

(2012) 12 GAU CK 0039
In the Gauhati High Court
Case No : Arbitration A. No. 02 of 2012

State of Tripura and Others	Vs	APPELLANT
Himangshu Bikash Saha		RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33, 34, 37, 37(1)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A, Order 7 Rule 10A

Citation : (2013) 2 GLT 757

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : N. Majumder, for the Appellant; S.M. Chakraborty and Mr. S. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Swapan Chandra Das, J.—By this appeal, filed u/s 37 of the Arbitration and Conciliation Act, 1996 (for short, the "Act"), the appellants herein, challenged order, dated 10.06.2010, passed by learned District Judge, South Tripura, Udaipur, in TS(ARB) No. 03 of 2009, on an application filed before that Court, u/s 34 of the Act. Heard learned counsel, Mr. Nepal Majumder for the appellant and learned senior counsel, Mr. S.M. Chakraborty, assisted by learned counsel, Mr. Suman Bhattacharjee for the respondent.

2. Facts noticed, may be summarized thus:

2.1 Pursuant to a Notice Inviting Tender for construction of certain Type-II Quarters for Tripura State Rifles, 5th Battalion Headquarters, Daluma, the respondent participated in the tender process and, ultimately, got work order being the lowest tenderer, and an agreement was signed between the respondent and the appellant--Executive Engineer which, inter alia, included an arbitration clause, in case of any dispute between the parties, arising out of execution of the work. Since certain disputes arose between the parties to the agreement, it was

referred to sole arbitrator and the sole arbitrator, in due course, made an arbitral award on 30.04.2008 in connection with Arbitration Reference No. Arb.P.20 of 2006.

2.2 Being dissatisfied with the award made by the arbitrator, the appellants filed an application u/s 34 of the act before the District Judge, West Tripura, which was registered as Misc. (ARB) No. 11 of 2008, and that petition was filed after the statutory period of limitation of three months but within the extended period of thirty days with a separate petition for condonation of delay of twenty nine days and the delay was condoned by the learned District Judge and, thereafter, on hearing both side, learned District Judge, by order, dated, 05.11.2009, held that the District Judge, West Tripura has no jurisdiction to decide the petition u/s 34 of the Act and directed return of the petition for filing the same in the appropriate Court following the provision of Order VII Rule 10 of CPC.

2.3 Learned counsel for the appellant-petitioners received the petition, so filed, u/s 34 of the Act, on return, from the Court of District Judge, West Tripura, on 10.11.2009 and, thereafter, the appellant-petitioners filed the same application before the District Judge, South Tripura, Udaipur, on 04.12.2009. Accordingly, it was registered as TS (ARB) No. 03 of 2009 in the Court of District Judge and, by the impugned order, dated, 10.06.2010, learned District Judge, South Tripura, dismissed the petition holding that it was time barred. Challenging the order aforementioned, the appellant- petitioners preferred a writ petition being WP(C) No. 169 of 2011 before this Court but that was dismissed. Thereafter, a writ appeal, being WA No. 44 of 2011, was also filed but by order, dated, 09.12.2012 that was also dismissed. The appellant- petitioners, now, preferred the present appeal u/s 37(1) of the Act challenging the order, dated 10.06.2010, passed by learned District Judge, South Tripura, Udaipur.

3. Learned counsel, Mr. Majumder, appearing for the appellant-petitioners, submits that the petition was returned by the District Judge, West Tripura, on 10.11.2009 and the same petition was filed before the Court of District Judge, South Tripura, on 04.12.2009 i.e. within a month of return of the petition and, so, there was no negligence on the part of appellant-petitioners in presenting the petition before the appropriate court of jurisdiction and, hence, the decision of the District Judge, South Tripura, in TS (ARB) No. 03 of 2009 was absolutely wrong and cannot stand in the eye of law and, hence, the appeal u/s 34 of the Act is filed, which should be admitted for hearing on merit.

4. Learned senior counsel, Mr. Chakraborty, refuting the submission of learned counsel, Mr. Majumder, has submitted that the Act prescribes special law of limitation and, ordinarily, a petition u/s 34 of the Act can be filed within three months and, thereafter, a grace period of thirty days prescribes under the proviso to sub-section (3) of Section 34, during which such application may be entertained by the Court, and if sufficient cause is shown to the satisfaction of the Court. After that grace period of thirty days, no petition can be entertained. Subsection (3) of Section 34 of the Act reads thus:

(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.

5. Admittedly, the petition u/s 34 of the Act was first filed before the Court of District Judge, West Tripura, on 10.9.2008 with a separate application seeking condonation of delay of twenty nine days. It means, the application was filed after three months twenty nine days from the date the award was received by the appellant-petitioners.

