

(2013) 02 DEL CK 0230
In the Delhi High Court
Case No : O.M.P. No. 174/2013

Union of India

APPELLANT

Vs

M/s. Uttam Singh Duggal and Co. and Another

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0230

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Manmohan Singh, J.

I.A. No. 3146/2013

Exemption allowed, subject to all just exceptions.

The application is disposed of.

I.A. No. 3148/2013 (for condonation of delay of 89 days in filing the petition)

1. This is an application filed by the petitioner for condonation of delay of 89 days in filing the petition u/s 34 of the Arbitration and Conciliation Act, 1996 against the award dated 18th August, 2012. The main petition is filed u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act") challenging the Award dated 18th August, 2012 passed by the learned sole Arbitrator Justice K. Ramamoorthy (Retd.) in the matter of M/s. Uttam Singh Duggal Co. (claimant therein) and Union of India (respondent therein).

2. The above petition has been filed after a delay of 89 days after expiry of the period within which the Award could be challenged u/s 34(3) of the Act. The petitioner has filed I.A. No. 3148/2013 (hereinafter referred to as the "said application") along with the petition with a prayer for condonation of delay in filing the above petition.

3. There is a prescribed time of limitation provided in Section 34 of the Arbitration and Conciliation Act, 1996 which reads as under:

34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--

(a) the party making the application furnishes proof that--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.--Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by

sufficient cause from making the application within the said period of three months if may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

4. In terms of Section 34(3) of the Act, which has been interpreted by the Supreme Court in *Union of India Vs. M/s Popular Construction Co.*, , the recourse to the Objection Petition u/s 34 can be made only by an application filed within 90 days from the date of receipt of the award and the court on sufficient and adequate reason may condone delay of 30 days thereafter in filing the petition but not thereafter. In *Union of India vs. Popular Construction Co.*'s case (supra), the court held as under:

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed u/s 34 is emphasised by the provisions of Section 36 which provide that

where the time for making an application to set aside the arbitral award u/s 34 has expired ...the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court.

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring u/s 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

(Emphasis is added)

5. The judgment in *Union of India vs. Popular Construction Co.*'s case (supra) has been re-affirmed in subsequent judgments of the Supreme Court in

Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, , Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, and Assam Urban Water Supply and Sew. Board Vs. Subash Projects and Marketing Ltd., .

6. Section 5 of Limitation Act has no application in the present case as Arbitration and Conciliation Act, 1996 is a "special law", which provides for a period different from that prescribed under the Limitation Act. This position is settled by the judgment of the Supreme Court in State of Himachal Pradesh and Another Vs. Himachal Techno Engineers and Another, and Union of India Vs. Popular Construction Co., (supra).

7. In view of the above, the delay sought by the petitioner in the present application cannot be condoned. The application is dismissed.

OMP No. 174/2013 & I.A. No. 3147/2013 (stay)

In view of the dismissal of I.A. No. 3148/2013, the petition to set aside the award has become time barred. The petition and the application are also dismissed.