

(2006) 04 AHC CK 0173

In the Allahabad High Court

Case No : First Appeal from Order No. 1362 of 2001

The National Projects Construction Corporation Ltd. (Now known as Rastriya Pariyojana Nirman Nigam Ltd.)

APPELLANT

Vs

B.B. Verma, Civil Engineers and Contractors and Shri K.N. Taneja, Sole Arbitrator

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 17, 17, 30
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 2
Limitation Act, 1963 — Article 119, 14, 5

Citation : (2006) 3 AWC 2175

Hon'ble Judges : Yatindra Singh, J; R.K. Rastogi, J

Bench : Division Bench

Advocate : G.N. Verma and Madhu Tandon, for the Appellant; M.C. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Rastogi, J.—This is an appeal against the judgment and decree dated 31.5.2001 passed by Sri Kaushlendra Yadav, then learned Civil Judge (Senior Division), Sonbhadra in Civil Misc. Case No. 87 of 1999 B.B. Verma v. National Projects Construction Corporation Ltd. and Anr.

2. The facts giving rise to this appeal are that the plaintiff respondent No. 1 had entered into a contract with the defendant appellant for construction of Roads, Bridges and Nuliah Crossings for Rihand Super Thermal Power Station, Stage I, Rihand, STPP Unit. This agreement contained an arbitration clause. Since some disputes arose between the parties, the plaintiff invoked this arbitration clause. Then the Chairman and Managing Director of the defendant-appellant appointed the defendant- respondent No. 2 as the sole Arbitrator vide his letter dated 29.8.1986. The Arbitrator conducted the proceedings and gave his award on 29.6.1993. He also forwarded a copy of that award to the plaintiff-respondent No. 1 which was received by him on 10.7.1993. Then the plaintiff relying upon

the statement of the parties made before the arbitrator on 28.5.1993 regarding jurisdiction of Delhi courts moved an application on 16.7.1993 before the Delhi High Court for making that award the rule of the court. This application was registered as original suit No. 1736 of 1993. The defendant-appellant filed his objections against that award under Sections 30 and 33 of the Arbitration Act, 1940, which was registered as I.A. No. 10040 of 1993. The Single Judge of the Court held by his order dated 18.7.1996 that the courts at Delhi had no jurisdiction to entertain the petition. Aggrieved with that order, the plaintiff filed FAO (O.S.) No. 308 of 1996. That appeal was dismissed by a Division Bench of that Court on 6.7.1999 and the judgment of the Single Judge was affirmed providing that the petition should be returned to the plaintiff for presenting it before the proper court. The petition was ultimately returned back to the plaintiffs counsel on 24.8.1999. Then he moved this application for making the award rule of the court in the court of the Civil Judge (Senior Division) Sonbhadra on 4.9.1999. He also moved an application under Sections 5 and 14 of the Limitation Act for condonation of delay in filing the application. It was stated in that application that the time which was spent in pursuing the application before the Delhi High Court should be excluded in counting the limitation and the application should be treated to be within time.

3. This application was registered as Misc. Case No. 87 of 1999 in the court of the Civil Judge (Senior Division). He issued notice of this application to the defendant appellant as well as to the Arbitrator, who had been impleaded as defendant No. 2. The defendant-appellant put in appearance in the court of the Civil Judge (Senior Division) on 15.1.2000 and received copy of the application u/s 5 of the Limitation Act. He also sought several adjournments to file objections, but no objection was filed and on the date fixed for hearing of the case the defendant appellant remained absent, so the court decided this case vide the judgment dated 31.5.2001 whereby he condoned the delay in filing the application and also allowed the application for making the award rule of the court. Aggrieved with that judgment and decree the defendant No. 1 filed this appeal.

4. We have heard learned Counsel for the defendant appellant as well as the plaintiff respondent No. 1.

5. The learned Counsel for the appellant made the following two submissions before us:

(i) Application of the plaintiff was barred by time and there was no justification to condone the delay u/s 14 of the Limitation Act.

(ii) The learned Civil Judge (Senior Division) after allowing the application u/s 14 of the Limitation Act should have provided one more opportunity to the defendant appellant to file his objections under Sections 30 and 33 of the Arbitration Act, 1940 and since he did not provide any such opportunity, the order passed by him should be set aside, and the defendant appellant should be

provided one more opportunity to file objections against the award and contest it on merits.

6. Now we take up both the contentions of the defendant-appellant one by one.

7. First of all, we take up first contention of the defendant appellant, The contention of the defendant appellant was that the Arbitrator's award was given on 29.6.1993 and its notice was also given to the plaintiff on 10.7.1993, and so the application for making it the rule of the court moved in the court of the Civil Judge (Senior Division) on 4.9.99 was time barred, and there was no justifiable ground to condone the delay. He also referred to Article 119(a) of the Limitation Act, which provides that the limitation for filing the application to make the award rule of the court is 30 days from the date of service of the notice of the making of the award. Now the question to be considered is whether the period spent by the plaintiff respondent in pursuing the proceedings before the Delhi High Court is to be excluded or not while counting the period of limitation.