5.1 Learned District Judge, West Tripura, Agartala, returned the petition by order, dated 05.11.2009, specifically observing that the said Court has no jurisdiction to decide the matter and directed return of the petition for filing before appropriate Court following the provision of Order VII Rule 10 of CPC.

5.2 It is an undisputed fact that the application was taken back on return by the learned counsel for the petitioners on 10.11.2009 and that was filed before the District Judge, South Tripura, Udaipur, on 04.12.2009.

5.3 While taking back the petition on return by the learned counsel, no endorsement was obtained by the petitioners from the Court, returning the plaint/petition with a fixed date for filing the same before the Court of competent jurisdiction. Relevant part of Rule 10 and 10(A) of Order VII of CPC reads thus:

10. Return of plaint.--

(1) [subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

.....

(2) Procedure on returning plaint.--On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

[10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.--

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court--

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),--

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.].

6. Indisputably, in the present case, no application was filed before the District Judge, West Tripura, by the petitioners under Rule 10A of Order VII of CPC and no endorsement was obtained for filing the same before the District Judge, South Tripura, on a particular date. It is evident that after taking the petition on return the appellant-petitioners were sitting over the same and submitted the petition/ plaint before the District Judge, South Tripura on 04.12.2009. The period from 05.11.2009 to 04.12.2009 is beyond the prescribed period of limitation for filing a petition u/s 34 of the Act and, therefore, the learned District Judge, South Tripura, as it appears, rightly dismissed the petition as time barred.

7. Learned counsel, Mr. Majumder has submitted that the appellant-petitioners have a good case to place before the appellate forum, and if it is not admitted and dismissed at the admission stage itself, the appellant-petitioners will suffer irreparable loss and justice would be denied to them. He has also submitted that technicality should be ignored for rendering proper and effective justice. In support of his contention, learned counsel refereed the cases of K. Rudrappa Vs. Shivappa, and Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, .

8. On the other hand, learned senior counsel, Mr. Chakraborty, has submitted that the arbitral award was made on 30.04.2008 over a dispute on an agreement of the year 2003-04. The Arbitration and Conciliation Act is a self-contained law for providing immediate relief to the parties and where special law on limitation is prescribed under the Act and the appellant-petitioners are guilty of not following the law of limitation, the Court below rightly passed the order dismissing the petition as time barred. While a matter is barred by limitation, the Court has got no jurisdiction to entertain it and there is no question of accepting a time barred matter for further adjudication.

9. Limitation is a bar, prescribed by law after which no suit or proceeding should be entertained by a Court of Law, unless, otherwise, prescribed by such law for condonation of delay. Here, as per the provision prescribed in sub-section(3) of Section 34 of the Act, the limitation is three months for filing the petition u/s 34 of the Act and the Courts have been authorized by law to condone the delay to the extent of further thirty days, if sufficient cause is shown. After elapse of said thirty days, the Court has got no jurisdiction to further condone the delay. Admittedly, in the present case, the petition was filed in the Court of District Judge, West Tripura after twenty nine days of grace period and one day remained, for which the petitioners would apply for condonation of delay. It is evident that after the return of the plaint by the District Judge, West Tripura, the appellant-petitioners filed it before the District Judge, South Tripura, after a month and that can in no way be condoned by law of limitation prescribed under the Act.

10. The Supreme Court in the case of Rudrappa (supra) has held that technical objections should not stand in the way of doing justice. The factual matrix of that case is completely different to that of the present case. In that reported case, the petitioners were not aware of the pendency of the appeal in the name of their father and when they came to know, they filed the petition for setting aside the abatement after condoning the delay. But in the present case, the appellant-petitioners were in the process of agitating the petition u/s 34 of the Act and they filed the petition initially after the expiry of limitation before the District Judge, West Tripura. Even, thereafter, when the plaint was returned, they did not file it immediately thereafter and did not follow the procedure prescribed under Order VII Rule 10 and 10A of CPC and filed the petition after a month of return and, so, the ratio of that decision cannot be applied in the factual situation of this case.

11. The decision in the case of Madras Port Trust (supra) also cannot be applied in the fact of the present case and the appellants, as I find, failed to make out any case, prima facie, for admission of the appeal.

12. Limitation means a legally specified period beyond which an action might be defeated or a property right might cease to continue. Limitation once expired, certain right accrues in favour of the other party and that right cannot be taken away save and except the prescription of law. In view of the discussions made

above, the appeal deserves no merit for admission and, accordingly, stands dismissed.