
(2012) 10 KAR CK 0085

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20194 of 2012 (AA-DB)

Shri Sateesh Bhimarao Kamble

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
General Clauses Act, 1897 — Section 3 (35)
Limitation Act, 1963 — Section 14, 5

Citation : (2012) 10 KAR CK 0085

Hon'ble Judges : Vikramajit Sen, C.J.;N.K. Patil, J

Bench : Division Bench

Advocate : J.S. Shetty for M/s. J.S. Shetty Associates, for the Appellant; P.R. Bentur for Sri H.R. Bentur for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, C.J.—This appeal questions the legal propriety and correctness of the decision of the Principal District Judge, Belgaum, delivered on 17.12.2007, whereby the appellant's application u/s 5 of the Limitation Act came to be dismissed and consequently the application filed by the appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (for short the A & C Act) was held not to survive for further consideration. The facts germane for the present purposes are that the sole Arbitrator had by the Award dated 20-04-2006 dismissed the claim of the Appellant for enhancement of the cost of the building and site by Rs. 24 lakhs. The appellant was dissatisfied with this decision of the Arbitrator, but ill-advisedly filed W.P. No. 7254/2006 praying for the quashing of the said award dated 20.04.2006. This petition came to be dismissed on 22nd September, 2006 holding that recourse should have been taken to Section 34 of the A & C Act. The dismissal of the writ petition was without prejudice to the right to seek remedy u/s 34 of the A&C Act, which if initiated was to be considered in accordance with law and the period expended in pursuing the writ petition was to be taken note of in those proceedings.

2. Section 34 of the A&C Act postulates the filing of an application for setting aside an arbitral award and prescribes that such action may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award; provided that the Court is empowered to entertain such an application within a further period of 30 days, but not thereafter. In other words, even if sufficient cause is shown with regard to the cause of the delay in approaching the Court u/s 34 of the A&C Act, the Court is powerless to condone it after three months and 30 days have elapsed since the service of the arbitral award on the party desirous of opposing it. It must immediately be underscored that Section 5 of the Limitation Act also contains a power to admit an application/appeal after the prescribed period, if the appellant satisfies the Court that he had sufficient cause for not preferring the application within the said period, but in contradistinction to Section 34 of the A&C Act, prescribes no outer limit for the delayed filing of the application.

3. It cannot be controverted that since the arbitral award was pronounced on 20-04-2006, the appellant had a statutory right to file objections on or before 19th July, 2006. Thereafter, the appellant could have sought condonation of delay, if sufficient cause had been disclosed, for a period of 30 days i.e. only till 18th August, 2006. However, the application/objections to the arbitral award came to be filed on 30.11.2006 along with an application u/s 5 of the Limitation Act. If the writ petition had not been filed, this filing would unquestionably and necessarily have to be dismissed as being barred by time.

4. It has been held on a number of occasions that the provisions of law cited in an application or in any other substantive legal proceedings cannot preclude the invocation of the correct provisions of law that may be attracted having regard to the cause of action and prayers made in the lis. In fact, it is incumbent on the Court to apply the correct law regardless of the misconception of law or wrong advice. Section 14, it stands conceded, assumes relevance in view of the filing of the writ petition mentioned above on 02.06.2006, and for the period during which it was being prosecuted with due diligence and in good faith. Since it came to be dismissed on 22.09.2006, this period would have to be excluded, which means that for the purposes of computing limitation this time capsule would have to be discounted and gained. In other words, the clock stops on 02.06.2006 and recommences running on 22.09.2006; viz., for a period of 112 days. Akin to the period which is spent in obtaining a certified copy of an order, the period be added to the time allowed for taking, action i.e. three months. In the present case, it is 91 days (since April has 30 days and May has 31 days) as per the definition of the word "month" contained in Section 3(35) of the General Clauses Act, 1897. By our computation, the appellant has a statutory right to file an application/objection against the said arbitral award within 203 days of its service i.e., on or before 09-11-2006.

