

(2004) 09 AHC CK 0217
In the Allahabad High Court
Case No : F.A.F.O. No. 954 of 2004

Santosh Kumar Agnihotri

APPELLANT

Vs

Smt. Sundari Devi and Others

RESPONDENT

Date of Decision : 09-09-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34(3), 43

Citation : (2005) 1 AWC 601

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Pankaj Bhatia, for the Appellant; Vipin Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This appeal is u/s 37 of the Arbitration and Conciliation Act (hereinafter referred to as the Act). The court below by the order dated 10th February, 2004, has rejected the objections filed by the present appellant against the award of the Arbitral Tribunal holding that the same is barred by limitation. The controversy involved in the present appeal is short one. The objector/appellant has claimed the condonation of delay in filing objections both under Sections 5 and 14 of the Limitation Act. The factual scenario of the case is that the Arbitral Tribunal gave an award on 11th April, 1996. The present appellant filed objections to the said award on 13th May, 1996 but before the Civil Judge and not before the District Judge. An objection was raised by the respondent regarding correct Forum. The Civil Judge by the order dated 11th October, 2001, ordered for the return of the objections for presentation before the appropriate court. It appears that objections were not taken back from the Court of Civil Judge immediately after the aforesaid order, dated 11.10.2001. He waited about eleven months. Thereafter, on 7.9.2002, he got it back and presented it on that very day before the Court of District Judge, Kanpur Nagar. An application for condonation of delay was filed for preferring the objections on the allegations that the objections were filed before the Civil Judge under the some bona fide

mistake and the time spent therein is liable to be excluded u/s 14 of the Limitation Act. The court below by the impugned order has rejected the said application on the ground that the order of returning the petition (objections) was passed on 11.10.2001 and no effort was made for taking back the objections immediately thereafter. Challenging the aforesaid order the present appeal has been filed.

2. Heard learned counsel for the parties and perused the record.

3. The dispute in the present case is that whether the provisions of Sections 5 and 14 of the Limitation Act are applicable to the objections preferred by the appellant against the award passed by the Arbitral Tribunal. The learned counsel for the appellant has placed reliance upon Section 43 of the Act. Section 43(1) of the Act provides that the Limitation Act shall apply to arbitrations as it applies to proceedings in Court. On the other hand the learned counsel for the respondent submitted that in view of proviso to Section 34(3) of the Act the Court can condone the delay provided the applicant was prevented by sufficient cause from making the application within the period of three months by a further period of 30 days, but not thereafter. The gist of the argument of the learned counsel for the respondent is that a Court can condone a delay in filing the objections u/s 34 of the Act at the most for a period of 30 days but not exceeding thereof.

4. Elaborating the argument the learned counsel for the appellant submitted that in view of Section 43 of the Arbitration Act the provisions of the Limitation Act are applicable, therefore, Section 14 of the Limitation Act shall also be applicable. He has placed reliance upon Section 43(1) of the Act, which reads as follows :

"43 Limitation.-(1) The Limitation Act, 1963 (XXXVI of 1963), shall apply to arbitration as it applies to proceedings in Court."

5. The word arbitration has been defined in Section 2(1)(a) of the Act. It means any arbitration whether or not administered by permanent arbitral institution. The word "Court" has been defined u/s 2(1)(e) of the Act, it means the Principal civil court of original jurisdiction in a district. From plain reading of Section 43(1) of the Act it is clear that the provisions of Limitation Act have been made applicable to the arbitrations in the same manner as it applies to the proceedings in Court. Sub-section (3) of Section 34 of the Act provides a specific period of limitation of filing of objections. It also provides that the delay up to the period of 30 days can be condoned by the Court if it is satisfied that the applicant was prevented by sufficient cause from making the application. The question ; which falls for determination is whether in view of specific provision as provided by proviso to Section 34(3) still the delay of more than 30 days can be condoned by a Court in filing the objections u/s 34 of the Act. Learned counsel for the appellant has placed reliance upon a Division Bench decision of this Court in the case of Meerut Development Authority, Meerut Vs. Chaddha Construction Co., New Delhi and another, . No doubt the aforesaid ruling supports the contention of

the appellant. The Division Bench has recorded its conclusion in paragraph 18 of the report. It considered the judgment given by the Supreme Court in the case of The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, ; Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, and Mukri Gopalan v. Cheppileet Ahubakar 1995 SCC 5. The Division Bench has also taken into consideration the provisions of Section 43 of the Act and was of the opinion that it is clear that the provisions of Indian Limitation Act are applicable in the matters which are governed by the provisions contained in the Arbitration and Conciliation Act, 1966.

