

Bench : Division Bench

Advocate : Peeyoosh Kalra, Shadman Ali, Mahua Kalra, Saurav Agrawal, Sahil Tagotra, Satyawar Shekhawat, Akanksha Sisodia

Final Decision : Dismissed

Judgement

1) Having heard the learned counsel for both sides, a few facts first need to be stated.

2) In the present case, an Arbitral Award was delivered on 30.10.2015 and received by the respondent on 07.11.2015. An application to correct the said aforesaid Award was made by the respondent on 16.11.2015. We may add that a similar application to correct the Award was also made on behalf of the respondent on 20.11.2015. Both these applications were decided by the learned Arbitrator together and dismissed on 14.12.2015.

3) On 11.03.2016, objections and application objecting to the Award was filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') by the respondent. The only question that arises is whether the aforesaid Section 34 application could be said to be within the time mentioned in Section 34(3) of the Act.

4) The learned Additional District Judge, by order dated 30.05.2017, found that the application was time-barred, reasoning that the application should have been made on and from the first date as, in fact, there was no correction made to the

Award.

5) The respondent preferred an appeal before the High Court, whereby the learned Single Judge of the High Court, by his judgment dated 10.07.2017, reversed the order of the Additional District Judge stating that as the Section 33 application had been disposed of only on 14.12.2015, the period mentioned in Section 34(3) would start running only from then, in which case, the Section 34 application could be said to be within time.

6) Learned counsel appearing on behalf of the petitioners before us has argued that the expression "disposed" which is mentioned in Section 34(3) would have to be read in consonance with and in harmony with Section 33. So read, this would only mean where some positive step has, in fact, taken place under Section 33 and the Award is either corrected or modified. This could not possibly refer to an Award which is not ultimately corrected or modified and the application under Section 33 is merely dismissed. For this, he relies upon the judgment of a Single Judge of the Bombay High Court in the case of Amit Suryakant Lunavat vs. Kotak Securities, Mumbai reported in 2010(6) Mh.L.J. 764. The learned Single Judge held:

"13. There is no justification, as contended, to accept the submission in view of the mandate of section 34 and considering the scheme and purpose of the Arbitration Act that because the application under section 33 of the Act was filed and it was rejected subsequently, therefore, the limitation period commenced afresh from the date of such decision of the award. In my view, it is contemplated only on a situation where the Arbitrator corrects or interprets and/or add or decide to add any additional claims and modified the award as only in such cases the original award loses its originality and therefore an application for setting aside the award needs to be filed within three months from the date of receipt of such corrected or modified award. Therefore, the party who received the award after deciding the application under section 34(3) of the Act, may get the benefit of fresh commencement of limitation from the receipt of the modified and/or corrected award and not otherwise."

7) We are of the view that the judgment of the Bombay High Court does not reflect the correct position in law. Section 34(3) specifically speaks of the date on which a request under Section 33 has been "disposed of" by the Arbitral Tribunal.

8) We are also of the view that a "disposal" of the application can be either by allowing it or dismissing it. On this short ground, in our opinion, the learned Single Judge of the Delhi High Court is correct in law.

9) The Special Leave Petition is, accordingly, dismissed.