

(1982) 11 PAT CK 0017
In the Patna High Court
Case No : A.F.O.O. No. 178 of 1975

The State of Bihar and Others

APPELLANT

Vs

Liason and Contracts and Another

RESPONDENT

Date of Decision : 08-11-1982

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2)
Limitation Act, 1963 — Article 119

Citation : AIR 1983 Patna 101 : (1983) PLJR 98

Hon'ble Judges : P.S. Sahay, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : J.P. Shukla Govt. Pleader No. 2 and J.N. Thakur, for the Appellant;
Janardhan Prasad Singh and Uday Shankar Sharan Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the appellants, the State of Bihar and its officers against the order of the court below making an award rule of the court. The question of law which arises for consideration in this appeal is as to whether a notice u/s 14(2) of the Arbitration Act (the Act) has got to be issued to the party who has himself filed the award.

2. The facts are that the respondent No. 1 had entered into a contract for executing certain works of the Irrigation Department in the district of Dhanbad in the year 1966. Under the agreement contained in the arbitration clause, on some difference arising between the parties, the dispute was referred to the named arbitrator, defendant No. 3 who gave an award in favour of the plaintiff for a sum of Rs. 1,14,715/-. The plaintiff made an application for making the award a rule of the court.

3. The plaintiff had impleaded in the proceeding besides the arbitrator, the State of Bihar and the Superintending Engineer, Hazaribagh and the Executive Engineer, Dhanbad as defendants Nos. 1, 2 and 4 respectively. It appears that defendants Nos. 1, 2 and 4 had appeared jointly through the Additional

Government Pleader, Dhanbad and had earlier filed a plain copy of the award. The court then directed defendant No. 4 to either file himself or get filed through the Arbitrator the original award which was ultimately filed on 16-7-1974 through defendant No. 4. Obviously, it must be through the Additional Government Pleader. On 1-8-1974, however, an application for time was made on behalf of the State of Bihar for filing objection to the award on the ground that it had no earlier knowledge of the filing of the award. The prayer was also formally allowed and objection was filed on 22-8-1974. However, at the time of hearing, an exception was taken on behalf of the plaintiff that in view of the mandatory provisions of Section 14 of the Arbitration Act read with Article 119 of the Limitation Act, the objection must have been filed within the prescribed period of 30 days and the same having been filed much beyond the said time, it could not be looked into, Undisputedly, no notice of the filing of the award separately had been issued by the court to the defendants and an argument was advanced in the trial court as well as before this court that issuance of the notice was mandatory and inasmuch as no notice was issued, time had not started to run for the purpose of filing of the objection to the Award and, therefore, the objection filed, as mentioned above, was much within time.

4. The learned Additional Subordinate Judge has, overruled the plea of the defendants on the ground that on the facts mentioned above, no notice was necessary to be issued as the Award in question had been filed by the defendants themselves. Accordingly, it ordered for accepting the award and making it a rule of the court. The appellants have accordingly filed the present appeal.

5. Mr. J.P. Shukla, learned Government Pleader No. 2, as already said earlier, has made an argument that issuing a notice within the scheme of Section 14(2) of the Arbitration Act was mandatory. It is no doubt true that Sub-section (2) of Section 14 of the Arbitration Act enjoins upon the court to give notice of the filing of the award and similarly Clause (b) of Article 119 of the Limitation Act also prescribes a period of 30 days for filing an application for setting aside an award or getting an award remitted for reconsideration "from the date of service of the notice of the filing of the award", but it must be held that if the aggrieved party has already got knowledge of the filing of the award, as in the present case, where the award was filed by defendant No. 4, who had appeared in the proceeding jointly with the State of Bihar, separate notice of the filing of the award is not necessary to be issued. A Bench of this Court as far back as in 1927 in the case of Bholanath Roy Vs. Bata Krishna Roy and Others, observed that "the materiality of the service consists in the fact that the party is properly made aware of the matter contained in the notice, but if the party or his pleader, where notice is served on him, dispenses with the compliance of the correct formalities prescribed he cannot afterwards object that although he in fact had notice the service was not directly in accordance with the formalities prescribed." The Supreme Court in the case of Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, has made the matter all the more clear and beyond all reasonable doubt. In that case also no separate notice was issued, but

on the relevant date the pleaders of the parties were present, according to the entry against the date in the roznama of the court and it was held to be sufficient notice to the parties as "notice to the counsel of the filing of the award means or amounts to notice to the party." In the 8th paragraph of the report the learned Judge made the following observation (at p. 668):--

"We are of opinion that the expression "give notice" in Sub-section (2) of Section 14 simply means giving intimation of the filing of the award, which certainly was given to the parties through their pleaders..... .."

In the case before us, apparently it was the pleader of the parties who had filed the award in question and, therefore, the fact of the filing of the award must be deemed to be within the knowledge of the parties. No separate notice, therefore, was required to be issued to any one of them. The objection to the award, therefore, should have been filed within 30 days from that date and the defendants could not be heard to say that they had no knowledge of the filing of the award as no notice u/s 14 of the Act had been issued against them.

6. The court below, therefore, has taken a correct view in refusing to look to the objection petition and we do not find any merit in this appeal. Mr. Janardhan Prasad Singh, however, on the request of the court has agreed to forego and give up a sum of Rs. 14,715/-awarded in favour of the plaintiff as a matter of good gesture. The decree, therefore, would stand modified to this extent.

7. Subject to the modifications as above, this appeal is dismissed, but without costs.