

**(2000) 04 PAT CK 0107**  
**In the Patna High Court**  
**Case No : M.J.C. No. 647 of 2000**

The State of Bihar

APPELLANT

Vs

Baibhaw Construction Pvt. Ltd.

RESPONDENT

**Date of Decision :** 20-04-2000

**Acts Referred:**

Arbitration Act, 1940 — Section 3

Arbitration and Conciliation Act, 1996 — Section 14, 15, 28

**Citation :** (2000) 3 PLJR 612

**Hon'ble Judges :** Aftab Alam, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Aftab Alam, J.—This is a petition filed by the Respondent in a disposed of writ petition. The writ petition had its origin in an arbitration proceeding and in the petition in hand a prayer is made on behalf of the Respondent to extend the time for publishing the award upto April 30, 2000.

2. The brief facts can be stated thus. The Respondent made an application before the Subordinate Judge, Siwan under Sections 14 and 15 of the Indian Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 1996 Act) making a prayer to terminate the appointment of the arbitrator nominated earlier in terms of the arbitration agreement between the parties and to appoint a new arbitrator for deciding the dispute between the parties (that is, the present Respondent Baibhaw Construction Private Limited and the State of Bihar). The Subordinate Judge I, by order, dated 22.9.1998 passed in Misc. Case No. 10/1997 allowed the prayer made on behalf of the Respondent-applicant and appointed the Hon"ble Mr. Justice R.N. Lal (a former Judge of this Court) as the arbitrator for deciding the dispute between the parties.

3. After the arbitration proceedings had continued for about eight months under the provisions of the Arbitration and Conciliation Act, 1996, a controversy arose whether the proceedings would be held under the provisions of the 1996 Act or

whether the proceedings should be held as provided under the Indian Arbitration Act, 1940 (hereinafter referred to as the 1940 Act). The learned arbitrator took the view that the proceedings before him would continue in accordance with the provisions of the 1996 Act. The State then came to this Court in CWJC No. 9236 of 1999 (in which case the present petition has been filed) challenging the view taken by the learned arbitrator and seeking a direction from this Court for holding the arbitration proceedings in terms of the provisions of the 1940 Act. That writ petition, as noticed earlier, was disposed of by order, dated 27.10.1999. That order is a consent order and it was passed when Mr. N.K. Singh, learned Counsel appearing for the Respondent agreed that the arbitration proceedings be held under the provisions of the 1940 Act.

4. It may further be noted that after the parties agreed as to the manner in which the arbitration proceeding was to be held the parties further agreed that the period of four months for the conclusion of the proceedings should be reckoned not from the date when the matter was referred to the arbitrator but from 27.10.1999, the date of the passing of the order by this Court. This would be evident from the concluding portion of the order which is as follows:

This writ petition is, therefore, disposed of with the consent of the parties in the following terms:

The Arbitrator would hold the arbitration proceedings under the provisions of the Indian Arbitration Act, 1940. The statutory period for the final publication of award will commence from today.

The parties are also in agreement that the earlier sittings made by the Arbitrator in which evidences were led on behalf of the arbitration proceedings and all the evidences already taken by the arbitrator will duly form part of the records of the proceeding and will be taken into consideration by the arbitrator.

The order of the Subordinate Judge remains unmodified in all other respects.

5. It appears that the arbitration proceedings could not be concluded within a period of four months from 27.10.1999 and from the arbitrator's report it further appears that the responsibility for the delay lay squarely with the State. In those circumstances the Respondent has filed this petition for further extending the time for publication of the award by the arbitrator.

6. From Section 3 read with item No. 3 of the 1st Schedule of the Arbitration Act, 1940 it is plain and clear that unless a period for making the award is otherwise specified in the arbitration agreement, the arbitrator must make the award within four months after entering on the reference. As noticed above, this period is over and the learned arbitrator was unable to make the award within this period.

Then comes Section 28 of the Act which is as follows:

28. Power to Court only to enlarge time for making award- (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and

whether the award has been made or not, enlarge from time to time the time for making the award.

(2) ....

It is relying upon this provision that the Respondent has filed this petition for extension of time.

7. It is indeed true that "the court" is vested with the power to extend the time for making award but the question is which is the court within the meaning of Section 28. The answer to my mind is quite clear and I am of the view that the expression "the Court" in Section 28 of the Arbitration Act 1940 plainly refers to the court which made the arbitration reference and appointed the arbitrator and, thus, it would be the court of Subordinate Judge I, Siwan which alone would be competent u/s 28 of the Act to extend the time for making the award.

8. To this writ court the controversy had come on a limited issue and that was disposed of on the basis of an order expressly passed with the consent of the parties. The writ court would not assume the power u/s 28 to extend the time for making award simply because some controversy in connection with the arbitration proceedings had come to it at some stage.

9. It would be, therefore, apposite for the Respondent to make a petition before the Subordinate Judge I, Siwan seeking suitable extension of time. In case such a petition is filed, the Subordinate Judge will undoubtedly pass appropriate orders after hearing the parties. Needless to say that the Subordinate Judge I will give due and proper weightage to the observations and opinions expressed by the learned arbitrator in his reports/notes. In case such a petition is filed, it is expected that the Subordinate Judge will pass appropriate orders within one month from the date of filing of the petition.

10. This M.J.C. petition is accordingly dismissed with the aforesaid observations and directions.