
(2012) 11 P&H CK 0177

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 5989 of 2012 (O and M)

Rama Industries Ltd.

APPELLANT

Vs

G.M. Fabricators and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 42
Limitation Act, 1963 — Section 14

Citation : (2013) 2 RCR(Civil) 555

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : P.S. Rana, for the Appellant; G.S. Bhatia, Advocate for Respondent
No. 1-Caveator, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 28112-CII of 2012

Allowed as prayed for.

FAO No. 5989 of 2012

1. In this appeal, order dated 18.09.2012 passed by learned Additional District Judge, Patiala, is under challenge. By the said order learned lower court has dismissed the application filed by appellant u/s 14 of the Limitation Act, 1963 along with petition u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, "the Act"). Dispute between appellant and respondent No. 1 was referred to respondents No. 2 and 3 and another person as arbitrators. Respondents No. 2 and 3 gave award dated 06.03.2008 (Annexure A-2). Appellant filed petition u/s 34 of the Act at Chandigarh on 26.03.2008 to challenge the said award. Learned Additional District Judge, Chandigarh vide order dated 10.11.2009 (Annexure A-4) held that Court at Chandigarh had no territorial jurisdiction to try the said petition and, therefore, ordered return of the said petition to the appellant for

presentation before the court of competent jurisdiction at Patiala. Thereafter, the appellant filed fresh petition u/s 34 of the Act in court at Patiala to challenge the award of the arbitrators. Along with said petition, the appellant also filed application u/s 14 of the Limitation Act for excluding the period spent by the appellant in prosecuting its petition u/s 34 of the Act at Chandigarh. The said application was resisted by respondent No. 1. Learned Additional District Judge, Patiala vide impugned order dated 18.09.2012 has held that application of the appellant u/s 14 of the Limitation Act does not help the petitioner/appellant and even after applying Section 14 of the Limitation Act to the case, petition u/s 34 of the Act is not within limitation. Accordingly, application u/s 14 of the Limitation Act has been dismissed along with petition u/s 34 of the Act. Feeling aggrieved, appellant has filed this appeal.

2. I have heard counsel for the parties and perused the case file.

3. Counsel for the appellant contended that respondents No. 2 and 3 had initially forwarded the award to the appellant vide letter dated 13.03.2008 but it was not complete award and the complete award was sent vide letter dated 22.03.2008 Annexure P-1 received by the appellant on 24.03.2008 and immediately the appellant filed petition u/s 34 of the Act at Chandigarh on 26.03.2008 which was ordered to be returned vide order dated 10.11.2009. The appellant applied for certified copy of order dated 10.11.2009 on 20.11.2009 and certified copy was prepared on 27.11.2009 and was received by appellant on 28.11.2009. It is contended that the petition u/s 34 of the Act was filed on 23.02.2010 at Patiala and after excluding the period spent in prosecuting the petition at Chandigarh and the period spent in obtaining the certified copy of order dated 10.11.2009 (Annexure A-4), the petition filed at Patiala u/s 34 of the Act was within limitation period of three months. Concession of further period of 30 days under proviso to Section 34(3) of the Act was also sought.

4. The contention has been repelled by respondent No. 1-caveator. It was contended that complete copy of the award was sent to the appellant by respondents No. 2 and 3 vide letter dated 13.03.2008. Vide subsequent letter dated 22.03.2008, only copy of a forwarding letter (sent by arbitrators to Additional District Judge whereby copy of award was sent to Additional District Judge, Patiala) was sent to appellant and respondent No. 1. It was also argued that arbitrators had been appointed by court at Patiala and, therefore, territorial jurisdiction for all subsequent proceedings/petitions under the Act vested in court at Patiala and, therefore, petition u/s 34 of the Act filed at Chandigarh was not in good faith and, therefore, appellant is not entitled to benefit of Section 14 of the Limitation Act. It was also argued that even if period spent in prosecuting the petition at Chandigarh is excluded, even then the petition filed in court at Patiala is not with limitation period of 3 months stipulated in Section 34(3) of the Act. The period spent in obtaining certified copy of order dated 10.11.2009 (Annexure A-4) cannot be excluded, but even if the same is excluded, even then the petition filed in court at Patiala is not with limitation. It was also argued that

benefit of proviso to Section 34(3) of the Act was not claimed by the appellant by moving an application or otherwise as no cause was alleged much less proved for not presenting the petition at Patiala within original limitation period of 3 months.

5. I have carefully considered the rival contentions. Complete copy of the award was received by the appellant vide letter dated 13.03.2008 and, therefore, reference to subsequent letter (Annexure A-1) dated 22.03.2008 whereby only copy of a forwarding letter was sent to the parties is of no avail. Thus, the limitation period commenced on 13.03.2008. Consequently, 13 days were taken by the appellant in filing the petition at Chandigarh on 26.03.2008 and 3 months 13 days were taken in filing the petition at Patiala after order dated 10.11.2009. Computed in this manner, even if the period since 26.03.2008 till 10.11.2009, during which the petition remained pending at Chandigarh, is excluded, even then the petition at Patiala was not filed either within the original limitation period of 3 months stipulated in Section 34(3) of the Act or within the extended period of 30 days thereafter under proviso to Section 34(3) of the Act.

6. Even otherwise, the appellant is not entitled to benefit of extended period of 30 days under proviso to Section 34(3) of the Act because the appellant did not claim the same by alleging any sufficient cause for not filing the petition at Patiala within the original limitation period of 3 months.

7. The period spent by appellant in obtaining copy of order dated 10.11.2009 (Annexure A-4) is not required to be excluded because the appellant had to take back the original petition from the court at Chandigarh with necessary particulars written thereon by the court at Chandigarh and the same was to be re-presented in the court at Patiala. Consequently, certified copy of order Annexure A-4 was not required to be obtained. Moreover, the original petition which was returned by the court of Chandigarh was not re-presented in the court at Patiala and a fresh petition u/s 34 of the Act was filed at Patiala.

8. The appellant is also not entitled to benefit of Section 14 of the Limitation Act because the appellant has not proved that he was prosecuting the petition at Chandigarh with due diligence and in good faith. The arbitrators had been appointed by court at Patiala. Consequently, in view of Section 42 of the Act, any subsequent application or proceedings under the Act had to be filed in the court at Patiala and not in the court at Chandigarh. Consequently, petition u/s 34 of the Act filed by the appellant at Chandigarh cannot be said to have been filed either with due diligence or in good faith. In this regard, counsel for the appellant referred to another petition filed by the appellant at Chandigarh for staying the proceedings of the arbitral Tribunal and submitted that in view of pendency of the said other petition, the appellant also filed the petition u/s 34 of the Act in court at Chandigarh. The contention has no merit. Even the other petition filed by appellant at Chandigarh for staying proceedings of the arbitral tribunal was not filed in court of competent jurisdiction because even any such petition had to be filed in court at Patiala in view of Section 42 of the Act. Consequently, neither the said other petition nor the petition u/s 34 of the Act could be filed at

Chandigarh. The appellant has, therefore, failed to satisfy necessary requirements of Section 14 of the Limitation Act to avail of its benefit because the petition filed by appellant in court at Chandigarh was neither with due diligence nor in good faith. Thus, examined from all angles, petition filed by the appellant u/s 34 of the Act in court at Patiala was not within limitation. There is, therefore, no infirmity much less perversity, illegality or jurisdictional error in impugned order of the trial court. The appeal is meritless and is accordingly dismissed.