It is to be seen that in the present case the plaintiff received notice of the award on 10.7.1993 and he moved an application before Delhi High Court for making it rule of the court on 16.7.1993. The case remained pending in the Delhi High Court and on 18.7.96 it was held by a Single Judge of the Court that the case was beyond territorial jurisdiction of the court ,and when the appeal filed against that judgment was also dismissed then on the application of the plaintiff the petition u/s 14 of the Arbitration Act along with concerned documents was returned back to him on 24.8.1999, then it was filed by the plaintiff in the court of the Civil Judge (Senior Division) Sonbhadra on 4.9.1999. If the period from 16.7.1993 to 24.8.1999 is excluded from the limitation period, the period spent by the plaintiff from 10.7.1993 to 16.7.1993 is six days and the period from 24.8.1999 to 4.9.1999 is 11 days and the total of 6 + 11 days comes to 17 days only. Thus the application shall be treated to be within limitation period of thirty days if the aforesaid period from 16.7.1993 to 24.8.1999 is excluded.

8. Now the question to be determined is whether the aforesaid period from 16.7.1993 to 24.8.1999 is to be excluded or not. It will be useful to go through Section 14 of the Limitation Act, 1963, which runs as under:

14. Exclusion of time of proceeding bona fide in Court without jurisdiction : (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is

prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground (hat the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

9. In the present case the plaintiff spent the time from 16.7.1993 to 24.8.1999 in pursuing the case in the Delhi High Court on the basis of the assumption that in view of the agreement between the parties the courts at Delhi had jurisdiction in the matter. However, this contention was not accepted by the Single Judge of the Court nor by the Division Bench in the appeal filed by the plaintiff against the order of the Single Judge. The appeal was dismissed by the Division Bench of Delhi High Court on 6.7.1999, but in pursuance of that order the plaintiff could not get the application returned back soon thereafter, and so he had to move a fresh application in this regard which was registered as Civil Misc. Application No. 3044 of 1999. It was decided by the Delhi High Court on 20.8.1999 and the following order was passed:

Office is directed to ensure that the order dated 6th July, 1999 is complied with forthwith. It is clarified that it is office of this Court which has not yet returned the papers to the petitioner. Clarified that the delay is on part of Court and petitioner is not to be blamed for any delay till the papers are returned.

Application stands disposed of.

10. In view of the aforesaid order passed by the Division Bench of the Delhi High Court as well as the provisions of Section 14 of the Limitation Act, the entire period from 16.7.1993 to 24.8.1999 is to be excluded, and after exclusion of the above period, the application moved by the plaintiff respondent in the court of the Civil Judge (Senior Division) shall be treated to be within time. We, therefore, reject the contention of the appellant that the application was time barred.

11. Now we take up the second contention of the appellant. His contention is that after allowing the application u/s 14 of the Limitation Act, the court should have allowed him fresh opportunity to file his objection against the award and since it has not been done by the court, the order passed by it is bad, and so his appeal should be allowed, and he should be provided a fresh opportunity to file his objection against the award.

12. It is, however, to be seen that according to Article 119(b) of the Limitation Act, 1963, the limitation period for filing objection against the award is thirty days from the date of service of the notice of filing of the award. In the present case, when the above application was filed by the plaintiff, its notice was sent to

the defendant-appellant. It is not clear from the record as to on which date the notice was served upon him, but he appeared in the court of the Civil Judge (Senior Division) on 15.1.2000, as is apparent from the order sheet of that date, The date 26.2.2000 was fixed in the case on the above date. On 31.1.2001 the defendant moved an application (paper No. 28 Gha) for time to file written statement. The application was not opposed by the plaintiff and it was allowed. However, no written statement was filed and so a fresh application bearing paper No. 29 Gha for time to file written statement was moved on 31.3.2001. This application was also not opposed and it was allowed. Thereafter the defendant appellant moved another application (30 Gha) on 17.4.2001 praying for time to file written statement. This application was opposed and so it was ordered to be put up for order on 18.4.2001. On 18.4.2001 one more application for time to file the written statement was moved, which is paper No. 31 Gha. It was stated in that application that this time last opportunity for filing written statement may be given. This application was opposed but it too was allowed by the court.