5. It could be possibly be contended, but in our opinion erroneously, that the method of computation should be to commence calculation from 20.04.2006 and

then, if the writ petition remained pending till after the expiry of three months, to insist that the filing must be done on the very next day; and this is not what has transpired to permit a further period of 30 days, there from provided it was shown that the applicant was prevented by sufficient cause from making the application. By this calculation, the application would have to be filed by 23.09.2006 and may still could have been entertained upto 20th October, 2006 provided sufficient cause was shown. However, this would not be the correct way of computing the limitation.

6. A claim has been made for adding a period of 06 days, which was exhausted in obtaining a certified copy of the dismissal order in W.P. No. 7254/2006. This we think is not permissible since the application is against the order dated 20.04.2006 and not 22.09.2006 when the writ petition was dismissed. Alternatively, viewed keeping in perspective the fact that the appellant had already initiated legal proceedings, which were not relevant, any further delay could not be possibly seen as sufficient cause.

7. The law of arbitration as was prevailing prior to the coming into force of the A&C Act, 1996 allowed considerable and inordinate delay in the execution of arbitral awards. This delay was eradicated to be eradicated firstly by clearly restricting the grounds on which an arbitral award could be assailed, and secondly by circumscribing the period for which discretion could be employed by the Court for the purposes of condoning the delay, namely three months and thirty days only. The use of the words "but not thereafter" appearing at the end of Section 34(3) removes any possible doubt on this aspect of the law.

8. While we do not uphold the reasoning and appreciation of the law contained in the impugned order especially since the availability of Section 14 of the Limitation Act even in the context of Section 34 of the A&C Act, 1996 has been positively laid to rest by the decisions of the Apex Court including of the Two Judge Bench in Gulbarga University Vs. Mallikarjun S. Kodagali and Another, and Union of India Vs. M/s Popular Construction Co., and State of Goa Vs. Western Builders, , we are also of the conclusion that the application/objection u/s 34 of the A&C Act filed by the appellant was beyond jural consideration having become time barred. In Executive Engineer Vs. Union of India 2010 (120) DRJ 615 : 2010 (X) AD (Del.) 180 one of us (Chief Justice) had the occasion to consider this conundrum in considerable detail. In the Division Bench Judgment dated 12.11.2010 of the Delhi High Court (FAO (OS) Nos. 49, 132, 444, 665/2009) referred to supra, the same conclusion was arrived at and the challenge thereto was rejected in terms of the dismissal, on 09.01.2012 of SLP [Civil] No. 6474/2011.

9. So far as the application for condonation of delay is concerned, the reasons given by the appellant read thus:

There is no any purposeful act on the part of the appellant/applicant but, due to the circumstances such as filing of the Writ Petition and to file this appeal/

application before this Hon''ble Court as per the directions of the Hon''ble High Court of Karnataka, Bangalore in Writ Petition No. 7254/2006(LA) dated 22.09.2006 and certified copies of the said WP of Hon''ble High Court of Karnataka have been obtained on 16.10.2006.

So, in the interest of justice and on the facts and circumstances and also for advancement of substantive justice, it is a fit case to be taken to consideration, to condone the delay, if any and to allow the Appellant/Applicant to proceed with the case on merit.

These are woefully reticent and bereft of essential detail, and even assuming that the application sought for the condonation of delay falling within thirty days of the expiry of three months of service of the arbitral award together with the period in which the appellant had pursued his writ petition, sufficient cause is wholly undisclosed.

In the circumstances, we are of the firm conviction, based on the provisions of the A&C Act as well as the Limitation Act that the Appeal should have been filed by 09.11.2006, that is on the expiry of 203 days (91 days/03 months + 112 days spent in the writ proceedings) and, in any event sufficient reasons have not been articulated for condoning the further delay. The Appeal is accordingly dismissed.