

(2019) 12 RAJ CK 0119

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2229 Of 2016

State of Rajasthan And Ors

APPELLANT

Vs

M/s M.M.C. Projects (India) Pvt. Ltd. And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Limitation Act, 1963 — Section 5, 14, 17

Arbitration and Conciliation Act, 1996 — Section 29(2), 33, 34, 34(2), 34(3)

Citation : (2019) 12 RAJ CK 0119

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Rekha Borana, Salil Trivedi, Prashant Tatia

Final Decision : Dismissed

Judgement

The instant misc. appeal, which has been preferred by the State of Rajasthan for assailing the order dated 23.01.2016 passed by the learned District Judge, Jalore in Civil Misc. Case No.45/2014, is delayed by 114 days. An application under Section 5 of the Limitation Act has been moved for condoning the delay.

Though the prayer to condone the delay is opposed by the counsel for the respondents, but, having regard to the peculiarity of facts and circumstances as available on the record and the factual situation narrated in the application, I deem it fit to condone the delay occasioned in filing the appeal. Thus, the delay in filing of the appeal is condoned and the office objection is overruled. The application under Section 5 of the Limitation Act is accepted.

Heard learned counsel for the parties on admission. Perused the material available on record.

The instant appeal has been preferred by the appellant State Government for assailing the order dated 23.01.2016 passed by the District Judge, Jalore whereby, the application preferred by the appellant State Government under Section 5 of the Limitation Act alongwith the application under Section 34 of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') for setting aside the arbitral award dated 17.07.2013 was rejected and as a consequence, the objections too were turned down as being time barred.

It is an admitted position that the arbitral award was passed on 17.07.2013. The State Government's counsel claims that initially, the competent authority took a decision not to file an appeal against the award. Thereafter, upon receiving the State Government's direction to file the appeal on 17.07.2014, the decision of no appeal was reviewed and the objections were filed in the District Court on 17.07.2014. It is an admitted position of law that the application for setting aside the arbitral award can only be filed within a period of 3 months. It is also not in dispute that the objections came to be filed in the Court concerned on 12.08.2014 and thus, were presented after more than one year of issuance of the arbitral award.

Section 34(3) of the Act of 1996 reads below:

"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.

The application for setting aside of the arbitral award 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. The proviso to Section 34(3) of the Act of 1996 empowers the Court if it is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months to further extend the period and filing of the application for setting aside of the arbitral award by 30 days but not thereafter.

Manifestly, on a plain reading of the statutory provision of Section 5 of the Limitation Act do not apply to proceedings under Section 34 of the Act of 1996. The issue at hand was considered in the case of P. Radha Bai & Ors. vs. P. Ashok Kumar & Anr, reported in AIR 2018 SC 5013 wherein, Hon'ble the Supreme Court held that once the party receives an award, the limitation period under Section 34(3) of the Act of 1996 commences and Section 17 of the Limitation Act cannot be invoked for condonation of delay in challenging the award.

The same view was reiterated in the case of Simplex Infrastructure Limited vs. Union of India, reported in (2019)2 SCC 455. In the aforesaid judgment, Hon'ble Supreme Court held as below:

"11. Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period for any appeal or application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in *Union of India v Popular Construction Company*⁷ , where it held as follows:

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result. ...

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act... "

18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

20. The respondent has relied on the decision of this Court in *Union of India v Tecco Trichy Engineers & Contractors*⁹ , where this Court had to decide the effective date from which the limitation within the meaning of subsection (3) of Section 34 of the Act shall be calculated. The Chief Project Manager on behalf of the Southern Railway had entered into a contract with a contractor for construction of a railway bridge. Disputes between the parties were referred to arbitration and an award was delivered in the office of the General Manager, Southern Railway. The Chief Engineer preferred an application against the award under Section 34 of the 1996 Act before the High Court. The learned Single Judge and the Division Bench of the High Court rejected the application holding it as barred by limitation. This Court reversed the order of the High Court and condoned the application for delay. This Court observed that in huge organisations like the Railways having different divisional heads and various

departments within the division, the copy of the award had to be received by the person who had knowledge of the proceedings and who would be the best person to understand and appreciate the award and grounds for challenge. This Court found that all arbitral proceedings for the Railways were being represented by the Chief Engineer and the General Manager had simply referred the matter for arbitration as required under the contract. While condoning the delay of three months and 27 days, this Court found that the service of the arbitral award on the General Manager could not be taken to be sufficient notice to constitute the starting point of limitation for the purpose of Section 34(3) of the 1996 Act. The decision in this case has no applicability to the facts of the present case as there is no dispute with respect to the party who received the arbitral award. It is an admitted position that on 27 October 2014, the arbitrator made an award in favour of the appellant and on 31 October 2014, the Union of India received a copy of the award. One of the reasons stated by the respondent for delay in filing an application under Section 34 of the 1996 Act was that the departmental office was located at Port Blair, Andaman and it was a timeconsuming process for obtaining permission from the circle office at Chennai. Administrative difficulties would not be a valid reason to condone a delay above and beyond the statutory prescribed period under Section 34 of the 1996 Act."

In the present case, there is no dispute of the fact that the appellant had received the award because even in the application under Section 5 of the Limitation Act, it is mentioned that the State Government took a decision on 05.12.2013 not to challenge the award by filing an appeal.

In view of the above discussion, I am of the firm opinion that the application under Section 34(3) of the Act of 1996 filed by the State Government for setting aside of the arbitral award was beyond the mandatory imitation period provided under Section 34 of the Act and hence, the same could not have been entertained by taking recourse of the provisions of the Limitation Act.

As a consequence, there is no escape from the conclusion that the impugned order dated 23.01.2016 passed by the learned District Judge, Jalore does not suffer from any error or illegality whatsoever warranting interference therein.

Consequently, I find no merit in this appeal which is hereby rejected.