

(2007) 07 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1499 of 2006

Sri Kempegowda

APPELLANT

Vs

The National Highway Authority

RESPONDENT

Date of Decision : 17-07-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31 (5), 34 (3)

Citation : (2008) 2 ARBLR 393 : (2007) ILR (Kar) 3700 : (2008) 1 KarLJ 628 : (2007) 4 KCCR 369 SN

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : G.S. Bhat and Associates, for the Appellant; Shilpashah, for Singhania and Partners and V. Bychappa, HCGP for R. 3, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna, J.—Though these appeals are listed for admission, the contesting respondents are served and represented by their learned Counsel. Further the only question which requires to be considered is as to whether the arbitration suit filed before the trial Court was barred by time or not and if it is not so, the entire proceedings is to be redone by the Court below, and as such admitting the appeal arising out of the preliminary point and keeping it pending is not desirable. Considering these aspects of the matter, these appeals are taken up for final disposal with the consent of the learned Counsel and disposed of by this order.

2. The Court below had clubbed all the suits, viz., A.S. Nos. 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 and 74/2004 from which the present appeals arise and a common order has been passed. Accordingly, all these appeals are against the common order. As such all these appeals are clubbed together and disposed of by this common order.

3. The different extents of land belonging to the appellants were acquired for the

benefit of the first respondent/National Highway Authority. The relevant notification thereto and the further proceedings up to culminating in the passing of award are not in dispute and as such I do not find it necessary to advert to the said details. The only issue which arises for consideration is that subsequent to the award passed by the Arbitrator determining the compensation amount and considering that it was an award passed by an Arbitrator as contemplated under the provisions of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the Act") whether the appellants in the present cases have preferred the arbitration suits assailing the award passed by the arbitrator within the period of limitation prescribed under the Act. The fact that the award in question was passed on 21.2.2003 is not in dispute. The appellants however had only been notified of the passing of the award and compensation awarded thereunder had been paid to them on 27.10.2003 and no copy of the award was despatched to the appellants is also not in dispute. The question is subsequent to such award and keeping in view the point of time when a copy of the award was received by the appellants herein, whether the arbitration suit could have been maintained since Section 34(3) of the Act mandates that any challenge to the award should be made within a period of three months and a further period of 30 days thereafter, and in any event not beyond the period of 120 days. Though decisions of Hon"ble Supreme Court and other Courts have been relied upon on this aspect of the matter, I do not find it necessary to refer to the same since it is not in dispute nor is it argued by the appellants that the appeal can be preferred beyond the period of 120 days.

4. Keeping this in view, the conclusion that would have to be reached is as to whether in the present facts and circumstances of the case, the suits were preferred within the maximum limitation period of 120 days from the date of receipt of a copy of the award.

5. As already noticed above, the compensation was no doubt received by the appellants on 27.10.2003. Thereafter the claimants have applied for issue of a certified copy of the award on 22.11.2003 in few cases and 24.11.2003 in the other cases. The office of the arbitrator has prepared the copy and kept it ready on 2.12.2003. Thereafter the appellants have received the copy on 8.12.2003. Keeping these dates in view, the provision of law would have to be considered to find out as to whether in the facts of this case, the limitation would start from 27.10.2003 when they received the compensation; 22/24.11.2003 when they applied for the copy of the award; 2.12.2003 when the copy was kept ready for delivery or whether it is 8.12.2003 when the copy was in fact received for the first time by the appellants. Before I advert to this aspect of the matter, the provisions contained in Section 31(5) of the Act would have to be noticed. It reads as hereunder:

31. FORM AND CONTENTS OF ARBITRAL AWARD

1. XXX XXX XX

2. xxx xxx xx

3. xxx xxx xx

4. xxx xxx xx

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(emphasis supplied)

5. Having noticed the said provision, it is necessary to notice Section 34(3) of the Act, which reads as hereunder

34. APPLICATION FOR SETTING ASIDE ARBITRAL AWARD

1. XXX XXX XXX

2. xxx xxx xxx

(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 application 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.

(emphasis supplied)

While on this aspect, one other provision which requires to be noticed is Section 3 of the Act which reads as hereunder:

3. RECEIPT OF WRITTEN COMMUNICATIONS

(1) Unless or otherwise agreed by the parties,-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address.

(b) xxx xxx xxx

(2) The communication is deemed to have been received on the day it is so delivered.

7. The reading of the said provisions would indicate that Sub-section (5) of Section 31 of the Act mandates that after the award has been passed by the arbitrator, the arbitrator shall deliver the signed copy of the award to each of the parties. In the facts of the present case, it is not in dispute that the arbitrator has not despatched or delivered a copy of the award to the appellants herein

who were parties to the arbitration proceedings. Thus this is not even a case which would answer the position of deemed service as contemplated u/s 3 of the Act since it is not even a case where a copy of the award is despatched to the address as contemplated since in a given case if the award is sent and it is delivered in terms of Section 3 such date would be relevant. These aspects of the matter assume importance since only if such copy had been delivered or despatched by the arbitrator to the appellants herein, the limitation period from the date or receipt of a copy of the award as contemplated u/s 34(3) would have to be read. As noticed by me above, the provision in Section 34(3) contains that the challenge is to be made within, the maximum period of 120 days from the date of receipt of the award.

