
(2002) 04 AP CK 0039
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4336 of 1999

Turcon India Private Limited

APPELLANT

Vs

Artos Breweries

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Arbitration Act, 1940 — Section 17, 30
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 5

Citation : (2002) 04 AP CK 0039

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : M.V. Suresh, for the Appellant; P. Srinivas Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Dubagunta Subrahmanyam, J.—This revision petition is filed against the order dated 28.8.1999 on the file of Principal Senior Civil Judge, Rajahmundry, in I.A.No. 320 of 1997 in O.P. (SR) No. 22 of 1997.

2. Necessary facts for the disposal of this revision petition are as follows: In pursuance of an arbitration agreement between the revision petitioner and the respondent, disputes which arose between the parties were referred to the Arbitrator Sri K. Ramachandra Rao. He passed an award on 24.1.1980. He issued a notice of his award to the parties. On the directions by the Delhi High Court, the Arbitrator filed his award in Delhi High Court on 21.7.1980. The respondent filed a petition in the Delhi High Court requesting the said court to make the award the Rule of the Court and pass a decree in terms of the award. The revision petitioner contested the said petition before Delhi High Court. He contended inter alia that the Delhi High Court has no territorial jurisdiction to pass orders relating to the said award. He also filed an interim application before the Delhi High Court in I.A. No. 417 of 1982 regarding the territorial jurisdiction of the Delhi High Court. The Delhi High Court in its order dated 18.2.1982 held that it has no territorial jurisdiction to entertain the petition filed u/s 17 of the

Arbitration Act, 1940 (for short "the Act") and make the award the rule of the court and pass a decree. It also directed the transmission of the entire records to the Senior Civil Judge at Rajahmundry as the said court had territorial jurisdiction in the matter concerned. As provided under Order VII Rule 10-A C.P.C., the Delhi High court directed both the parties to appear before the Senior Civil Judge on 14.3.1988. The said time for appearance of the parties was extended by the Delhi High Court. In fact on 20.7.1988 one advocate appeared before the Senior Civil Judge on behalf of the revision petitioner. The said advocate filed vakalat before the Senior Civil Judge on behalf of the revision petitioner on 7.10.1988. The records were however did not reach Senior Civil Judge's Court at Rajahmundry from Delhi High Court. The proceedings before the Senior Civil Judge were being adjourned from time to time awaiting the records of the Delhi High court. It also transpires that the original records were misplaced in Delhi High Court and thereafter the records were reconstructed as per the orders of the Delhi High Court and those records reached the Senior Civil Judge, Rajahmundry, in the year 1990. However, the said fact of receiving the records from Delhi High Court was not noticed by the Senior Civil Judge till the year 1994. After noticing that the records had already reached his court, the Senior Civil Judge had taken on file the petition filed by the respondent herein u/s 17 of the Act and numbered it as O.P. No. 88 of 1995. He ordered notice to the revision petitioner herein. As the notice was not served on the revision petitioner, the trial court ordered substituted service by publication of notice in a newspaper. After the said publication, the respondent through his counsel appeared before the trial court on 24.7.1996. On the said day one advocate of Rajahmundry filed vakalat for the revision petitioner herein.

3. On 24.2.1997 the revision petitioner filed a petition u/s 30 of the Act requesting the trial court to set aside the award dated 24.1.1980 passed by the Arbitrator. The office of the trial court took an objection that the said petition was barred by limitation. Thereupon the revision petitioner filed an application u/s 5 of the Limitation Act to condone the delay of 16 years 2 months 9 days in filing the application u/s 30 of the Act. At this juncture itself I wish to point out that the learned counsel for the revision petitioner contended that the said delay of 16 years 2 months 9 days was calculated by the court. The said contention is not based on record. In the affidavit as well as in the petition the revision petitioner himself made a specific request to the trial court to condone the delay from 8.10.1981 till the date of filing of the petition u/s 30 of the Act. It is pleaded in the petition that the petition u/s 30 of the Act is to be filed within thirty days of service of notice issued by the court u/s 14(2) of the Act and as no such notice was received from the court by the revision petitioner, the main petition was not at all barred by limitation and the said petition was filed only to comply with the technical objection raised by the office that the main petition was barred by limitation. Except pleading that the delay condonation petition was filed to meet the technical objection raised by the office, no other ground was mentioned in the petition showing any reason or cause for the delay in filing Section 30 of the

