

(2008) 01 MP CK 0104
In the Madhya Pradesh High Court

Prashant Kumar Sahu

APPELLANT

Vs

Optel Telecommunications Ltd. and Others

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 37

Citation : (2008) ILR (MP) 1753 : (2009) 2 MPHT 402 : (2008) 2 MPJR 171 :
(2008) 2 MPLJ 481

Hon'ble Judges : S.A. Naqvi, J; A.K. Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

Feeling aggrieved by the order and decree dated 19-8-2003 passed by learned District Judge, Satna in Misc. Civil Case No. 18/2002 affirming the award dated 18-12-2002 passed by Arbitral Tribunal (in short "Tribunal"), Bhopal, this appeal has been filed u/s 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

No exhaustive statements of the facts are required to be stated for the disposal of this appeal. Suffice it to state that Rate Contract No. OTL : 15/10:I/RC, dated 25-8-1998 was executed between the appellant and respondent Nos. 1 and 2 for supply of wooden drums. The appellant deposited a sum of Rs. 50,000/- as earnest money vide Draft No. 419903, dated 13-4-98 of State Bank of India, Satna City. The price amount was to be paid within 60 days after the acceptance of goods. It was agreed between the parties that if any dispute would arise, it will be referred to arbitration.

As per claim of appellant he had supplied goods as under:

Amount	Sl. No.	Bill No.	Date of Bill
1,07,926.00	1.	2.	8-10-98 Rs.
	2.	3.	27-10-98

Rs. 1,18,995.00	-----	3.	4.
28-10-98 Rs. 90,266.00	-----	4.	
6.	16-11-98	Rs.	1,45,210.00
-----		Total:	Rs. 4,62,361.00

Since the respondent Nos. 1 and 2 have failed to make payment despite notices and reminders were given by the appellant, according to him, he is entitled to get interest at the rate of 12% by way of damages. It is not in dispute that the appellant served two notices dated 6-8-2001 and 10-1-2002 to the respondents. The appellant hence filed an application before the District Judge, Satna on 30-4-2002 for appointment of the arbitrators and also prayed as under:

- (1) Rs. 50,000/- deposited as earnest money be paid;
- (2) Rs. 4,62,361/- as stated in Para 5 of the application be paid;
- (3) Interest @ 12 per cent after two months from the date of notice, i.e., 6-8-2001 till final payment be paid;
- (4) Notice charges Rs. 1100/- be paid;
- (5) Costs of the arbitration proceedings.

It is not in dispute that respondent Nos. 1 and 2 have admitted most of the claims, but have raised plea of limitation that the claim is barred by time. According to respondent Nos. 1 and 2 goods were never supplied well in time and, therefore, they are not liable to pay damages as per Clause 14 of the agreement. The claim of Rs. 4,46,308/- is, however, admitted by the respondent Nos. 1 and 2 subject to limitation.

The matter was referred to the Arbitral Tribunal where issues were framed and it was held by the Tribunal that claim of Rs. 4,46,308/- has been admitted by the respondent Nos. 1 and 2, but, again since the claim is not within prescribed period of limitation, therefore, the Tribunal declined to pass any award of Rs. 4,46,308/-. However, the Tribunal held that the appellant is entitled to get back amount of earnest money Rs. 50,000/- with interest at the rate of 12% as well as notice charges Rs. 1100/-.

The appellant challenged the award by filing application u/s 34 of the Act and prayed to set aside the arbitral award. The learned District Judge decided the objections raised by the appellant u/s 34 of the Act and categorically held that the dispute raised by the appellant before the Tribunal was barred by time and eventually dismissed the objections by affirming the award passed by the Tribunal.

In this manner, the present appeal has been filed u/s 37 of the Act.

The contention of Shri R.P. Agrawal, learned Senior Counsel appearing for the appellant is that the Tribunal as well as learned District Judge erred in law by

holding that the dispute raised by the appellant was barred by prescribed period of limitation. The contention of learned Senior Counsel is that provisions of Sections 21 and 43 (2) of the Act have not been properly construed by the Tribunal as well as by learned District Judge. According to learned Senior Counsel if these two provisions are considered in proper perspective in the present factual scenario it would reveal that the claim of the appellant is not barred by prescribed period of limitation. It has also been contended that liability of making payment of Rs. 4,46,308/- has been admitted by the respondent Nos. 1 and 2 and, if that is the position, since there is no hurdle of limitation, said amount be also awarded in addition to the award passed by the Tribunal.

On the other hand, Shri R.N. Shukla, learned Senior Counsel appearing for the respondent Nos. 1 and 2 argued in support of the impugned award as well as supported the impugned order of learned District Judge.

Having heard learned Counsel for the parties, we are of the considered view that this appeal deserves to be allowed.

