
(1993) 08 KAR CK 0031
In the Karnataka High Court
Case No : C.R.P. No's. 3860 and 3887 of 1989

Pavi Electrical Industries

APPELLANT

Vs

B.D.K. Alloy Pvt. Ltd.

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Arbitration Act, 1940 — Section 14, 30, 37

Citation : (1993) ILR (Kar) 3412 : (1993) 3 KarLJ 306

Hon'ble Judges : Jagannatha Hegde, J

Bench : Single Bench

Advocate : H. Kantharaj, for the Appellant; V. Tarakaram, for R-1 and Suman Hegde, for R-2, for the Respondent

Judgement

Jagannatha Hegde, J.—The petitioner in Civil Revision Petition No. 3860/1989 is respondent-1 and the petitioner in Civil Revision Petition No. 3887/1989 is respondent-2 in Arbitration Case No. 3/1978 on the file of the Principal Civil Judge, Hubli.

2. The Arbitrator filed an award before the Civil Judge. Respondent-1 filed an application before the learned Civil Judge for setting aside the award u/s 30 of the Arbitration Act with an application I.A.No. VII for condoning the delay in filing the said application on 17.9.1984. A similar application in I.A.No. V was filed by respondent-2 along with an application for setting aside the award on the same day. The trial Court dismissed both the applications by a common order dated 25.3.1989 on the ground that Section 5 of the Limitation Act did not apply and that respondents-1 and 2 had knowledge of the filing of the award on 30.6.1984 and 7.7.1984 respectively.

3. The learned Counsel for the Revision petitioners rightly contend that the finding of the trial Court that Section 5 is not applicable to the case on hand cannot be upheld in view of Section 37 of the Arbitration Act, which specifically says that all the provisions of the Indian Limitation Act will apply to arbitration proceedings in Court. It is also their contention that filing of such applications u/s

5 of the Limitation Act was not necessary in the instant case, as no notice of the filing of the award has been issued to them by the Court so far.

4. It is not in dispute that no notice of filing of the award from the Court has been issued to the respondents so far. The contention of the respondents in these Petitions is that the evidence discloses that the filing of the award was informed by the Arbitrators to respondent-1 on 30.6.1984 and respondent-2 on 7.7.1984 and that the limitation would commence from the said dates.

5. Article 119 of the Limitation Act reads thus:

Description of the application

Period of Limitation

Time from which period begins to run

119.

Under the Arbitration Act, 1940

a)

for the filing in Court of an award;

Thirty days

The date of service of the notice of the making of the award

b)

for settling aside award or getting an award remitted for reconsideration

Thirty days

The date of service of the notice of the filing of the award.

6. The other provision with which we are concerned is Section 14 of the Arbitration Act, 1940, which reads thus:

"14. AWARD TO BE SIGNED AND FILED - (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) xxx xxx xxx"

7. It is true that notice may be in writing or oral. Notice may be formal or informal. But, notice from the Arbitrator or from any other source other than the Court cannot be said to be a notice from the Court. In *Sree Sree Ma Engineering and Co. Vs. State of West Bengal and Another*, a Division Bench of the High Court of Calcutta has held that the notice of filing of the award referred to in Article 119(b) of the Limitation Act should be a notice contemplated u/s 14(2) of the Arbitration Act, 1940, and should emanate from the Court and not from any other source. That is also the view taken by the Supreme Court in *INDIAN RAYON CORPORATION PVT. LTD. v. RAUNAQ AND COMPANY PVT. LTD.* AIR 1988 SC wherein it has been laid down that the notice in this regard must be served by the Court and that the essential requirements are:

- a) filing of the award in the proper Court:
- b) service of the notice by the Court or its office to the parties concerned; and
- c) such notice need not necessarily be in writing.

It is further laid down that it is upon the date of service of such notice the period of limitation begins and as at present under Clause (b) of Article 119 of the Act, the limitation expires on the expiry of thirty days of the service of that notice for an application for setting aside of the award. So, the service of notice by the Court is important and not the method or manner of service.

8. In the instant case, it is not disputed that notice in any form has not been issued by the Court to the petitioner so far. The question of their applications filed u/s 30 being barred under Clause (b) of Article 119 of the Limitation Act will not, therefore, arise.

9. Hence, both the Revision Petitions are allowed and the impugned common order dated 25.3.1989 is set aside. No costs.

The trial Court shall consider the two applications filed u/s 30 of the Arbitration Act by the petitioners in accordance with law. The original proceedings commenced in the year 1978 and, therefore, the trial Court is directed to dispose of the matter as expeditiously as possible.