Act. It is a significant fact to be kept in mind for disposal of this revision petition. While contending in the petition that a petition u/s 30 of the Act need not be filed till a notice u/s 14(2) of the Act issued by the court was served on the revision petitioner, the revision petitioner did not come forward with any plea in his petition the cause of action for filing him the said petition u/s 5 of the Limitation Act if in fact he need not file any petition u/s 30 of the Act till a written notice issued by the court was served on him.

4. It is the contention of the learned counsel for the revision petitioner that in the present case no notice was issued by the Civil Court to the revision petitioner about filing of the award in Rajahmundry Court. It is his contention that filing of the award before the Delhi High Court is of no consequence inasmuch as the Delhi High court has no jurisdiction to entertain the petition filed by the respondent to make the award the rule of the court.

5. The learned counsel for the revision petitioner did not cite any decisions before this court in support of his contention that the period of limitation starts from the date of receipt of a written notice issued by the civil court u/s 14(2) of the Act.

6. The learned counsel for the respondent has invited the attention of this court to some of the decisions. It is his contention that no written notice u/s 14(2) of the Act is necessary and it is sufficient if either the revision petitioner or his counsel has knowledge of the filing of the award by the Arbitrator in a Civil Court. It is contended by him that the revision petitioner is a party to the proceedings before the Delhi High Court and therefore from that day onwards he is aware of the filing of the award in Delhi High court. It is also contended that in pursuance of the directions given by the Delhi High Court in the year 1988 itself, the revision petitioner's counsel appeared before Senior Civil Judge, Rajahmundry, and subsequently he filed the vakalat on 7.10.1988 and again after the petition filed by the respondent u/s 17 of the Act was entertained by Senior Civil Judge, the revision petitioner's counsel again filed vakalat before the Senior Civil Judge, Rajahmundry, on 24.7.1996. It is the contention that throughout all these proceedings the revision petitioner is aware of filing of the award in the Civil Court.

7. I would now consider the decisions relied upon by the learned counsel for the respondent. The first decision is a judgment of the Supreme Court in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, . This decision was relied upon by the trial court also in its impugned order. The relevant passage reads as follows:

" The notice which the Court is to give under S. 14(2) to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering to the party can arise in the case of a notice given orally. The communication of the information to the pleader of the party that an award has

been filed is sufficient compliance with the requirements of sub-sec.(2) of S. 14 with respect to the giving of the notice to the parties concerned about the filing of the award. Notice to the pleader is notice to the party in view of R.5 of O.3 Civil Procedure Code".

8. Another decision relied upon is a judgment of the Supreme Court in Indian Rayon Corporation Ltd. Vs. Raunaq and Company Pvt. Ltd., . The Supreme Court followed its earlier decision in Nilkantha's case (1 supra). The facts of this case are that the award was filed in the High Court on 4.2.1977. The party concerned filed affidavit on 4.2.1978 stating that the award has been wrongly filed in the High Court and it should be taken off the file. Thereafter on 30.7.1981 a notice u/s 14(2) of the Act was served on the party. Subsequently the party filed a petition u/s 30 of the Act for setting aside the award. The said petition would be within the time prescribed bylaw if the date of service of the notice u/s 14(2) of the Act is taken as the basis for filing the required petition. If the date of filing of the affidavit by the party, namely, 4.2.1978 was taken as the starting point for limitation, the petition filed u/s 30 of the Act was barred by limitation. The Supreme Court held that if the substance is clear, the form of the notice is irrelevant but the notice of the award having been filed in the court is necessary. It also held that the filing of the award in the court is necessary and the intimation thereof by the Registry of the court to the parties concerned is essential and beyond this, there is no statutory requirement of any technicality u/s 14(2) of the Act. The judgment clearly negatives the contention of the learned advocate for the revision petitioner that unless a written notice from the court u/s 14(2) of the Act is served on the party concerned, the period of limitation does not start to commence.

