

(2014) 09 CAL CK 0029

In the Calcutta High Court

Case No : G.A. Nos. 2053, 2849 of 2014 and A.P. No. 274 of 2005

Union of India and Others

APPELLANT

Vs

Venus Engineering Concern Pvt. Ltd.

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2015) 1 WBLR 507

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : L.K. Chatterjee and Aparna Banerji, Advocates for the Appellant;
Dipak Basu, P. Bhattacharya and A. Mahanta, Advocates for the Respondent

Judgement

Biswanath Somadder, J.—This is a restoration application taken out by Union of India arising of an order dated 1st February, 2012, whereby its application for setting aside of an award passed under the old Arbitration Act was dismissed for default. An interesting point that arises for consideration is whether this restoration application is barred by limitation or not. It is a matter of record that the application for restoration has been filed on 4th July, 2014.

2. According to the learned senior Counsel appearing on behalf of the respondent, this restoration application is barred by limitation since it ought to have been filed within 30 days from the date of passing of the order of dismissal for default, i.e. 1st February, 2012 and there is absence of reasons for delay.

3. As observed at the outset, the instant application is for the purpose of restoration of a setting aside application filed under Sections 30, 33 of the Arbitration Act, 1940. As such, this application cannot come within the purview of the statutory description as provided either under Article 122 or Article 123 of the Schedule to the Limitation Act. Therefore, the only Article which could apply is Article 137 of the Schedule to the Limitation Act which reads as follows:-

4. The question as to whether Article 137 of the Limitation Act, would apply in

case of an application under Sections 30, 33 of the Arbitration Act, 1940 is also no more res integra in view of the judgment of the Supreme Court rendered in the case of Mohta Alloys Steel Works vs. Mohta Finance and Leasing, AIR 2002 SC 480 wherein it has been held, inter alia, to the effect that Article 137 of the Limitation Act would be attracted in respect of an application under Section 33 of the Arbitration Act, 1940. As such, this Court has no hesitation in holding that an application for setting aside of an award filed under Sections 30, 33 of the Arbitration Act, 1940 will fall within the compass of the statutory description provided under Article 137 of the Schedule to the Limitation Act and in the facts and circumstances of the case, there was no requirement for Union of India represented by the General Manager, Eastern Railway Administration to explain the delay in filing of the restoration application, since there was none.

5. So far as merit of the restoration application is concerned, having regard to the averments made in the instant application, this Court finds that cause shown could have been better explained to justify the absence of the learned Advocate in Court when the matter was dismissed for default on 1st February, 2012. Conducting of the case by the Eastern Railway Administration leaves much to be desired and has been far from satisfactory, which is reflected in paragraphs 6 and 7 of the instant application and the explanation provided therein is also quite contradictory in nature. There has been utter negligence on the part of the Eastern Railway Administration in conducting the setting aside proceeding. As such, although this Court is inclined to allow the restoration application, it is subject to payment of cost assessed at 300 GMs to be deposited with the High Court Legal Services Committee, Calcutta, within a fortnight from-date.

6. The instant application, being G.A. No. 2053 of 2014 is allowed by restoring AP No. 274 of 2005 to its original file and number, subject to the observation made hereinabove.

7. Let a copy of this order be transmitted to the General Manager, Eastern Railway Administration, forthwith, by the Registrar, Original Side so that he can initiate corrective measures with regard to handling of such important matters where interest of the Central Government is involved. The matter shall appear in the list under the heading "Arbitration Motion (Adjourned)" on 12th November, 2014.