6. The Supreme Court very recently has followed its earlier judgment given in the case of Commissioner of Sales Tax v. Parson Tools and Plants (supra). To understand the real import of the Judgment of the Supreme Court it is apt to consider it by going deep into the matter. The Supreme Court in the case of Parson and Tools (supra) was considering the question of applicability of Section 14(2) of the Limitation Act, in terms or any principle could be invoked for excluding the time spent in prosecuting an application u/s 10 of the U. P. Sales Tax Act, for computation of the period of limitation for filing a revision under that Act. Section 10 (13) of the U. P. Sales Tax Act provides the period of limitation for filing a revision before the revising authority was as one year but the revising authority, on proof of sufficient cause can entertain an application within a further period of six months. Interpreting the aforesaid provision, the Supreme Court has held that language of the above provision unmistakably shows that the Legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form omitted in Sub-section (3B) of Section 10 of the Sales Tax Act. Section 10 was designed to ensure speedy and final determination of fiscal matters within reasonably certain time by excluding unrestricted application of the principles of Sections 5 and 14 of the Limitation Act, It cannot be said that the Legislature has made the provisions of Section 10 unduly oppressive. In paragraphs 11 and 12 the Supreme Court has come to the conclusion that the intention of the Legislature to exclude unrestricted application of principles of Sections 5 and 14 of the Limitation Act is manifestly clear. These provisions of Limitation Act viz., the Legislature did not, after due application of mind incorporate in the Sales Tax Act, cannot be imported into by an analogy. The Court is not competent to supply omission by engrafting on it or introducing in it under guise of interpretation by analogy and implication, something what it thinks to be a general principle of Justice and equity. This is a Judgment by three Judges of the Supreme Court and is an authority of the proposition that provisions of Sections 5 and 14 of the Limitation Act can be read in a statute, when its applicability is excluded either expressly or impliedly. Restriction on the power of a Court. not to condone delay beyond a specific period, resort to Sections 5 and 14 of the Limitation Act to condone the delay beyond the specific period, is not permissible.

7. The Supreme Court in the case of Nasiruddin and Others Vs. Sita Ram Agarwal, , has come to the conclusion that Section 5 of the Limitation Act, 1963,

is not applicable where there is default in depositing the rent by the tenant. Section 5 of the Limitation Act would apply where any appeal or any application may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not making the appeal or application within such period. In this case also the three Judges of the Supreme Court referred its earlier judgment given in the case of Commissioner of Sales Tax. U. P. v. Parson Tools and Plants, Kanpur.

8. Recently the Supreme Court has again examined the controversy in the case of Gopal Sardar Vs. Karuna Sardar, . This case is an authority for the proposition that a departure has been made in Section 29(2) of the Limitation Act of 1963, from Indian Limitation Act, 1908. Under the Indian Limitation Act, 1908, Section 29(2)(b) provides for the purpose of determining for a period of Limitation prescribed for any suit, appeal or application by any special law or local law the application of Section 5 of the Limitation Act was specifically and in clear terms excluded. u/s 29(2) of the present Limitation Act, Section 5 applies in case of special or local law to the extent to which it is not expressly excluded by special or local law. It has been further held that even in the case, where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an expressed reference, it would nonetheless be open to the Court to examine whether or and to what extent the nature of those provisions or the nature of the subject-matter of scheme of special law excludes their operation.

9. In this case also the Supreme Court followed its dictum as given in the case of M/s. Parson Tools (supra) and has come to the conclusion that the benefit of Section 5 of the Limitation Act cannot be extended in late filing of the application u/s 8 of the West Bengal Land Reforms Act, 1955. The Court examined the scheme of West Bengal Land Reforms Act and came to the conclusion that the scheme of the Act impliedly excludes the application of Section 5 of the Limitation Act to the aforesaid Act.

