
(2019) 08 GAU CK 0054
In the Gauhati High Court
Case No : Arbitration Appeal No. 13 Of 2017

Union Of India

APPELLANT

Vs

Raitani Engineering Works Pvt Ltd

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 34(1), 34(3)
Limitation Act, 1963 — Section 5

Citation : (2019) 08 GAU CK 0054

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : U K Goswami, S Deka

Final Decision : Allowed

Judgement

1. Heard Mr. C. Goswami, learned counsel for the appellant. Also heard Ms. M. Jain, learned counsel for the respondents.

2. The appellant railways being aggrieved by the award dated 24.12.2014 of the arbitrator made an application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award. In doing so, according to the appellant railways, there was a delay of 11 days in preferring the application under Section 34(1). In the resultant situation, the appellant railways made a petition under Section 5 of the Limitation Act for condoning the delay of 11 days.

3. The learned Additional District Judge No.3, Kamrup(M) while considering the said petition for condoning the delay arrived at a conclusion that the railway authorities received the award from its advocate on 06.02.2015 and the petition under Section 34 was registered on 29.05.2017. The dated 29.05.2017 recorded in the order is possibly incorrect which ought to have been 29.05.2015. It further recorded that the Sheristadar in the Office of the District & Sessions Judge had checked the petition on 29.05.2015. Accordingly, the learned Court came to the conclusion that the petition was filed on 20.05.2015 which otherwise ought to

have been filed on 07.05.2015.

4. Accordingly, the learned Court made an arithmetical calculation and arrived at a conclusion that the delay was 14 days and not 11 days. Thereupon, the learned Court arrived at a conclusion that the application ought to have been under Section 34(3) of the Arbitration and Conciliation Act, 1996 and as such it could not have been made after a period of 3 months. Accordingly, the learned Court concluded that the condonation petition was made in a casual manner and the verification was not signed by the appropriate authority of the appellant railways.

5. Proviso to Section 34(3) provides that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the period of 3 months, it may entertain the application within a further period of 30 days but not thereafter. Admittedly, the petition under Section 34 (1) of the appellant railways was filed within the period of one month after expiry of the three months from the date of the order and therefore the learned Court was required to examine whether sufficient cause was shown as to why the petition was made after expiry of three months. Instead of adjudicating on the actual cause shown and arriving at a conclusion whether it is acceptable or not, the learned Additional District Judge, Kamrup(M) had gone more into the technicalities of the application filed rather than the causes shown.

6. Accordingly, we set aside the order dated 26.05.2017 and require the learned Additional District Judge No.3, Kamrup(M) to consider the application of the appellant railways afresh and examine whether the causes shown in filing the petition under Section 34(1) after a period of 3 months would be an acceptable reason or not. As regards the technical deficiencies in the petition as pointed out by the learned Court, the appellant railways may make necessary correction to remove technical deficiencies.

7. The appeal stands allowed to the extent indicated. However the appellant railway would have to satisfy the learned Additional District Judge as to the reason for the delay in making the application after expiry of the three months.

8. The parties to appear before the learned Additional District Judge No.3, Kamrup(M), on 16.09.2019. Interim order passed earlier stands vacated.

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