
(2015) 04 BOM CK 0227
In the Bombay High Court
Case No : Arbitration Appeal No. 10 of 2013

S.R. Thermocole (EPS) Packaging Pvt. Ltd.	APPELLANT
Vs	
Bajaj Allianz General Insurance Co. Ltd.	RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 21, 33, 33 (4), 34, 34(3)
Limitation Act, 1963 — Section 5

Citation : (2016) 1 ARBLR 30 : (2015) 5 MhLj 417

Hon'ble Judges : A.A. Sayed, J

Bench : Single Bench

Advocate : Herbert Naronha, for the Appellant; Yogita M. Deshmukh instructed by M.M. Sathaye, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.A. Sayed, J.—By this Appeal under section 37 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "1996 Act"), the Appellant has impugned the order dated 29 October 2012 passed by the District Court, Pune, whereby the Miscellaneous Application No. 248 of 2011 of the Appellant/Original Applicant for condonation of delay in filing the Petition/Application under section 34 of the Arbitration and Conciliation Act, 1996, was dismissed on the ground that it was barred by limitation.

2. It would, at the outset, be necessary to set out the relevant dates and events.

3. The aforesaid dates have not been disputed by the Respondent. Sections 33 (4), (5) (6) and 34(3) of the Arbitration and Conciliation Act, 1996 are relevant for our purposes. They read as under :

"33. Correction and interpretation of award; additional award.- (1)

(2)

(3)

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7)

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 under section 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.

(4)"

(emphasis supplied)

4. The controversy is essentially pertaining to the dates after the order was passed by this Court on 24 January 2011 returning the Petition under section 34 of the Arbitration and Conciliation Act, 1996 to be filed in the District Court, Pune. It is not in dispute that after 30 March 2010 when the Additional Award was received by the Appellant, the Petition was required to be filed within three months i.e. till 30 June 2010, and in any event within the grace period of further 30 days under the proviso to section 34(3) of the 1996 Act, which takes us to 30 July 2010, (i.e. about 120 days in the aggregate) if sufficient cause were to be made out for condoning the delay. It is also not in dispute that the Petition was initially filed in this Court within 2 months and 25 days i.e. 85 days.

5. By the impugned order the District Court has dismissed the Application for condonation of delay on the ground that the Petition before the District Court should have been filed either on 18, 19 or 21 February 2011 by showing vigilance. The District Court concluded that from the date of return of the Petition on 17 February 2011 to the date of filing in District Court on 9 March 2011, there

was a delay of 19 days and the delay could not be condoned by invoking section 5 of the Limitation Act in view of section 34(3) of the 1996 Act.

6. In *Ram Ujarey Vs. Union of India*, AIR 1999 SC 309 : (1999) 81 FLR 10 : (1998) 7 JT 603 : (1999) 1 LLJ 804 : (1998) 6 SCALE 133 : (1999) 1 SCC 685 : (1999) SCC(L&S) 374 : (1998) 2 SCR 684 Supp : (1999) 2 SLJ 43 : (1998) AIRSCW 3709 : (1998) 8 Supreme 405 , the Supreme Court was concerned with a somewhat similar issue in respect of return of Plaint and limitation. In para 21 of the said judgment the Supreme Court has held as under:

"(21) The period of limitation within which claim petitions can be filed before the Tribunal is indicated in Section 21 of the Act. The contingencies contemplated by Section 21 are not applicable to the present case. The suit, admittedly, was filed within time. It is another matter that it was filed in a court which had no jurisdiction and, therefore, the Tribunal, while allowing the appeal filed against the decree passed by the trial court, directed the plaint to be returned to the appellant for presentation before the appropriate bench of the Tribunal. Some delay had occurred in the refiling of the plaint before the Tribunal and as pointed out by the Tribunal itself, the delay was only of one-and-a-half months, although at one place the Tribunal observed that there was a delay of about eight months. The period of eight months has been calculated by the Tribunal from the date on which an order was passed at Allahabad for the return of the plaint. The limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the appellant, if the appellant was not at fault. Two dates have been mentioned on which the plaint was returned; in the application for condonation of delay, the date mentioned is 20.08.1988, but in the affidavit filed in support of that application, the date of receipt of the plaint is mentioned as 20.10.1988. Since the OA was filed before the Tribunal on 12.12.1988, there was a delay of either three- and-a-half months or one-and-a-half months, but not a delay of eight months as observed by the Tribunal. The Tribunal had itself observed in an earlier part of its judgment that there was a delay of one-and-half month only."

(emphasis supplied)

7. Thus the principle of law in aforesaid judgment of the Supreme Court is that limitation would not run from the date of the order (returning the Petition) but would run from the date on which the Petition was returned and was made available to the Appellant, if the Appellant was not at fault. In the present case, admittedly, after the order was passed by this Court for return of the Petition on 24 January 2011, the Application was filed on behalf of the Appellant in the Registry for return of the Petition on 29 January 2011. The Petition was ultimately returned on 17 February 2011. The period of 20 days i.e. between 29 January 2011 and 17 February 2011 would have to be excluded in computing the period of limitation considering the law laid down by the Supreme Court in *Ram Ujarey*'s case (supra). No fault is attributed to the Petitioner by the Respondents in respect of the aforesaid period of 20 days when the Petitioner's Application

was pending in the Registry of this Court. As extracted in the table hereinabove, from 30 March 2010 when the copy of the Additional Award was received by the Appellant to the date of the filing of the Petition on 24 June 2010, a period of 85 days had elapsed. The Appellant had a period of 5 days in hand and a grace period of further 30 days (total 35 days) within which period the Appeal could have been entertained, if sufficient cause was made out and delay were to be condoned under the proviso to Section 34(3) of the 1996 Act. After the order of this Court returning the Petition was passed on 24 January 2011, the Appellant filed the Application in the Registry for return of the Petition after 5 days i.e. on 29 January 2011. This period of 5 days would have to be deducted from the aforesaid period of 35 days, which makes it 30 days. After return of the Petition on 17 February 2011 the Appellant has filed the Petition before the District Court on 9 March 2011 i.e. within 20 days, leaving a balance of 10 days. Thus, the Petition was filed "within" the period of 3 months and 30 days (grace period) i.e. about 120 days (in the aggregate) as envisaged under section 34(3) of the 1996 Act and proviso thereto.

8. In the Application for condonation of delay, the Appellant has furnished reasons for the delay. The Appellant has stated that Mr. Ramdas Mansingh Mane and Mrs. Shoba Ramdas Mane are the Directors of the Appellant and on 14 February 2011 the marriage of their daughter Ms. Rupali was solemnized in Chinchwad, Pune and they were busy with the religious and other functions and also went to their native place and they were busy in the formalities/arrangements for sending their daughter to U.S.A. as her husband is from U.S.A. and she was required to leave with him to U.S.A. I find that sufficient cause was made out by the Petitioners for the District Court to have condoned the delay.

9. Considering the facts and circumstances of the case, in my view, the District Court fell in error in rejecting the Application for condonation of delay of the Appellant. It is required to be noted that initially, the Petition was filed in this Court within 85 days of the receipt of the Additional Award by the Appellant. The District Court has proceeded on the basis that the Petitioner ought to have been filed within three days after the Petition was returned by the Registry of this Court without even going into calculations of limitation period and/or time to be excluded therefrom and without considering the explanation for the delay.

10. For the reasons mentioned above, the impugned order is set aside. The Appeal is allowed with no order as to costs. The Petition/Application of the Appellant under section 34 of the 1996 Act is restored to file and shall be numbered and decided in accordance with law.