10. The Scheme of Arbitration and Reconciliation Act, 1966, has to be examined. It provides for the appointment of the arbitrators, the manner of making reference to the Arbitral Tribunal and the provisions of interim measures by the Court. It also provides grounds for challenging of possible appointment as an arbitrator and the procedure for the same. Section 3 of the Act provides that the authorities are free to agree on a procedure for challenging an Arbitrator. The provisions about the languages to be used in the arbitral proceedings, the manner of taking evidence by Arbitral Tribunal forms and contents of the arbitral award and termination of the arbitral proceedings have been provided under the Act. Section 34 provides the grounds on which an arbitral award can be set aside. Section 37 provides the appealable orders under the Act. The Act also contains the provisions regarding enforcement of the award including that of foreign awards. On reading of the Act as a whole it is clear that the Act is self-contained Act. It provides the appealable order, the period of limitation for filing objections to an award and the procedure to be adopted by the Arbitral Tribunal

and for setting aside the award etc. Section 34 of the Act in express terms provides that the delay of a further period of 30 days can be condoned. It expressly states that the period beyond 30 days cannot be condoned by a Court. The words "but not thereafter" clearly show the intention of the Legislature not to give power to a Court to condone the delay in filing objections against the award beyond 30 days. On a plain reading of proviso to Section 34(3) of the Act, it shows that the Court on sufficient cause being shown that the applicant was prevented from making the application with the period of limitation, may entertain the application within a further period of thirty days. It authorizes the Court to condone the delay for a further period of thirty days. Thirty days period is the outer limit for condonation of delay. The intention of the Legislature is clear. The Supreme Court in the case of M/s. Parson Tools (*supra*) has held that if the Legislature wilfully omits to incorporate something of analogous law in a subsequent statute, or even if there is cautious omnisus in a statute, the language of which otherwise is plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. On a plain reading of the aforesaid proviso to Section 34(3) of the Act, it is clear that the Legislatures have put a complete bar on the power of the Court to condone the delay in filing of the objections for a period beyond 30 days. The words "but not thereafter" clearly manifests the intention of the Legislature prohibiting a Court to condone the delay beyond 30 days. The idea appears to be that when the parties have voluntarily chosen a forum and the Judges (Arbitrators) to decide their dispute, the dispute should be settled with utmost speed in accordance with the award of the Arbitrator. The parties enter into arbitration agreement to save time, money and energy which is otherwise spent in long drawn legal proceedings before the Courts by way of appeals and revisions, etc. Therefore, a Court cannot condone the delay beyond 30 days in filing of the objections against an award in view of proviso to Section 34(3) of the Act. The provisions contained u/s 43 of the Act on which strong reliance was placed by the appellant stands excluded by the specific provisions as contained in the proviso to Section 34(3) of the Act.

11. In view of the above discussion this Court is of the opinion that the delay beyond 30 days in filing objections cannot be condoned by a Court u/s 34(3) of the Act.

12. Apart from above the learned District Judge has rightly pointed out that there was no good ground for condonation of delay for the period since 11.10.2001 (when the Civil Judge ordered return of the objections for presentation before the appropriate court) to 7.9.2002, the date on which the objections after return were presented before the learned District Judge. The applicant came to know on 11.10.2001, that the Civil Judge is not the correct forum for entertainment and adjudication of the objections preferred by him. He should have taken immediate steps for taking the objections back from the file of the learned Civil Judge for presentation to the proper forum. Only lame excuse has been given in paragraph

4 of the affidavit that due to inadvertent omission his counsel failed to advise him about the steps to be taken in pursuance of the order dated 11.10.2001. I have carefully considered the averments in paragraph 4 of the affidavit. The averments therein are as vague as it could be. The name of the counsel has not been disclosed. Even in this paragraph it is mentioned that he was advised in April, 2002 to apply for taking back the objections from the Court of Civil Judge. There is absolutely no explanation as to why the appellant waited from April, 2002 to September, 2002. No efforts were made to take the objection back immediately after April, 2002. From the order of the learned District Judge it is clear that an order was passed on 14th August, 2002, ordering return of the objections. Even then the present petition after return was filed on 7.9.2002.

13. Besides the legal proposition that the delay beyond 30 days could not be condoned, even otherwise on the facts, the appellant has not made out any case for condonation of delay. I have been informed that it is a litigation in between the mother and sons on the one side and other son on the other side. It is a family dispute and the intention of the appellant appears to keep alive the litigation for indefinite period.

14. In the result, I find no merit in the appeal.

15. The appeal is dismissed accordingly.