13. Thereafter one more application (paper No. 32 Gha) for time to file written statement was moved on 19.4.2001. It was opposed by the plaintiff and so the court fixed 30.5.2001 for its disposal. On that date one more application (33 Gha) for adjournment on personal ground of the counsel of the defendant-appellant was moved. The application was allowed and 31.5.2001 was fixed for hearing of the case. On that date the defendant-appellant did not appear and so the case was heard *ex parte* in his absence and it was decided.

14. Now it is to be seen that in the present case the defendant No. 1 put in appearance on 15.1.2000 and thereafter repeated opportunities were given by the court to him upto 31.5.2000 to file his written statement, but he did not do so. The limitation period prescribed for filing objection against the award is one month from the date of service of the notice of the filing of the award which is to be counted in the present case from 15.1.2000, the date on which the defendant-appellant appeared in the court. The court gave him sufficient time of more than one year and four months. This time was granted ignoring the time limit fixed under Article 119(b) of the Limitation Act, which is thirty days only. The appellant's contention is that he should have been granted fresh time after allowing the application u/s 14 of the Limitation Act, but it is to be seen that Article 119(b) of the Limitation Act does not provide for any such relaxation. According to Clause (b) of the aforesaid Article, entire objections are to be filed within thirty days and there is no such provision that at first the objections regarding limitation are to be filed and then the objections on merits are to be filed. The defendant appellant had prayed for time to file written statement in his each application, which goes to show that he wanted to file objections on merits and not on the application u/s 14 of the Limitation Act only. As such when the defendant had failed to file his objections even after grant of the aforesaid period which was in excess of the statutory period prescribed in Article 119(b) of the Limitation Act, there was no question of granting further time to the defendant-appellant after allowing the application u/s 14 of the Limitation Act. Any such

order passed by the court would have been illegal in view of the specific requirement of filing objection within thirty days of the notice of filing of the award. In the present case, the defendant shall be treated to have received this notice on 15.1.2000 when he appeared in the court. The limitation period is to start from the date of notice of filing of the award and not from the date of registration of the case after condoning delay u/s 14 of the Limitation Act. As such no order could be legally passed on 31.5.2000 for allowing further time to file written statement or objection in violation of Article 119(b) of the Limitation Act.

15. The learned Counsel for the plaintiff-respondent cited before us a ruling of Hon'ble Supreme Court rendered in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, in which it has been held that communication by the court to the parties or their counsel of the information that the award has been filed is sufficient compliance of the requirement of Sub-section 2 of Section 14 of the Arbitration Act and in that case no fresh notice in writing is required to be given to the parties by the court on filing of the award. He further submitted that whenever an award has been filed in the court, and no objection against that award is filed by either party, a decree is to be passed in terms of the award u/s 17 of the Arbitration Act even without application of either party for making it rule of the court. In support of this contention he cited before us a ruling of Hon'ble Supreme Court in Champalal Vs. Mst. Samrath Bai, in which it has been held that the law of limitation applies to applications made by the parties and not to the filing of the award by the Arbitrator. He also cited a ruling of this Court in "Battu Lal Nikhara v. Bhartiya Khadya Nigam" reported in 1986 A.L.J. 799 in which the same view has been taken.

16. The learned Counsel for the defendant-appellant cited before us a ruling of Nagpur Bench of Bombay High Court in the case "Kawalsingh Abkar v. Baldeosingh Abkar" reported in AIR 1957 Nagpur 57, in which it has been held that Section 5 of the Limitation Act has no application to the petitions under the Arbitration Act. His contention was that in the present case the plaintiff has referred to both Sections 5 and 14 of the Limitation Act in his application for condonation of delay. It is correct that delay in filing the application u/s 14 of the Arbitration Act can be condoned only u/s 14 of the Limitation Act and Section 5 has no application, but if the essential requirements of Section 14 of the Limitation Act have been mentioned in the application and that section has also been referred, it is immaterial that there is superfluous reference of Section 5 of the Limitation Act also, and the application shall not be treated to be bad by reference of Section 5 of the Limitation Act. In this ruling also it has been held that no notice in writing of filing of the award is necessary and such a notice is required in that case only where the parties are absent, but if the parties are present in court and have knowledge of filing of the award, objection is to be filed within the limitation period of 30 days irrespective of the fact that no notice in writing has been given. This ruling does not render any help to the appellant.

17. The position in this way is that there was no necessity for the court to give any more opportunity to the defendant-appellant to file his objection against the award after allowing the application u/s 14 of the Limitation Act nor any such time could be granted in view of the specific provisions of Article 119(b) of the Limitation Act. The appeal in this way has got no force and it is liable to be dismissed.

18. No other point was pressed before us.

19. The appeal is, therefore, dismissed with costs to the plaintiff respondent No.

1. The judgment and decree of the learned Civil Judge (Senior Division) Sonbhadra are hereby confirmed .