The moot question to be decided in this appeal is whether the dispute raised by the appellant is within time or is barred by prescribed period of limitation. If the dispute is within time, according to us, the appellant is entitled to get amount of Rs. 4,46,308/- because the respondent Nos. 1 and 2 have admitted in their reply to the application that they are required to pay amount of Rs. 4,46,308/-. The only objection for its payment which has been raised by the respondent Nos. 1 and 2 in their reply is that the same is barred by prescribed period of limitation. In order to appreciate the arguments advanced by learned Counsel for the parties, we would like to advert ourselves to certain relevant dates which are as under:

Date	Sl. No. Events
25-8-98 Agreement entered into between appellant and respondent Nos. 1 and 2.	(1)
16-11-98 Last supply was made by appellant to respondent Nos. 1 and 2 and as per Clause 6 of the agreement the payment was to be made within 60 days.	(2)
16-1-99 60th day expired.	(3)
6-8-01 Notice to make payment was sent by appellant to respondent Nos. 1 and 2.	(4)
10-1-02 Notice by which resolution of dispute was demanded was sent by appellant to respondent Nos. 1 and 2.	(5)
30-4-02 Application u/s 11 of the Act was filed by appellant before the District Judge.	(6)

The factum of giving notices dated 6-8-2001 and 10-1-2002 is not disputed in reply to the application. On the other hand, the same is admitted. If the notice dated 10-1-2002 sent by the appellant is said to have been received by the respondents on the same day, even then, according to learned Senior Counsel, the dispute which has been raised by the appellant cannot be said to be barred by time. In order to appreciate the said argument, we shall advert ourselves to Section 21 of the Act which reads thus:

21. Commencement of arbitral proceedings.- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

(Emphasis supplied)

On going through the above-said provision we find that it speaks about the commencement of arbitral proceedings. According to this section, the arbitral proceedings in respect of a particular dispute would commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent and, therefore, according to us, the determining factor in order to compute the limitation is the date when the notice was received by the respondent Nos. 1 and 2 raising the arbitral dispute. If we take it for consideration that earlier notice dated 6-8-2001 was received on the same day or within 2-3 days after 6-8-2001, even then the proceedings cannot be said to be barred by time in terms of Section 21 of the Act.

Section 43 of the Act speaks about the "Limitation" and it would be condign to refer to Sub-section (2) of Section 43 which reads thus:

43. (2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(Emphasis supplied)

If we keep Section 21 and Section 43 (2) of the Act in juxtaposition and read conjointly it becomes luminously clear like a noon day that limitation would commence from the date when the respondent Nos. 1 and 2 have received notice in respect to the request for the dispute raised by the appellant. On plain reading of the language of these two sections and interpreting these two provisions harmoniously there cannot be any other interpretation.

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency of repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid "a head on clash" between two sections of the same Act and, whenever it is possible to do so to construe provisions which appear to conflict so that they

harmonise. (See : Principles of Statutory Interpretation by Justice G.P. Singh Seventh Edition Page 112).

The Supreme Court in the case of Sultana Begum Vs. Prem Chand Jain, , while considering the scope and interpreting Order XXI Rule 2 and Section 47, CPC and by relying the decision of Canada Sugar Refining Co. v. R. (1898) AC 735, quoted the observation made by Lord Davy, which reads thus:

Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.

and thereafter by quoting various decisions laid down following principles:

(1) It is the duty of the Courts to avoid a head on clash between two Sections of the Act and to construe to the provisions which appears to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the Court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the Courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.

In the present case, we do not find Sections 21 and 43 (2) of the Act to be inconsistent or repugnant to each other and therefore, on the basis of the decision of Sultana Begum (supra) and the principles laid down by the Apex Court both these two Sections are to be construed harmoniously. We do not find any scintilla of doubt in our mind that these two provisions are not a head on clash to each other. Section 21 of the Act speaks about when the arbitral proceedings can be commenced and to enable the arbitral proceedings what should be the period of limitation this has been prescribed in Section 43 (2). Thus, according to us, if a party desires to commence arbitral proceeding, when right would accrue to him, this has been stated in Section 21 and in order to exercise the said right what should be the limitation, this has been prescribed in Section 43 (2) of the Act.

The word "commence" has not been defined under the Act and, therefore, we would like to see dictionary meaning of this word. In Oxford Large Print Dictionary, the meaning of word "commence" is "to begin" and in Black's Law

Dictionary its meaning is "To initiate by performing the first act or step. To begin, institute or start". Therefore, by construing the word "commence" harmoniously used in Sections 21 and 43 the meaning would be "to start" and if that is the position, according to us, the limitation would start from the date on which the request by way of said two notices, raising the arbitral dispute to be referred to the arbitration, were received by the respondent Nos. 1 and 2. Admittedly, notices dated 6-8-2001 and 10-1-2002 have been received by the respondent Nos. 1 and 2 and if that would be the position, according to us, the application which was filed by the appellant u/s 11 of the Act on 30-4-2002 cannot be said to be barred by prescribed period of limitation.

For the reasons stated hereinabove, we hereby hold that application u/s 11 of the Act filed by the appellant is within 1 imitation and since respondent Nos. 1 and 2 have admitted the claim of Rs. 4,46,308/-, according to us, the appellant is entitled to get the said amount apart from the amount as awarded by the Tribunal and affirmed by learned District Judge.

Resultantly, this appeal succeeds and is hereby allowed. Looking to the facts and circumstances, parties are directed to bear their own costs.