9. Even if the date of filing of the award in the Delhi High Court, which is admittedly within the knowledge of the revision petitioner herein, is ignored on the ground that the Delhi High court has no territorial jurisdiction to receive the said award, still the fact remains that under Order VII Rule 10 and 10-A C.P.C., the Delhi High Court directed both the parties to appear before the Senior Civil Judge, Rajahmundry, on a particular date in the hope that the records from the Delhi High Court would reach the Rajahmundry Court by that date. In Rajahmundry Court, which is the trial court now, the revision petitioner was represented by an advocate of that court. The advocate filed vakalat in the said proceedings. In the said proceedings, the docket sheet clearly indicates that in the year 1994 the court realised that the records from Delhi High Court were received by the court during the year 1990. Even if for some reason or the other it is presumed that even in the year 1994 the revision petitioner is not aware of the receipt of the award and other records by the trial court, it cannot be said that after receiving the notice in the O.P. concerned and after filing the second vakalat by his advocate in the trial court, the petitioner has no knowledge of the filing of the award in the trial court. In my considered opinion the period of limitation commences from the said date. Without any hesitation, the court can come to the conclusion that by 24.7.1996, the day on which the advocate for the

revision petitioner filed vakalat in the trial court, the revision petitioner is aware of filing of the award in the trial court. If for any reason he wanted to seek the relief of setting aside the award, he should have filed the petition u/s 30 of the Act within thirty days from 24.7.1996. The present petition was filed well beyond the said thirty days from 24.7.1996. Therefore the petition u/s 30 of the Act filed by the revision petitioner is clearly barred by time. It is already noticed that except denying the pleas that the petition u/s 5 of the Limitation Act is filed to meet the technical objection of the office regarding the limitation, no other ground whatsoever was mentioned in his petition by the revision petitioner for condoning the delay of Section 30 of the Act within the time prescribed by law. I am, therefore, satisfied that there are no grounds whatsoever to condone the delay in filing the petition u/s 30 of the Act by the revision petitioner.

(1) 10. Another decision relied upon by the respondent is another judgment of the Supreme Court in Food Corporation of India and others Vs. E. Kuttappan, . In this decision the Supreme Court held that notice u/s 14(2) of the Act need not be given in writing and it could be otherwise communicated. In that case the party requested the Arbitrator by means of a letter to forward the awards to his counsel for filing the same in court. Subsequently the Arbitrator handed over the records and through his counsel the said party produced the award before the court. Subsequently the court directed issuance of notice to the counsel appearing for the parties and fixed a date. The said party filed objections computing the period of limitation of thirty days under Article 119 of the Limitation Act, 1963, from 7.11.1998, the date on which the counsel for the parties were summoned by the court to be told of filing of the award. The Supreme Court held that the starting point of limitation is 25.10.1988, the day on which the counsel for the petitioner therein produced the award in court. Therefore, this decision also shows that no formal notice u/s 14(2) of the Act from the court is required and the petition u/s 30 of the Act is to be filed within thirty days from the date on which the concerned party had notice or knowledge about filing of the award in the Civil Court.

11. The last decision relied upon is a judgment of this court in VENKATA SUBBARAO Vs. AMMIRAJU (4). In that case in the presence of the parties, the Arbitrator produced the award before the court. This court held that the parties had knowledge about filing of the award and non-compliance with Section 14(2) of the Act does not vitiate the proceedings. In view of the principles of law laid down in the above decision, it is very clear to my mind that the petition filed u/s 30 of the Act by the revision petitioner is barred by limitation. No cause whatsoever was put forward to condone the delay in filing that petition. Therefore, the impugned order is not liable to be set aside.

12. In the result, the revision petition is dismissed. No costs.