

(1998) 02 CAL CK 0022

In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction, G.A. No. 25 of 1998, Award Case No. 69 of 1997

Seth and Associates

APPELLANT

Vs

Steel Authority of India

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Limitation Act, 1963 — Article 119, 137

Citation : AIR 1998 Cal 208 : (1998) 2 CALLT 311

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. H.M. Dutta and Mrs. Kumkum Dutta, for the Appellant; Mr. Debol Banerjee and Mr. Soumen Sen, for the Respondent

Judgement

A. Lala, J.—This is on application made by the petitioners challenging the award made and published by the Arbitrator on 10th February, 1997. The respondent instead of contesting such application in merit raised point of maintainability of the application, being consequential to the filing of the award filed in the court at the instance of the petitioner on 11th November, 1997.

2. According to the respondent there is no time limit for the purpose of filing of the award by the Arbitrator in the court so to say that either the limitation for filing the award by the Arbitrator is not at all covered by the Limitation Act or if at all, covered by the residuary article being Article 137 of the Act. But a litigant cannot withhold the award on behalf of the Arbitrator and cause delay in filing it before the court to frustrate the entire proceedings. There should be a check and balance otherwise such cause will render to an absurdity.

3. The point is very pertinent considering the situation.

4. The Arbitration Act, 1940 is now repealed enactment for the purpose of appropriate future commencement of arbitration proceedings but the court cannot shut out its eyes from observing that there are various causes for

repealing the enactment and one of such cause is taking advantage of the provisions of the Act by unscrupulous litigants in various manners although the original intention of the legislature was to minimise the litigations in the court of law and to settle it with the intervention of independent persons.

5. In the instant case, I found from the annexure "B" to the petition that original award was made and published on 10th February, 1997 and on the very same day the original award on stamp paper alongwith the entire records of the arbitration proceedings were forwarded to the claimant for further necessary action at their end. But the petitioner, instead of taking immediate steps for filing it before the court kept the award with them till 11th November, 1997 when it actually filed before the court by them. Therefore for about 9 months the petitioner was sitting tight with an award of Arbitrator. This is, no doubt, an interference of the administration of the justice.

6. In support of the contention of the respondent a decision being 1995 AIHC 2100 (Kerala High Court) (Full Bench) (Government of Kerala and Another v. V.J. Chacko) was cited. By citing paragraph 9 of the judgment, Mr. Debol Banerjee, learned counsel for the respondent submitted that though there is no period of limitation so far as the arbitrator in filing the award before the court, but in a case where the arbitrator at the instance of the party filed the award before the court it has to be construed as an application by the party concerned and if that be so, Article 119 (a) of the Limitation Act squarely apply.

7. I think that there may be distinction in between filing of the award by the Arbitrator suo moto and filing of the award by the Arbitrator at the instance of the party. Such distinction is not discriminatory. An Arbitrator being creature of the order of the court or agreement between the parties may face certain problem in respect of costs, charges and expenses. Above all there is every chance of criticism of their conduct but a party who is holding an award of an Arbitrator did no mistake in filing to same but rely upon a party cannot be allowed to take advantage of the situation.

8. Mr. H. M. Dutta, learned counsel appearing for the petitioner cited various judgments i.e. Kumbha Mawji Vs. Union of India (UOI), Hazi Rahmetulla Vs. Chaudhari Vidya Bhusan, Federal Republic of Germany Vs. S. Dey and Associates and Another, But, those are according to me, have no appropriate relevance as to the position cropped up herein. Mr. Dutta also cited a passage at page 277 from the book of Bachwat, J to contradict the point agitated by the petitioner herein. Although such passage talks about the applicability of the Article 119 (a) of the Limitation Act. 1963 but the point agitated before this court is squarely hit by the judgment of the Full Bench of Kerala High Court. No doubt each and every case has its own factual basis but the case before this court has got much more stronger factual basis than the case of the Kerala High Court.

9. Now-a-days Supreme Court and various High Courts have stated giving more and more guidelines to restrict the scope and ambit of the proceedings before

the Arbitrator as well as before the court. But it is true that we are started researching more and more when we have got such valuable enactment repealed. Although belated, the new concept as taken by the Kerala Full Bench has to be adopted to create a check and balance and to restrain unscrupulous litigants who are delaying the proceedings unnecessarily to frustrate the aggrieved persons and lead to an absurdity.

10. I, therefore, reasonably construe and hold that in case of filing award by an Arbitrator at the Instance of the party to the agreement or anybody other than Arbitrator before the court of law should be guided by Article 119(a) of the Limitation Act.

In view as above, I think there is no necessity of hearing the application for setting aside the award in merit which is consequential to such belated filing of the award and, therefore, dismissed with costs.

All parties are to act on a signed copy minute of the operative part of the order.

11. Petition dismissed