

(2006) 09 DEL CK 0152

In the Delhi High Court

Case No : C.M. (Main) No's. 2884-85 of 2006 and CM No. 16117 of 2005

S.M. Chopra and Another

APPELLANT

Vs

G.P. Ahuja

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33, 34, 34(3)
Limitation Act, 1963 — Section 5

Citation : (2006) 09 DEL CK 0152

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Kapil Kher, for the Appellant; Rajesh Gupta and Harpeet Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, J.—Admit.

2. At request of learned Counsel for the parties, the matter is taken up for final disposal.

3. The respondent filed an application u/s 34 of the Arbitration and Conciliation Act, 1996 (herein-after referred to as the said Act) objecting to an award. Along with the said application, another application was filed under 5 of the Limitation Act, 1963 for condensation of delay in filing the objection. The petitioner in whose favor the award has been made objected to the maintainability of the application u/s 5 of the Limitation Act.

4. The trial court vide the order dated 13.10.2005 has been pleased to entertain objections of the respondent on merit holding that technicalities should not come in the way of substantive justice even though the application u/s 5 of the Limitation Act may not be maintainable.

5. On perusal of the impugned order, I am of the considered view, that the trial court appears to have misdirected itself in analyzing the scope of the dispute and

the impugned order is devoid of any reasons. There is no doubt and it is not even pleaded by learned Counsel for the respondent herein that Section 5 of the Limitation Act would apply to the present case. The plea of the learned Counsel is that a copy of the award was never served upon the respondent and thus the application filed by the respondent ought to have been entertained u/s 34 of the said Act. The relevant provision in this respect would be Section 34(3) of the said Act, which reads as under:

34. Application for setting aside arbitral award -

1)...

2)...

3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

6. In fact the plea of the learned Counsel for the respondent is that in the absence of service of the copy of the award, the time period would not begin in view of the provisions of Section 34(3) of the said Act.

7. The trial court has not discussed this aspect at all. All that is stated is that respondent has ?given sufficient reasons?. This can hardly be called a reasoned order. The finding to be recorded by the trial court is as to whether the plea of the respondent that he has not been served with a copy of the award is to be accepted or not and thereafter the consequences would follow as set out in Section 34(3) of the said Act.

8. In view of the aforesaid the impugned order is set aside and the matter is remanded back to the trial court to decide the dispute afresh in view of the parameters laid down in the present judgment.

9. The petition is allowed leaving the parties to bear their own costs.

10. Parties to appear before the District Judge on 27.09.2006 for the case to be assigned to the appropriate court.

11. A copy of this order be sent to Mr. Yashwant Kumar, learned Additional District Judge who passed the order dated 13.10.2005.

CM 16117/2005

No further directions are called for on this application.

The application stands disposed