(emphasis supplied)

8. In the present case, as already noticed, the compensation being paid pursuant to the award on 27.10.2003 is not in dispute but the same cannot constitute the date of receipt of the award. The fact that the application was made for issue of certified copy of the award on 22/24.11.2003 is also not in dispute. Further as noticed and taken as the last date by the learned Judge of the Court below i.e., the date on which the copy was ready on 2.12.2003. Keeping in view the provision of Section 31(5) of the Act what would have to be considered is as to whether mere knowledge of the award, making the application for copy of the award or copy of the award being kept ready in the office of the arbitrator would form the starting point of limitation since the relevant provision contains the phrase "receipt of the copy of the award". No doubt in such situation, a straight jacket formula cannot be applied and the date would have to be carefully reckoned in the particular facts involved in the case and even Section 3 would have to be kept in view. If the conduct of the party indicates that one has slept over the matter for a long period without making an attempt to secure the copy after gaining knowledge, even this cannot come to his rescue. But in the present case, the very conduct of the respondents in not despatching a copy of the award also will have to be kept in mind while considering this aspect of the matter. Even though the award was passed on 21.2.2003 and despite Sub-section (5) of Section 31 of the Act mandating that the arbitrator shall furnish a copy of the award to the parties to the dispute, the compensation was disbursed on 27.10.2003 without even the arbitrator furnishing a copy of the award to the appellants. It is only on the compensation amount being disbursed and the claimants no doubt receiving the same, finding the same to be on the lower side have filed an application for copy of the award, obviously to know the basis. They have applied for the same within a reasonable time of about three weeks. Thereafter no doubt the copy has been kept ready on 2.12.2003. Though the copy has been kept ready, this once again does not answer the mandate of Sub-section (5) to Section 31 since the office of the arbitrator has not taken steps to deliver or even despatch the same to the claimants and it is only when the claimants themselves approached the office of the arbitrator, it was delivered to them on 8.12.2003. While noticing these aspects, one cannot be oblivious to the

fact that the appellants are small agriculturists and rustic villagers who have lost their lands for a public purpose and are only seeking for a just compensation. That being so, in my view, the arbitral award has been received by the appellants for the first time on 8.12.2003 and that would be the relevant date for the purpose of computing limitation.

9. On this aspect of the matter, the learned Counsel for the respondent placing reliance on the decisions of the Hon''ble Supreme Court in the cases of Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, , Nafees Begum and Ors. v. Hikmatullah Mohd Safi and Ors. AIR 1984 Bombay 62 and in the case of The State of West Bengal Vs. L.M. Das, sought to contend that what is essential is to find out whether the claimants or parties to the dispute had notice of passing of the award by the arbitrator. Relying on the said decisions, the learned Counsel would contend that in the present case, even though a copy of the arbitral award was not delivered, they had notice of the award on 1.10.2003. Thereafter the claimants received the compensation on 27.10.2003 and even on that date they had the knowledge of the award when they received the compensation. In any event they had made an application on 22/24.11.2003 having knowledge of the award and at least that date if considered, the suite would be beyond the time prescribed. I have carefully perused the judgments cited by the learned Counsel. The said decisions are rendered while considering the provision in Section 14 of the Arbitration Act, 1940. A perusal of Section 14 of the Arbitration Act, 1940, would indicate that after passing of the award what was required under the said provision was for the arbitrator or the umpire to sign it and thereafter give notice in writing to the parties and file the award in Court Since the provision provided only notice to be sent, the Hon''ble Court in the said decisions have taken the said view. In contradistinction to Section 14 of the Old Act, there is a marked difference in Sub-section (5) of Section 31. As already noticed by me, it mandates that the arbitral award which is made shall be signed and copy of the same shall be delivered to each of the parties and under the scheme of the present Act the award itself is enforceable as a decree in terms of Section 36 of the Act Of course, in a given case Section 3 of the Act also would have to be kept in view. Therefore, I am of the view that the said decisions would not aid the contentions put forth by the learned Counsel for the respondent.

10. That being so, in the present case, the certified copy of the arbitral award issued to the appellants would indicate that the same was issued on 8.12.2003. As such the date of the receipt of a copy of the award by the appellants would have to be reckoned only as on 8.12.2003, though they had notice of the award earlier. Since the right of challenging the award is taken away after the period mentioned in Sub-section (3) to Section 34 by taking a definite period of limitation by specifically stating that the limitation is to be considered from the date of receipt of a copy of the award and when such strict interpretation is given to law of limitation, the words regarding receipt of the award in such a provision would also have to be strictly construed so as to find out the actual date on

which the award copy was received by the person filing the suit by keeping in view Section 3, Section 31(5) and Section 34(3) of the Act.

11. In the instant case, the award was received on 8.12.2003 and the suits were filed on 5.4.2004. Even though the same was filed after the initial period of three months, it has been presented within the next 27 days thereafter along with an application seeking condonation of delay and the reasons assigned in the affidavit are bonafide and constitute sufficient cause. The suit filed by the appellants will therefore have to be held as having been filed within the limitation provided under Sub-section (3) and the proviso to Section 34 of the Act.

12. That being so, the Court below was not justified in rejecting the suits on the ground of limitation. Hence the order dated 4.12.2005 is set aside. The arbitration suits bearing No. 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 and 74/2004 are ordered to be restored by the I Addl. Sessions Judge, at Bangalore Rural District, on file and consider the case on its merits and dispose of the same in accordance with law.

In terms of the above, the appeals are allowed with no order as to costs.