
(2014) 09 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Nos. 1565, 2979 and 2980 of 2013

Swarup Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 31(5), 33, 34, 34(3)
National Highways Act, 1956 — Section 3-G(5)

Citation : (2015) 177 PLR 851 : (2015) 2 RCR(Civil) 947

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Arun Bansal, Advocates for the Appellant; Dinesh Kumar Prajapati for R.S. Modan, Advocates for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—This order shall dispose of CR Nos. 1565, 2979 and 2980 of 2013. All these revision petitions are being taken up together for adjudication as the facts as also the matter in dispute, are the same. For convenience and clarity, facts are being taken from CR No. 1565 of 2013. Arbitral Award dated 28.1.2009 passed by the Arbitrator appointed under Section 3-G(5) of the National Highways Act, 1956 had been challenged by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter mentioned as "the Act") by the applicant-objectors, who are revisionists herein. During the course of adjudication of the application under Section 34 of the Act filed by the petitioners herein, before the lower court, an application was moved by the respondent-Union of India seeking framing of a preliminary issue to the effect as to whether the delay in filing the application under Section 34 of the Act can be condoned? It was claimed that application under Section 34 of the Act preferred by the petitioners herein against the Award was not maintainable being time barred.

2. Accepting the application of the respondent-Union of India herein, a preliminary issue regarding maintainability of the application under Section 34 of

the Act for condonation of delay, was framed. Sequelly, the application under Section 34 of the Act filed by the petitioners herein was dismissed as time barred vide order dated 3.1.2012.

3. It is this order which is under challenge in these revision petitions on the ground that the lower court overlooked the provisions of Section 31(5) and Section 34(3) of the Act. It is claimed that without affording opportunity to the parties to address arguments on the preliminary issue of maintainability of application under Section 34 of the Act, the same was dismissed vide the same order vide which the application of the Union of India for framing preliminary issue was accepted.

4. Per contra, stand of the respondents is that when there is no provision for condonation of delay in filing the application under Section 34 of the Act, the trial court in passing the impugned order, made neither factual nor legal mistake and thus, the impugned orders should be upheld.

5. Hearing has been provided.

6. Award is dated 28.1.2009. Application under Section 34 of the Act was filed on 29.5.2009. Along with the main application, an application for condonation of delay in terms of Section 34(3) of the Act had also been preferred. At this stage, quick reference to Section 34(3) of the Act is being made hereunder:-

"34(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."

7. The lower court though took cognizance of this prevision, but held that by virtue of Section 34(3) of the Act, recourse against an arbitral Award to a competent court cannot be made beyond the period prescribed for the purpose. It was held that if time to challenge the Award under Section 34 of the Act has expired, the Award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it was a decree of the court. The lower court thus concluded that after expiry of the time provided under Section 34 of the Act to challenge the Award, such Award becomes a legally enforceable decree without any further act of the court.

8. The Counsel for the petitioner referring to a judgment rendered by the Hon'ble Supreme Court of India on 28.2.2011 in Civil Appeal No. 2152 of 2011 (arising out of SLP (Civil) No. 14308 of 2010), has urged that Section 31(5) of the Act provides for delivery of copy of the Award which is to be duly signed by the members of the Arbitral Tribunal. Counsel for the petitioner has urged that

since signed copy of the Award in terms of Section 31(5) had not been delivered to them, it was an aspect which was to be looked into by the lower court. Counsel for the petitioner has urged that the starting point of limitation should always be taken as the date of knowledge of the Award and not the date of the Award. It is claimed that if the date of knowledge is taken into consideration, in fact, there is no delay and the lower court was required to entertain the petition.

9. Though neither the application under Section 34 of the Act nor the one for condonation of delay allegedly appended therewith before the lower court, has been made part of this paper book, claim of the petitioners is that if taken from the date of knowledge of the Award, there is no delay. It is urged that there is no compliance of sub-section (5) of Section 31 of the Act and thus the application under Section 34 of the Act is within limitation.

10. It thus transpires that this contention of the petitioners had raised an issue which needed evidence, without which matter of delay could not have been adjudicated by the lower court. Without following such course, the court had just refused to entertain the petition holding that it was barred by limitation.

11. The trial court had committed yet another mistake. Allowing the application of the respondent-Union of India for treating the issue of maintainability as preliminary one, no opportunity was given to the parties to address arguments thereon. Counsel for the parties were not heard on this aspect and the application under Section 34 of the Act was dismissed by the same order vide which the issue of maintainability was treated as preliminary.

12. Counsel for the petitioners has relied upon order dated 16.9.2013 passed by a Coordinate Bench of this Court in CR No. 4828 of 2012 (Tez Kaur v. Union of India and others,) wherein in similar circumstances this Court had set aside the impugned order and the matter had been remitted to the court below for adjudication in accordance with law.

13. Sequelly, since the impugned orders do not stand legal scrutiny, the same are set aside and the matter is remanded to the trial court which would decide the matter afresh in accordance with law.

14. In the above terms, the revision petitions are allowed. Parties are directed to appear before the lower court on 10.10.2014.